

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

Sr. No.277

Civil Writ Petition No.5223 of 2013 (O&M)
DECIDED ON: November 08, 2017

SHIV KUMAR AND OTHERS

..PETITIONERS

VERSUS

STATE OF PUNJAB AND ANOTHER

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Abhishek Bajaj, Advocate,
for the petitioners.

Mr. Manoj Bajaj, Additional Advocate General, Punjab.

Ms. Ishrat Phulka, Advocate,
for respondent No.2.

JASPAL SINGH, J.

Petitioners - Shiv Kumar & others, have preferred the instant civil writ petition under Article 226/227 of the Constitution of India, seeking issuance of a writ particularly in the nature of mandamus directing the respondents to grant seniority, step up increments, promotions and all consequential benefits to them in view of their regular service from the date

they joined on deputation and in any case from 23.09.2003 when the respondents took the decision vide resolution item No.23.17.

2. The case set up by the petitioners in the writ petition is that they were employees of Punjab National Fertilizers and Chemicals Limited since it was declared a sick unit. Vide office order dated 12.02.2001 (P-1), they were taken on deputation as Clerks in the pay scale of Rs.3210-5160 plus allowances as applicable to the employees of Punjab Urban Planning and Development Authority (for brevity 'PUDA') initially for a period of one year. Thereafter, their services were being extended time to time on usual terms and conditions of deputation. Subsequent thereto, petitioners were absorbed in PUDA vide Resolution No.23.17 dated 23.09.2003 (P-2) in a meeting of PUDA in accordance with terms and conditions laid down in the letter dated 05.11.2003 (P-3). Even thereafter, vide order/letter dated 04.11.2010/09.11.2010 (P-5), petitioners were permanently absorbed in their various capacities and posted under respondent No.2 at Mohali, Ludhiana and other places. After their absorption and issuance of letter dated 04.11.2010/09.11.2010 (P-5), petitioners made various representations to the respondents to grant them service benefit that is like that of seniority, step up of increments and promotions and all consequential benefits from the date of their absorption in PUDA, when they initially joined in PUDA i.e. 12.02.2001 (P-1) but the matter was put off time and again. Ultimately, when no action was taken and the matter was put off on pretext or the other, petitioners knocked the door of this Court by filing instant petition.

3. In response to notice of motion issued by this Court, respondents appears and respondent No.2-PUDA filed written statement and admitting that petitioners and some other employees of the Punjab National

Fertilizers and Chemical Limited (Sick Unit which was under liquidation) were taken on deputation as Clerks in PUDA vide office order No.39180-39198, dated 12.02.2001 for the period of one year on usual terms and conditions of deputation, which was extended from year to year basis at their request. The passing of resolution and approval of the meeting to absorb the petitioners permanently in PUDA was taken in the 23rd meeting held on 23.09.2003, which was conveyed to the petitioners on 05.11.2003, clarifying that their seniority shall be determined from the date when they were absorbed permanently in PUDA. Thus, on this averment, PUDA has taken stand that they were absorbed though permanently but from the date of their permanent absorption in PUDA i.e. in the year 2010.

4. Now, challenge to this petition raised by the respondent No.2-PUDA is that terms and conditions of deputation were conveyed to the petitioners and in view thereof, petitioners cannot claim their service benefits as have been claimed through instant petition from the date they were taken on deputation i.e. either w.e.f. 12.02.2001 (P-1) or 23.09.2003 when Resolution was passed particularly when they were permanently absorbed in PUDA vide letter dated 04.11.2010/09.11.2010 (P-5) and their seniority is usually was fixed at the bottom. In addition to it, it was also clarified that as per condition No.2, they should possess the following requisite qualifications specified for direct recruitment as Clerks:-

- i) Candidate must have passed Type Test in Punjabi as per the prescribed speed.*
- ii) Candidate must have passed 3 months' computer course from a recognized institute within one year from his absorption into PUDA.*

