

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 141

Regular Second Appeal No.3439 of 2017 (O & M)
Date of Decision: July 17, 2017

Dakshin Haryana Bijli Vitran Nigam Ltd. & another

..... PETITIONERS

VERSUS

Nand Kishore

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. R.S. Longia, Advocate, for the petitioners.

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Jaspal Singh, J

1. The instant appeal has been preferred by the appellants against judgment & decree dated March 31, 2015 passed by the Civil Judge (Junior Division), Faridabad, whereby the suit filed by the respondent – plaintiff has been decreed, as well as judgment & decree dated February 20, 2017 passed by the Additional District Judge, Faridabad whereby the appeal filed by the defendants against the aforesaid judgment & decree passed by the trial court has been dismissed.

2. While assailing the impugned judgments & decrees passed by the courts below, learned counsel for the appellants has submitted that the impugned judgments & decrees are against the evidence available on record and settled canons of law. The courts below have erred in not appreciating the oral as well as documentary evidence. The respondent – plaintiff was not

in continuous service of appellant No.2 – Executive Engineer (OP) Division, Dakshin Haryana Bijli Vitran Nigam, Sector – 23, Faridabad, and therefore, did not fulfill the conditions envisaged under Rules, 3.17(A), 4.21 and 4.23 of the Punjab Civil Services Rules, Volume – II Part – II (for short, ‘Rules’), as applicable to the State of Haryana. Respondent – plaintiff was appointed on daily wages, in the capacity of Mate, on November 15, 1981 and continued as such till February 22, 1993. On February 23, 1983 he was absorbed by the appellants, DHBVN (erstwhile HSEB) as Assistant Lineman (ALM) by selection in direct recruitment. However, the said selection of respondent – plaintiff and other candidates as ALM was quashed by this Court vide judgment/order which was further upheld by the Hon’ble Supreme Court. Consequently, services of the respondent – plaintiff was terminated vide Memo dated September 24, 1997. Subsequently, plaintiff was again selected and appointed as ALM on October 15, 1997 in HSEB vide appointment letter dated October 10, 1997 w.e.f. October 15, 1997. He was promoted to next higher post of LM w.e.f. February 10, 2011.

3. Haryana Government Notification No.4/53/2009/2 – Pension dated March 17, 2010 was issued regarding counting of daily wage service towards pension, introducing provisions of Rule 3.17A(f)(i) of Rules, wherein it is provided that daily wage service would be counted towards qualifying service for pension provided the same was continuous and followed by absorption in regular service without any break. Plaintiff requested defendants to make necessary entry in his service book. He also served a legal notice dated December 03, 2013 upon the defendants. Ultimately, on January 02, 2014, defendants refused to make any such entry in the service record of plaintiff, which constrained him to institute a suit for

that plaintiff is entitled that services rendered by him from November 15, 1981 to February 22, 1993 with the defendants Board/Nigam be counted towards his regular service for the purpose of pensionary benefits. Learned counsel for the appellants, accordingly, prayed for setting aside of impugned judgments & decrees.

4. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellants and scrutinized the impugned judgments & decrees as well as documents available on file, but finds no legal or factual weight therein.

5. Before deciding the controversy, reference of Rules 3.17(A), 4.21 and 4.23 of Rules is necessary which read as under:-

“**3.17-A.** (a) All service interrupted or continuous followed by confirmation shall be treated as qualifying service; the period of break shall be omitted while working out aggregate service.

(b) Extraordinary leave counted towards increments under rule 4.9 (b)(ii) of Punjab Civil Services Rules, Volume-I, Part-I, will be accounted towards service qualifying for pension.

(c) Periods of suspension, dismissal, removal, compulsory retirement followed by reinstatement will count for pension to the extent permissible under rule 4.17 of Punjab Civil Services Rules Volume-II read with rule 7.3 of the Punjab Civil Services Rules, Volume-I, Part-I.

(d) Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of rule 4.19(a) of Punjab Civil Service Rules Volume-II.

(e) An interruption in the service of a Government employee caused by wilful absence from duty and unauthorized absence without leave will as hitherto entail forfeiture of past service.

Explanation.— The willful refusal to perform duties by a Government employee by any means including

pen down strike shall be deemed to be willful absence from duty.

- (f) Employees retiring from Government service without confirmation (as temporary employees) in any post on or after 5 February, 1969 will be entitled to invalid/ retiring/ superannuation pension and death-cum-retirement gratuity on the same basis as admissible to permanent employees. In case of death of employees in service his family will also be entitled to similar benefits as are admissible to the families of permanent employees. This concession will, however, not apply to:
 - (i) Persons paid from contingencies; provided that [full period] 2 of service of such persons paid from contingencies rendered from 1st January, 1973 onwards for which authentic records of service is available will count as qualifying service subject to the following conditions:-
 - (a) Service paid from contingencies should have been in a job involving whole time employment and not part time for a portion of day,
 - (b) Service paid from contingencies should be in a type of work or job for which regular post should have been sanctioned e.g. Malis, Chowkidars, Khalasis etc.,
 - (c) The service should have been such for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relations in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments; and
 - (d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.”

