

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2887-2011 (O&M)
Date of decision: 29.03.2017

Om Parkash

.....Petitioner

versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.S.K.Sandhir, Advocate for the petitioner
Mr.Rajesh Gupta, Advocate for the respondent No.1 and 2
Mr.Sumit Gupta, Advocate for the respondent No.3

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ? yes*
2. *To be referred to the Reporters or not ? yes*
3. *Whether the judgment should be reported in the Digest? yes*

Kuldip Singh, J. (Oral)

Petitioner worked in work charge capacity in Bhakra Dam Project as Junior MTO from 28.6.1967 to 18.8.1971 and was retrenched after paying compensation. He again worked on work charge basis as Junior Mechanic from 17.9.1971 to 30.9.1973 in BSL Nangal and thereafter from 1.10.1973 to 24.8.1977 as mechanic in BSL Nangal and was again retrenched. Thereafter, the petitioner was appointed on regular basis on 1.5.1979 under the then Punjab State Electricity Board, now succeeded by PSPCL as a Diesel Mechanic at Ganguwal Power House. Therefore, he was transferred to various posts and ultimately retired on 30.4.2001. The present petition was filed by the petitioner in the year 2011 i.e. after a lapse of 10 years for issuing the writ of mandamus for directing the respondents to count his work charge service rendered in Bhakra Dam Project and BSL Nangal as qualifying service for the purpose of fixing pension and accordingly release

the pensionary benefits.

Respondent Nos.1 and 2 in the written statement have taken the stand that the petitioner joined on work charge basis on 1.5.1979 in the office of the SDO construction at Ganguwal and worked in work charge capacity till 18.9.1994 and he was granted the benefit of said work charge service. It was stated that the instructions dated 20.5.1982 (Annexure P1) issued by the Punjab Government were adopted by respondent no.2 and that the instructions dated 27.3.1997 (Annexure P3) were also adopted by respondent nos.1 and 2.

Respondent nos.3 to 5 in the reply have taken the preliminary objection that the petition has been filed after a lapse of 10 years of the retirement. The work charge service is not denied but it is stated that he worked in different and distinct organizations.

I have heard learned counsel for the parties and have also carefully gone through the file.

Service rendered by the petitioner in Bhakra Dam Project and BSL Nangal not denied by the respondents. The said entities merged into Bhakra Beas Management Board. The instructions of the Punjab Government 20.5.1982 (Annexure P1) shows that admittedly, the service rendered with the Central Government/ State Government prior to securing posts under the State/ Central Government on their own violation was ordered to be treated as qualifying service for pension and the pension was to be proportionately shared by the government concerned on service share basis. The benefit of said instructions will be applicable only to those who having been retrenched from service of Central/ State Government, secured on their own, employment under State/ Central Government either with or

without interruption between the date of retrenchment and date of new appointment. Admittedly, vide letter dated 25.11.1985, the Punjab State Electricity Board, as it was then, vide circular No.54/85 dated 25.11.1985 adopted instructions (Annexure P1) of the State Government w.e.f. 31.3.1982. Further instructions of the Government dated 27.3.1997 (Annexure P3) for counting the work charge service period for pensionary benefits was also adopted by the Punjab State Electricity Board.

Now, the question would arise as to whether the work charge service rendered by the petitioner which comes to approx. 9 years 10 months and 9 days is liable to be counted for grant of pensionary benefits to the petitioner or not?

The controversy has already been settled by the Hon'ble Supreme Court in case titled as Punjab State Electricity Board and another vs. Narata Singh and another, 2010 (3) SLR 202. It is to be noted that previously the Bhakra Dam Project and BSL Nangal were under the Irrigation Department of Punjab Government. The facts of the case are identical with the present case. In the said case, the Hon'ble Supreme Court while considering the SLP against the Division Bench of this Court vide which the prayer of the employee was allowed, observed as under:-

7. The contention, that the two circulars, namely, one dated March 31, 1982 and another dated May 20, 1982 cover only the employees of the State Government and the Central Government and the Board, which is a distinct legal entity from the State of Punjab, is not covered by the same, is merely stated to be rejected. It is neither the case of the respondent No.1 nor the case of the State Government that employees of the Board are covered by the circulars dated March 31, 1982 and May 20,

1982. However, it is their case that the employees of the Board were entitled to benefit contemplated by those two circulars as soon as the policy laid down in those two circulars was adopted by the Board vide letter dated November 25, 1985. The effect of adoption of the two circulars, i.e., one of the Central Government and another of the State Government is that a work charged employee who has rendered services either under the Central Government or the State Government would be entitled to count the period of service so rendered by him for the purpose of claiming pensionary benefits as an employee of the Board.

