

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

**CWP-15773-2013 (O&M)
Date of decision : 31.08.2018**

Mulkh Raj

...Petitioner(s)

Versus

Punjab Small Industries and Export Corporation Ltd. and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. G.S. Bal, Sr. Advocate,
with Mr. ADS Bal, Advocate,
for the petitioner.

Mr. Hoshiar Singh, Advocate,
for Mr. Sanjeev Sharma, Advocate,
for the respondents.

JITENDRA CHAUHAN, J.

The petitioner is aggrieved against Clause-2 of the appointment order dated 26.06.2013 (Annexure P-7), whereby, the benefit of past service of 25 years rendered by the petitioner with the respondents has been denied to him.

It is contended that the services of the petitioner were regularised vide order dated 26.06.2013 (Annexure P-7) in compliance of letter dated 12.03.2013, issued by the Principal Secretary, Department of Industry and Commerce. However, by virtue of Clause-2 of the appointment letter, the petitioner was not held to be entitled to any benefit of the previous service. Learned Senior counsel further refers to Annexure P-6 to contend that immediately before his regularization, the petitioner had

been getting basic pay of ₹ 10,270/- + ₹ 1,800 /- = ₹12,070/-. However, by virtue of Clause-2 of the appointment letter, his pay had been fixed at the minimum of the pay scale i.e. ₹4,900/- + 1,650/- (initial start of ₹5,300/-), thereby, causing great financial loss to him. In this regard, reliance is placed on Rule 4.4 of the Punjab Civil Services Rules, Vol-I, Part-I.

On the other hand, learned counsel for the respondents submits that once the petitioner had accepted his appointment vide order Annexure P-7, he cannot lay challenge to the same at this stage. The petitioner could have opted to continue and receive higher pay as a work-charge employee.

Heard.

According to Clause 2 of the appointment letter (Annexure P-7), the appointment of the petitioner would be considered as a fresh appointment without any benefit of the previous service. By virtue of this condition, the respondents, on one hand have regularized the services of the petitioner and have denied him the benefit of past service of about 25 years rendered by him. Such a clause is arbitrary and cannot sustain in the eyes of law. The controversy with regard to counting of past service rendered in work charge capacity has been settled by Hon'ble the Supreme Court in Punjab State Electricity Board Vs. Narata Singh (2010 (4) SCC 317), by holding thus:-

“5. The short question which arises for determination of this Court is whether the work charged service rendered by the respondent No.1 under the Government of Punjab prior to securing employment with the Board would qualify for grant of pension under the Punjab Civil Services Rules. This dispute deserves to be determined

because the contention of the appellant is that the High Court was neither justified in referring to the definition of "temporary post" as given in Regulation 3.17 (ii) of Punjab Civil Services Rules nor the Full Bench decision in Kesar Chand (supra) but the High Court should have taken into consideration the definition of "temporary post" as per Regulation 2.58 of PSEB MSR Vol.I Part-I, 1972. As noticed earlier, by memo dated 25.11.1985, the Board adopted letter dated 20.5.1982 of the Department of Finance, Government of Punjab in order to allocate liability of pension in respect of temporary service rendered under the State Government. A bare glance at letter dated 20.5.1982 makes it very clear that allocation of pensionary liability in respect of temporary service rendered under the Government of India and the State Government was agreed upon on certain conditions being fulfilled, one of which was that the period of temporary service rendered under the Central/State Government should be such which could be taken into consideration for determining qualifying service for grant of pension under the Rules of respective government. In order to determine whether work charged service rendered by the respondent No.1 under the State Government could have been taken into consideration for the purpose of calculating qualifying service, one has to refer to definition of "temporary post" as defined in Punjab Civil Services Rules and not to the Rule referred to by the Board. Rule 3.17(ii) of the Punjab Civil Services Rules reads as under:

"If an employee was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government,

followed without interruption by confirmation in the same or another post, shall count in Full as qualifying service except in respect of :-

(i)

(ii) periods of service in work-charged establishment; and"

A bare reading of the above-quoted rule makes it clear that periods of service in work charged establishments were not counted as qualifying service. Therefore, the work charged employees had challenged validity of the said Rule. The matter was considered by the Full Bench of Punjab and Haryana High Court. [In Kesar Chand vs. State of Punjab & Ors.](#) [1988 (5) SLR 27], the Full Bench held that Rule 3.17(ii) of the Punjab Civil Services Rules was violative of [Article 14](#) of the Constitution of India. The Full Bench decision was challenged before this Court by filing a special leave petition which was dismissed. Thus, the ratio laid down by the Full Bench judgment that any rule which excludes the counting of work charged service of an employee whose services have been regularized subsequently, must be held to be bad in law was not disturbed by this Court. The distinction made between an employee who was in temporary or officiating service and who was in work charged service as mentioned in Rule 3.17(ii) of the Punjab Civil Services Rules disappeared when the said rule was struck down by the Full Bench. The effect was that an employee holding substantively a permanent post on the date of his retirement was entitled to count in full

as qualifying service the periods of service in work charged establishments.

In view of this settled position, there is no manner of doubt that the work charged service rendered by the respondent No.1 under the Government of Punjab was qualified for grant of pension under the rules of Government of Punjab and, therefore, the Board was not correct in rejecting the claim of the respondent for inclusion of period of work charged service rendered by him with the State Government for grant of pension, on the ground that service rendered by him in the work charged capacity outside PSEB and in the departments of the State Government was a non-pensionable service.”

In view of the above, Clause-2 of the appointment letter (Annexure P-7) is quashed and the petitioner is held entitled to all the benefits of past service rendered by him. That being so, his pay has to be protected in terms of Rule 4.4 (ibid), relevant portion whereof, is extracted below:-

“FIXATION OF INITIAL PAY

4.4. The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay is regulated as follows:—

(a) XXX XXX XXX XXX

(b) If the conditions prescribed in clause (a) are not fulfilled, he will draw as initial pay the minimum of the time-scale, on appointment in Government service in the case of member of Punjab Civil Service (Judicial Branch), specialist doctors and on completion of probation in other

cases: Provided both in cases covered by clause (a) and in cases, other than cases of re-employment after resignation or removal or dismissal from the public service, covered by clause (b), that if he either –

(1) has previously held substantively or officiated in –

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post other than a tenure post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale; or

(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated, then the initial pay shall not be less than the pay, other than special pay, personal pay or emoluments classed as pay by the competent authority under rule 2.44(b), which he drew on the last such occasion, and he shall count for increments the period during which he drew that pay on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay. If, however, the pay last drawn by the Government employee in a temporary post has been inflated by the grant of premature increments the pay which he would have drawn but for grant of these increments shall unless otherwise ordered by the authority competent to create the new post, be

taken for the purposes of this proviso to be the pay which he last drew in the temporary post.....”

The term 'pay' has been defined in Rule 2.44 (ibid), which reads thus:-

2.44. “pay” means—

*(a) the basic pay, that is the amount drawn monthly by a Government employee in the scale of pay of the post held by him, or to which he is entitled by reason of his position in a cadre; and
(b) includes any other emoluments which may specifically be classed as part of pay by the competent authority.*

A plain reading of the above provisions clearly show that the petitioner having put in more than 25 years of service as work-charge employee, the petitioner was entitled to pay protection upon his regularization. It is ordered accordingly. The necessary relief of pay fixation in the aforesaid terms be granted to the petitioner within a period of six weeks from the date of receipt of a certified copy of this judgment. The arrears, if any, accrued to him be paid within six weeks thereafter.

Allowed in the above terms.

31.08.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No