211 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CWP No.24340 of 2016 (O&M)**
Date of decision : March 24, 2017

Om Parkash and another **....... Petitioners**

Versus

State of Haryana and others **....... Respondents**

2. **CWP No.728 of 2015 (O&M)**
Date of decision : March 24, 2017

Man Bahadur **....... Petitioner**

Versus

State of Haryana and another **....... Respondents**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Naveen Daryal, Advocate for the petitioner(s).

Mr. Naveen Sheoran, DAG, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

<u>KULDIP SINGH J. (ORAL)</u>

By this single judgment of mine, I shall dispose of two writ petitions baring CWP Nos.728 of 2015 and 24340 of 2016 involving the same question of facts and law.

Facts of the cases are extracted from CWP No.24340 of 2016. Two petitioners in the said writ petition served Haryana State Minor Irrigation and Tubewell Corporation (for short ‘HSMITC’) Department from 01.10.1984 to 14.10.2001. Thereafter, they were transferred to Excise and Taxation Department, Government of Haryana, as Driver, where they worked as such and retired from service on 31.01.2016. In CWP No.728 of 2015, petitioner Man Bahadur served HSMITC from 10.03.1975 to 15.01.2002 and was later on transferred as Driver to the Excise and Taxation Department on 16.01.2002 and retired from service on 28.02.2014.

The petitioners in both the cases claim the benefit of past service rendered in HSMITC as qualifying service for all purposes except seniority. They have also impugned the order dated 14.10.2016 (Annexure P-8) passed by the respondents, whereby their claim was declined. They claim the benefits of judgment of Hon'ble the Supreme Court passed in Civil Appeal No.4446 of 2008, titled as ***"State of Haryana and another v Deepak Sood"*** decided on 15.07.2008 (Annexure P-11). Petitioners claim that they were serving in the HSMITC and were shifted to Excise and Taxation Department.

It is further stated that a similarly situated employees, have been granted the similar relief.

In the reply, the respondent Nos.1 to 3 have taken the stand that the petitioners were appointed provisionally as Driver as fresh entrants at their own request in the initial pay scale of ₹4,000-6,000/- with special pay of ₹100/-. There was a condition in the appointment letter that they would not be given any benefit of past service and would be treated as new recruits in the Department. It is further stated that no record of HSMITC was transferred to the Excise and Taxation Department except service book of the petitioners and no option was exercised. It was further stated that the pay of the petitioners was not protected. It was also stated that while disposing of CWP No.3717 of 1999, titled as ***"Santro Devi v State of Haryana",*** this Court directed the State of Punjab and Haryana to constitute a Forum for redressing of grievances of its employees so that the employees can approach the said Forum before approaching this Court. In pursuant to the said order, the Forum was constituted by the Government vide Notification dated 12.06.2002. The petitioners have not approached that Forum before approaching this Court.

It is further stated that the benefits of the past service towards pension etc. was only granted to the surplus employees on the direction of Hon'ble High Court/Supreme Court but petitioner No.1 was appointed by way of transfer from HSMITC to the respondents-Department at his own request.

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

The order dated 05.10.2001 (Annexure P-1), vide which the petitioners were appointed as Driver provisionally on transfer basis at their own request in Excise and Taxation Department, Haryana. The name of one of the petitioners, namely, Om Parkash is mentioned in the said order. It was specifically stipulated in the service condition that he will not be given any benefit of past service and will be treated as new recruit in this Department. His seniority in the Department will be considered from the date he joined the Department. Another order dated 01.01.2002 (Annexure R-1) attached with written statement filed by respondent No.2, contains the name of petitioner No.2 Ramesh Kumar, containing the similar conditions and regarding Man Bahadur, the order is also dated 01.01.2002, containing the same conditions.

Undoubtedly, the petitioners complete their services and after their retirement, present petitions have been filed by them.

Learned counsel for the petitioners has relied upon the Government Instruction dated 07.01.2002 (Annexure P-10) regarding absorption from autonomous body to the Haryana Government or vice versa.

Clause 9 of the said Instructions is reproduced as under:

> “9. **Option for employees who are at present in service:**
> *In order to get the benefit for the qualifying service rendered in an Autonomous/Statutory Body, subject to fulfilment of the criteria contained above, the employee should make request to that effect within a period of six months from the date of issue of this office memorandum. As a onetime facility for the employees a present in service they may be permitted to exercise their option within a period of six months from the date of the issue of this office memorandum either to get pensionary benefits in respect of the past qualifying service rendered by them in pensionable or non-pensionable organization failing which it will be presumed that they are not interested in availing the benefit of past service rendered for the purpose of pensionary benefits. Wherever an employee opts to avail of the benefit of past service for counting the same as qualifying service for pension he would be required to*

> *deposit the terminal benefits already availed by him from the previous employer to the extent of the employer's share of the CPF/gratuity along with interest thereon from the date of receipt of the emoluments till the date of deposit thereof in the Government treasury wherever such dues/terminal benefits have not been received by the employee concerned, his employer would be under obligation to deposit the employer's share of the CPF/prorate pensionary benefits alongwith interest for the period of service rendered in such organization with the other organization."*