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“4.21 An interruption in the service of a Government employee entails forfeiture of his past service, except in the following cases:-

- (a) Authorized leave of absence.
- (b) Unauthorized absence in continuation of authorized leave of absence so long as the post of the absentee is not substantively filled; if his post is substantively filled, the past service of the absentee is forfeited.
- (c) Suspension where it is immediately followed by reinstatement whether to the same or different office, or where

the officer dies or is permitted to retire or is retired while under suspension.

(d) Abolition of post or loss of appointment owing to reduction of establishment.

(e) Transfer to non-qualifying service in an establishment under Government control. The transfer must be made by competent authority; a Government employee who voluntarily resigns qualifying service cannot claim the benefit of this exception. Transfer to a grant-in-aid school entails forfeiture.

(f) Time occupied in transit from one post to another; Provided that the Government employee is transferred under the order of competent authority, or, if he is a nongazetted Government employee, with the consent of the head of his old office."

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"4.23 Interruption in service (either between two spells of permanent, or temporary service or between a spell of temporary service and permanent service or vice versa in the case of an officer retiring on or after the 5th January, 1961, may be condoned, subject to the following conditions, namely:-

(1) The interruption should have been caused by reasons beyond the control of Government employee concerned.

(2) Service preceding the interruption should not be less than five years' duration. In cases where there are two or more interruptions, the total service, pensionary benefits in respect of which shall be lost if the interruptions are not condoned should not be less than five years.

(3) The interruption should not be of more than one year's duration. In cases where there are two or more interruptions, the total period of all interruptions to be condoned should not exceed one year."

6. A cursory look on the aforesaid Rules makes it crystal clear that to get a service counted as qualifying service, it must have to be continuous, followed by absorption in regular appointment. If there is an interruption due to abolition of post or loss of appointment owing to reduction of establishment, it will not entail into the forfeiture of his past service. Further, If the interruption is caused by the reason beyond the control of government employee(s) concerned and service preceding the interruption is not less than 5 years and the interruption is not more than one year, the interruption in service can be condoned. In the case in hand, plaintiff's termination on September 24, 1997 was not because of any fault

or misconduct on his part. He was never served with any notice of dereliction of duty, rather he was removed from service by an order of Hon'ble Apex Court. In these circumstances, in view of Rule 4.21 of Rules, interruption in service of respondent – plaintiff shall not entail forfeiture of his earlier service which was beyond his control and same is liable to be condoned.

7. Admittedly, plaintiff was appointed on daily wage basis w.e.f. November 15, 1981 in the capacity of mate and during his service, he remained as trainee apprentice from March 08, 1983 to March 07, 1986. Thereafter, he was appointed as mate on daily wage basis followed by upgradation/appointment/selection as ALM through Selection Committee of appellants w.e.f. February 23, 1993. However, aforesaid selection as ALM was challenged before this Court and was held invalid, which order was further upheld by the Hon'ble Apex Court. Consequently services of the plaintiff were terminated vide Memo dated September 24, 1997. In the case in hand, removal of plaintiff from services on April 24, 1997 was not because of any fault or misconduct on his part, in as much as, he was removed from services in compliance of order passed by the Hon'ble Supreme Court. Accordingly, the interruption of service of plaintiff will not entail forfeiture of his past service as the circumstances under which loss of appointment to him was beyond his control. Subsequently, after adopting the due procedure by the Selection Committee, plaintiff was again selected and appointed as ALM vide appointment letter dated October 10, 1997 w.e.f. October 15, 1997. Thereafter, he was promoted to the next higher post of LM w.e.f. February 10, 2011.

8. There was no fault on the part of the plaintiff. He did not

during that period he was paid the salary. Thus, though his case does not fall within aforesaid reproduced provisions of Rules, but since he had to leave the service in compliance of order passed by the Hon'ble Apex Court, he cannot be fastened with any liability. So, there is no substantial question of law. Thus, trial court vide judgment & decree dated March 31, 2015 has decreed the suit of plaintiff holding that service rendered by the petitioner from November 15, 1981 to February 22, 1993 with the appellants – defendants be counted towards his regular service for the purpose of pensionary benefits. The decision rendered by the trial court has rightly been upheld by the lower appellate court vide judgment & decree dated February 20, 2017.

9. In the light of what has been discussed above, instant appeal being devoid of merits is dismissed with no order as to costs.

July 17, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No