8. It is wrong to argue that adoption of circulars by the Board does not create a reciprocal arrangement between the Board and the State of Punjab and/or Central Government. The language of the three circulars is clear and unambiguous and, therefore, those circulars will have to be interpreted plainly. The conjoint and meaningful reading of the two circulars dated March 31, 1982 and May 20, 1982 with circular dated November 25, 1985 of the Board unequivocally and clearly creates an arrangement between the Central Government, State Government and the Board under which an employee of the Board who had earlier occasion to render service as a work charged employee either in the Central Government or in the State Government would be entitled to count the period of service so rendered, when the question arises as to whether he has put in qualifying service for grant of pension by the Board arises. The respondent No.1 has never requested the Board to consider his case for promotion de hors the circular dated November 25, 1985. Having regard to the facts of the case, this Court is of the opinion that the High Court was justified in issuing mandamus as prayed for by the respondent No.1.

11. It was stressed that the service of the respondent No.1 with the Government of Punjab came to an end on April 15, 1978 when he was retrenched whereas after a lapse of more than four years, he joined the services of the Board on August 6, 1982

and, therefore, the gap being not condonable under Rule 4.23 of the Punjab Civil Services Rules, the claim of the respondent No.1 should have been rejected, has no substance. The policy decision of the Board indicates that the benefit of policy decision of the Government of Punjab was to be available to an employee of the Board with effect from March 31, 1982. A conjoint and meaningful reading of the memo dated November 25, 1985 issued by the Board and the policy decision of the Government of Punjab as reflected in letter dated May 20, 1982 of the Department of Finance makes it more than clear that the benefit would be admissible to one who having been retrenched from the service of the State Government, secured on his own, employment under the Board either with or without interruption between the date of retrenchment and date of new appointment. There is no manner of doubt that the respondent No.1 was retrenched from the service of the State Government. This fact is not only admitted in the list of events supplied by the learned counsel for the appellant but is also mentioned in the impugned judgment. The record shows that on his own, the respondent No.1 secured employment under the Board with interruption between the date of retrenchment and date of new appointment. Therefore, it is wrong to argue that the respondent No.1 having joined service of the Board after a lapse of more than four years from the date on which he was retrenched by the State Government would not be entitled to the benefit of the memo dated November 25, 1985.

Thereafter, it concluded as under:-

13. The learned counsel for the appellants pointed out the finding recorded by the Division Bench in the impugned judgment to the effect that “we are, therefore, clearly of the opinion that the work charged service of the appellant with the Board must be counted for determining qualifying service for the purpose of pension” and argued that the judgment of the High Court should not be construed to mean as giving direction

*to the appellant to include previous service rendered by the respondent No.1 as work charged employee of the State Government for pension purposes. So far as this argument is concerned, it is true that the Division Bench of the High Court has expressed the above opinion in the impugned judgment. However, the reference to Rule 3.17(ii) of the Punjab Civil Services Rules as well as the Full Bench decision of the Punjab and Haryana High Court in **Kesar Chand vs. State of Punjab & Ors. [1988 (5) SLR 27]** and speaking order dated November 16, 2005 passed by the Board rejecting the claim of respondent No.1 makes it abundantly clear that the High Court has directed the appellants to count the period of service rendered by the respondent No.1 in work charged capacity with the State Government for determining qualifying service for the purpose of pension. Further, the respondent No.1 has been directed to deposit the amount of Employee's Contributory Fund which he had received from the appellants along with interest as per the directions of the Board before the pension is released to him. All these directions indicate that the High Court had come to the conclusion that the period of service rendered by the respondent No.1 in work charged capacity under the State Government should be taken into consideration for determining qualifying service for the purpose of pension. Non-mention of such direction in the impugned judgment is merely a slip and the appellants cannot derive any advantage from this.*

The said authority is directly attracted in the facts of the present case. Therefore, the work charge service of the petitioner rendered in Bhakra Dam Project and BSL Nangal is liable to be counted as qualifying service for the pension in terms of judgment in the case of Narata Singh (supra).

The petitioner shall deposit the amount of gratuity, retrenchment and other benefits, received by him from Bhakra Dam Project and BSL

Nangal along with interest determined by respondent no.1 within the time specified by them, if the same is already not deposited. On deposit of the said benefits, his work charge service shall be counted as qualifying service for the pension. Proportionate pension shall be shared by the State government, which was controlling then Bhakra Dam Project and BSL Nangal. Keeping in view the fact that there is delay 10 years in approaching this Court, the petitioner shall be paid arrears but without any interest.

Petition is accordingly allowed.

29.03.2017

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes