IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4328-2014 (O&M)
Date of decision: 18.04.2017

Hari Dutt and another

…..Petitioners

versus

Haryana Vidyut Parsaran Nigam Limited and others

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Madan Mohan, Advocate for the petitioner
Mr.Pardeep S. Poonia, Advocate for respondent Nos.1 to 3
Mr.Ravi Nayak, Advocate for
Mr.Karan Nehra, Advocate for respondent No.4

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)

Petitioners, who were initially the employees of Haryana State Electricity Board, now succeeded by HVPNL, were posted with BBMB against the share quota of Haryana State Electricity Board from April 1969 to 31.7.2007 and 16.1.1970 to 31.10.2004, respectively, when they superannuated from service. Petitioners claimed that it was neither a deputation nor a foreign service, therefore, their pension was to be fixed in terms of Rule 6.24 of PCSR Vol.II as applicable to Haryana, taking into consideration his entire emoluments. The petitioner filed the present writ petition in the year 2014 i.e. After 7 and 10 years of their retirement.

Respondents in the written statement have taken a stand that the pension of the petitioners was fixed on the basis of presumptive pay as per PCSR Volume II Rule 6.19 C as applicable to Haryana, as the petitioners

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were employees of HSEB, now succeeded by HVPNL and were posted in BBMB, as per Nigam instructions. It is further stated that as per instructions endorsed on 31.8.1992, the pension of the employees who statutorily stood transferred to BBMB as on 1.11.1966 in terms of Section 79(4) Reorganization Act and allocated to the State of Haryana, should be fixed on the basis of emoluments drawn by them from BBMB at the time of retirement. The petitioners were appointed to the BBMB in the share quota of Haryana after 1.11.1996. Reliance has been placed on instructions dated 14.8.2002, under which, the pension of the employees who are transferred to BBMB after 1.11.1996 is to be fixed on the basis of presumptive pay which would have been admissible to them in HVPNL had they not been posted in BBMB. The respondents relied upon Rule 6.19 C.

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

Rule 6.19 C is reproduced as under:-

6.19-C.(i) The term "emoluments" for these purposes shall mean "pay" as defined in rule 2.44(a)(i) of Punjab Civil Services Rules Volume I, Part I.] If a Government employee immediately before his retirement or death has been absent from duty or on leave with allowances his emoluments for the purpose of calculating service gratuity or death-cum-retirement gratuity should be taken at what they would have been had he not been absent from duty.

Provided that the amount of gratuity is not increased on account of increase in pay not actually drawn and that benefit of higher officiating or temporary pay is given if it is certified that he would have continued to hold the higher officiating or temporary appointment but for his proceeding on leave.

(ii) Pay drawn in tenure appointment(s) will count provided the service in tenure appointment(s) does not qualify for grant of

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special additional pension.

(iii) There will be no change in the existing principle of reckoning those emoluments for pension which are paid by the Government. In other words the entire amount drawn as emoluments by a Government employee while on foreign service will not count for pension and gratuity. In such a case, the pay which the Government employee would have drawn under the Government had he not been sent on foreign service will alone be taken into account.

(iv) In the case of employees on deputation to any other State Government or the Central Government, the emoluments which he would have drawn, had he not proceeded on deputation, will alone be taken into account.

The petitioners were admittedly, earlier were employees of the Haryana State Electricity Board now succeeded by HVPNL.

It is also not denying fact that they were posted in BBMB against the share quota of then Haryana State Electricity Board. The posting can be only by way of deputation and it was not permanent absorption. It is not even otherwise alleged by the petitioners that they were permanently absorbed in BBMB. In this way, they continued to be employee of Haryana State Electricity Board now succeeded by HVPNL. Therefore, sub-rule 4 of Rule 6.19C reproduced above, is attracted and the pension was to be fixed assuming that he is on the rolls of HVPNL and not proceeded on deputation. In addition to this, before retirement of the petitioners, instructions dated 14.8.2002 were issued. Relevant extract of clause 2 of the instructions is as under:-

2) All other employees transferred to BBMB/ UT after 1.1.66 and retiring from BBMB/UT will be entitled to draw pensionery benefits on the basis of presumptive pay which would have been admissible to them in HVPNL had they not

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been posted in BBMB/UT.

It also shows that before the retirement of the petitioners, a policy was formed which is in consonance with said Rule 6.19C (iv) that the pension is to be fixed on the basis of presumptive pay which would have been admissible to the petitioner in HVPNL. In fact, the pension of the petitioners was fixed and petitioners continued to draw the said pension from the years 2007 and 2004 till the year 2014 when suddenly after 7 and 10 years respectively, they woke up to claim that their pension should have been fixed as per last drawn salary in BBMB. It is to be noted that the petitioners have not placed on file any document to show that as to in which manner they were posted from Haryana State Electricity Board to BBMB. Meaning thereby that the assertion of the respondents is to be taken as correct that the posting was in the nature of deputation and they continued to be on the rolls of the Haryana State Electricity Board now succeeded by HVPNL.

Learned counsel for the petitioners has relied upon the judgment of Hon'ble Apex Court in *K.L.Rathee vs. Union of India and others* 1997(4) SLR 545. The perusal of this judgment shows that it does not cover the case of deputation. Another judgment relied upon is of learned Single Bench of this Court in *Sohan Singh, Sub-Inspector of Police vs. The State of Hareyana and others, 1992(1) SLR 171*. However, this case also does not relate to Haryana State Electricity Board or HVPNL.

In view of the service rules and the instructions of HVPNL, the pension of the petitioners was to be accordingly fixed.

Learned counsel for respondents on the other hand has vehemently argued that claim of the petitioner for re-fixation of pension is

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barred by delay and latches. He has relied upon the judgments in *Tarsem Pal vs. Punjab State Power Corporation Limited and others, 2013(3) SLR 314,* Jaideep Dhillon vs. *State of Punjab and others, 2016(4) S.C.T. 632*, *Nathu Ram Sharma and another vs. State of Punjab and others, 2015(2) S.C.T. 631 and* Sucha Singh and others vs. *State of Punjab and others, 2012 (2) S.C.T. 229.*

On the other hand learned counsel for the petitioners has submitted that since it is a pension case which is recurring loss, therefore, delay and latches are not attracted.

I am of the view that delay and latches would be attracted in the present case. Had it been a case of mis-calculation of pension then the petitioners can be granted arrears of last 38 months prior to the filing of CWP. However, in this case, the pension of the petitioners was found to be correctly fixed as per service rules. Now the petitioners claims that different formula should have been applied. For making such claims, he should have otherwise come within limitation.

However, as discussed above, no case of the petitioners on merits is made out. Hence, the present writ petition stands dismissed.

18.04.2017 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: Yes

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