5. Thus, from the aforesaid pleadings and contentions, it is evident that petitioners were employees of Punjab National Fertilizers and Chemical Limited who were subsequently taken on deputation as Clerks in PUDA vide office order dated 39180-39198 dated 12.02.2001 (P-1), though for a period of one year on usual terms and conditions of deputation but their services were extended year to year basis at their own request. The passing of Agenda Item No.23.17 to absorb the petitioners or some other employees from Punjab National Fertilizers and Chemical Limited in PUDA against the vacant post. Keeping in view of their fulfilment, eligibility and other conditions, they were permanently absorbed. Thus, question which requires determination in the case in hand is whether any Rule, Regulation or Executive Instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputation post would be violative of Articles 14 and 16 of the Constitution and is liable to be struck down and answer to this question is in the positive, in view of the law laid down in the Hon'ble Apex Court in case ***S.I. Rooplal vs. Lt. Governor through Chief Secretary, Delhi, 2001(1) SCT 630; 1999(6) SLR 623***, particularly in para No.24, which is relevant for disposal of instant petition. It reads as under:-

“It is clear from the ratio laid down in the above case that any Rule, Regulation or Executive Instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned Memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the Memorandum, as has been prayed in the writ petition, the rights of the appellants could be

preserved, we agree with the prayer of the petitioners/appellants and the offending words in the Memorandum "whichever is later" are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text of the impugned Memorandum. Consequently, the right of the petitioners/appellants to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police, is restored."

6. Similarly, in another case captioned as ***M. Ramchandran vs. Govind Ballabh, 1999(4) SCT 263; 1999(6) Scale 82***, it was categorically observed that seniority on absorption of deputationists has to be determined on the basis of their length of service including the service rendered by them on similar/equivalent posts in their parent department and they are entitled to the benefit of their service rendered on the equivalent posts.

7. Adverting to the facts of the case in hand, respondent No.2-PUDA has imposed the condition at their initial absorption that their seniority shall be on purely provisional basis to be determined as and when they are appointed on regular basis keeping in view the date of such regular appointment and subsequent thereto, while passing an order for their permanent absorption in PUDA, another condition was imposed that as far as their seniority, promotion and other service benefits are concerned that shall be given to the petitioners from their regular appointment i.e. from 09.11.2010. Imposition of such conditions are not only violative of Articles 14 and 16 of the Constitution and liable to be struck down but also against the principle of natural justice. There is no reason to ignore the petitioners from their seniority when they have no fault on their part. They were earlier serving in Punjab National Fertilizers and Chemical Limited and were taken

on deputation in PUDA vide order dated 12.02.2001 (P-1) and joined as such. Subsequent thereto, their services were being extended from time to time and permanently absorbed vide letter dated 04.11.2010/09.11.2010 (P-5). The petitioners are also rendering the services from the date of their joining in PUDA in pursuance of letter dated 12.02.2001 (P-1) and there is no reason to decline them the seniority and other service benefits accrued to them.

8. As far as the another limb of arguments raised by respondent No.2 with regard to passing of Punjabi Type Test etc. is concerned, there is no specific denial by the respondents. Otherwise also, documents available on file depict that some of the petitioners have already passed the said test. If for the sake of arguments, it is deemed that petitioners have not passed the Punjabi Type Test, but at the same time, they have performed their duties and ultimately retired. Then, in such a situation, they cannot be deprived of the benefits in respect of their services rendered by them in PUDA.

9. As an up shot of the aforesaid discussion, instant petition is allowed and respondents are directed to grant the seniority, step up of increments, promotions and all consequential benefits to the petitioners by treating them in regular service from the date of their joining as deputationists i.e. on 12.02.2001. Further, the conditions reflected in the letter dated 04.11.2010/09.11.2010 (P-5) to the effect that they shall be deemed to be a fresh appointee or shall have no claim with regard to seniority etc. are struck down. Consequently, respondents particularly respondent No.2-PUDA are directed to do the needful and make the payment thereof, within a period of three months from the date of receipt of

certified copy of this order. In case of non compliance of this order,
petitioners shall be entitled to interest @ 9% per annum from the date of
institution of instant petition till actual payment.

10. No order as to costs.

November 08, 2017

Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No