The reliance has also been placed upon the judgment of ***Deepak Sood's case (supra)***, and reliance has been placed on the following observations of the Apex Court:

> *"Therefore, in the series of judgments given by this Court the view has been taken that in case of a transfer/absorption from one department to another or from public sector to State though the benefit of the seniority may be denied to the incumbent but not for other benefits like pay fixation and for the pensionary benefits. Therefore, when the benefit of past service rendered in the parent department was given for fixation of pay and pensionary benefits, there is no reason why the past service should not be counted for grant of ACP Grade. Consequently, we are of the view that the view taken by the Division Bench of the High Court in the impugned judgment and order is correct and there is no ground to interfere in this appeal. Consequently, this appeal is dismissed but with no order as to costs."*

Further reliance has been placed upon the Instructions of the Government dated 16.12.2010 (Annexure P-12) issued in view of ***Deepak Sood's case (supra)***. The relevant extract relied upon is reproduced as under:

> *"Accordingly, all the employees initially appointed in Boards/Corporations/Municipal Committees and declared surplus and subsequently appointed on transfer basis in other departments and the benefit of pay protection has been given are entitled to the benefits of incentives introduced under the schemes mentioned at (c) to (f) after completion of requisite length of service as the case may be after counting their past service rendered by them in Boards/Corporations/Municipal Committees."*

Now, the position emerging from the abovenoted facts is that the petitioners were appointed by way of transfer in the Excise and Taxation Department of Haryana Government. There is nothing on file to show that they were declared surplus in HSMITC. There is specific condition in the appointment letter that they will not get the benefits of past service. The petitioners apparently agreed to the said conditions joined in the Excise and Taxation Department.

Now, the question is as to whether the petitioners are entitled to all the benefits as mentioned in ***Deepak Sood's case (supra)*** and the Instructions of the Government dated 16.12.2010 (Annexure P-12).

Keeping in view the conditions of the appointment letter, it is also to be noted that HSMITC was also a Corporation under the Act of the Government. The service condition mentioned above shows that the petitioner will not be entitled for the benefits of past service and will be treated as new recruits. However, for the purpose of the pension, the position is different. During the service, the petitioners may not be granted the benefits of the past service for the fixation of pay, increments, ACP etc. However, for the purpose of pension, the past service rendered in the semi Government Corporation is to be counted as qualifying service for grant of pension as per Instructions dated 07.01.2002 (Annexure P-10).

Learned counsel for the petitioners has relied upon the Instructions dated 16.12.2010 (Annexure P-12) and has pressed that for the purpose of pay fixation and ACP, past service rendered by the petitioners is to be counted. The Instructions dated 16.12.2010 (Annexure P-12) shows that these are based on the judgment of ***Deepak Sood's case (supra)***. A perusal of ***Deepak Sood's case(Supra)*** shows that in that case on account of closure in the Octroi Branch of the Municipal Committee, Panipat, the employees of Octroi Branch were absorbed in Education Department. There was specific stipulation in the absorption order that their past service shall be counted for pension and pensionary benefits, though, no benefit of past service for the purpose of seniority shall be given. Consequently, the Apex Court held that once their past service is counted for the pay and pensionary benefits, it would follow that they will also be given the benefit of fixation of pay and grant of ACP.

The present case is at different footing and is not covered by ***Deepak Sood's case (supra)*** in that respect and by the Instructions dated 16.12.2010 (Annexure P-12). In the present case, there was specific stipulation in the order of transferring the petitioners in the Excise and

Taxation Department that the petitioners first will not be given the benefits of past service and will be treated as new recruits in the Department.

It also comes out that the petitioners working in HSMITC as T-mate were appointed as Driver in the Excise and Taxation Department, which carried higher scale. According to that pay scale, they were granted increments and ACP. Now, after the retirement, they cannot claim that for the purpose of grant of ACP, their past service should be counted, particularly, when no prayer has been made for striking down the conditions in the appointment order that they will not be given the benefits of past service and will be treated as new recruits in the Department.

It being so, I am of the view that the petitioners are entitled to only this much relief that their past service rendered in HSMITC is to be counted as qualifying service for the purpose of pension, subject to compliance of the conditions contained in the Circular dated 07.01.2002 (Annexure P-10), which mean that the petitioners shall have to surrender CPF, gratuity along with interest received by them from the previous department and on their doing so, benefits of their previous service rendered in HSMITC may be granted for the purpose of pension. The respondents are directed to process their case by counting their previous service rendered in HSMITC for the purpose of pension, gratuity and leave encashment.

It is further ordered that if the benefits are released within three months from the date of receipt of benefits with interest, no interest shall be liable to pay and in case, the delay is caused in releasing the same, the respondents shall be liable to pay interest @ 9% per annum.

As such, both the petitions are allowed to the abovenoted extent.

(KULDIP SINGH)
JUDGE

March 24, 2017
sarita

Whether speaking / reasoned Yes

Whether Reportable: No