

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-3857-2013 (O&M)

Date of decision: 10.05.2017

Sukhdev Singh Gill

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Ravi Kant Sharma, Advocate for the petitioner
 Mr.Nikhil K.Chopra, Additional Advocate General Punjab
 Mr.Harsh Aggarwal, Advocate for respondent no.3

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

Kuldip Singh, J. (Oral)

Petitioner served as Superintendent Grade-II in General Reserve Engineering Force (for short, 'GREF') from 8.11.1966 to 7.9.1973. Thereafter, he joined as Section Officer in Municipal Committee, Ludhiana on 7.9.1973. The Committee was later on converted into Municipal Corporation. Petitioner retired on attaining the age of superannuation on 30.4.2003. It also comes out that during the service, petitioner has filed CWP No.6160 of 1987 for counting his past service for seniority. The said

writ petition was allowed by a Single Bench of this Court. But the judgment was reversed by a Division Bench in LPA No.544 of 1988 vide judgment dated 10.4.1990. SLP filed against the said judgment was dismissed holding that the petitioner is not entitled to benefit of service in GREF for the purpose of seniority.

Petitioner claims the benefit of his service in GREF from 8.11.1966 to 7.9.1973 for the purpose of pay fixation, leave encashment and pensionary benefits. He has also impugned order dated 28.1.2013 (Annexure P11) vide which his request for grant of benefit of military service has been declined.

The State in the reply on behalf of respondent nos.1 and 2 has taken a stand that his earlier petition for counting the service rendered with GREF for fixing seniority has already been dismissed by the Apex Court holding that his service could not be treated as service rendered in three principal wings of the armed forces, namely, Army, Navy and Air Force. Therefore, the petitioner is not entitled for counting his service rendered in GREF for the purpose of seniority in the provincialised service under the State of Punjab. It has been further stated that for the purpose of pension, Punjab Municipal Corporation General Provident Fund and Pension Rules, 1994 are applicable wherein qualifying service has been defined in Rule 2(j), reproduced as under:-

the service rendered under the Municipal Corporation for which an employee is paid from the Municipal Corporation Funds and shall include any service rendered under the Government of Punjab, a Committee, a Trust or any other public sector undertaking immediately before joining the service.

Therefore, it was maintained that the service rendered in the

GREF cannot be counted for the purpose of pensionary benefits. It was further stated that the Government vide letter dated 13.6.2012, forwarded the representation of the petitioner dated 22.3.2002 to the Defence Welfare Officer, Ludhiana, who vide letter dated 21.9.2012 has intimated Municipal Corporation, Ludhiana that employees working in GREF have neither been conferred the status of ex-serviceman nor been given identity card of ex-serviceman. Hence, it was maintained that service rendered by the petitioner in GREF is not to be counted for grant of pensionary benefits.

I have heard learned counsel for both the parties and have also carefully perused the record.

First of all, I will deal with the claim of the petitioner for counting his previous service rendered in the GREF for the purpose of pay fixation during service and leave encashment.

It comes out that when the petitioner had approached this Court for the first time by way of CWP No.6160 of 1987, he only claimed the fixation of seniority by treating his service rendered in the GREF as military service. That would follow that if he is given seniority, his pay was to be refixed after counting the said service, not only for the purpose of seniority, but for pay-fixation also. At the time when the petitioner approached this Court for the first time in the year 1987, he never pleaded that his service rendered in the GREF should be treated as service for the purpose of pay-fixation and leave encashment. Plea of pay fixation was available to him. Since pay fixation was not claimed in the said writ petition, now after the retirement, the said plea is not available to the petitioner. Therefore, said claim of the petitioner is declined.

This Court will now confine only to the prayer as to whether

previous service of the petitioner rendered in GREF from 8.11.1966 to 7.9.1973 is to be computed for the purpose of grant of pensionary benefits or not?

A perusal of the previous judgment of the petitioner titled as Sukhdev Singh Gill vs. State of Punjab, 2001(1) S.C.T. 113 of the Apex Court shows that in that case during his service, the petitioner has claimed benefit of GREF service for the purpose of seniority only. Therefore, the Apex Court confined itself only to the said question. In that case, stand taken by the respondent State in the affidavit is reproduced as under:-

19. Learned senior counsel for the appellant, however, invited our attention to a statement made in the counter affidavit filed by Mr. Om Prakash Tandon, PGS (I), Under Secretary to Government of Punjab, Department of Local Government on behalf of Respondent Nos. 1 & 2 in the writ petition. (Respondent No. 1 in the writ petition is the State of Punjab and respondent No. 2 is the Director, Local Self Government Department, Punjab, Chandigarh.) At page 75 of the paper book, we find in the said counter affidavit filed by the said Officer it was stated that the appellant was entitled for the benefit of previous military service for the purpose of "pay and leave" but he was not entitled for the benefit of said service for "seniority". We take note of the fact that such a statement is made in the counter affidavit.

The plea that his previous service should be counted as qualifying service for the purpose of pension is available to the petitioner only after his retirement.

The respondents have relied upon Punjab Municipal Corporation General Provident Fund and Pension Rules, 1994, wherein the definition of employee has been given in Section 2k. The perusal of Section

1(3) shows that the said rules are applicable to the employee who are

appointed on or after 1.4.1990. In this case, the petitioner was appointed before the said date. Therefore, the said rules are not attracted in the present case. The said rules otherwise do not provide regarding the previous service of an employee in the military. Undoubtedly, if the rules of the Municipal Corporation are silent, Punjab Civil Services Rules will be applicable. This Court is also informed that before coming to the force of Rules of 1994, the service under the Municipal Corporation was not pensionable and it became pensionable only after the Rules of 1994 came into force. Be it so, since the petitioner was in service when the rules were enforced, he will be entitled to the benefit of pension, which became available to him on the enforcement of the said Rules of 1994 since he was in service at that time.

The matter as to whether the said service in GREF is to be counted for the purpose of grant of pensionary benefits, was examined by this Court in R.S.Dhull vs. State of Haryana and another (CWP No.14360-2008, decided on 30.11.2016). This Court after considering the various provisions, notifications, formulated issue no.2 in this regard and answered the same in affirmative. Therefore, the petitioner is entitled to the benefit of the law laid down by this Court in R.S.Dhull's case (supra).

Admittedly, the job of the petitioner in GREF was not pensionable.

Accordingly, the respondents are ordered to count the service of the petitioner in GREF from 8.11.1966 to 7.9.1973 as qualifying service for the purpose of grant of pension and other pensionary benefits. The petitioner shall deposit the gratuity received by him from GREF as per condition laid down in the government instructions with the respondents with interest as per government rates and thereafter, the respondents shall

pass the necessary orders counting his service in the GREF from 8.11.1966 to 7.9.1973 as qualifying service for the purpose of pension and accordingly refix his pension and release him revised pension and other pensionary benefits.

Writ petition is allowed to the above noted extent.

10.05.2017

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes