

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

(203)

CWP-225-2013 (O&M)

Date of Decision: November 21, 2018

B.S Kanwar

..Petitioner

Versus

HVPN and another

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.R. Bansal, Advocate, for the petitioner.

Mr. Udit Garg, Advocate, for respondent No.1.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana,
for respondent No.2.

HARSIMRAN SINGH SETHI, J.(ORAL)

CM-485-2016

This is an application under Order 6 Rule 17 CPC read with Section 151 CPC and Article 227 of the Constitution of India for amendment of the writ petition.

Reply to the amended writ petition has also been filed.

In view of the above, amended writ petition as well as reply to the amended writ petition is permitted to be taken on record.

CWP-225-2013

In the present writ petition, order dated 09.07.2015 has been impugned by which the request of the petitioner for restoration of 1/3rd share of the pension as done in case of similarly situated person namely Sh. O.P. Katyal, has been rejected.

The facts as have been mentioned in the present petition are that the petitioner joined the service of Punjab State Electricity Board as

Apprentice Engineer on 07.10.1963. After the bifurcation of Punjab State Electricity Board, the services of the petitioner were allocated to Haryana State Electricity Board. While working with the Haryana State Electricity Board, the petitioner was promoted as Assistant Executive Engineer in April 1968 and then was further promoted as Executive Engineer in November, 1973. On promotion as Executive Engineer, the petitioner was sent on deputation with the National Hydro Electric Power Corporation, New Delhi. The petitioner kept on working there on deputation till he was absorbed on 01.06.1984. After the petitioner was absorbed from the National Hydro Electric Power Corporation, the petitioner sought his pension from the Haryana State Electricity Board for the service which he has rendered from 1963 onwards. In the year 2000, vide Annexures P-3, P-4 and P-5, the petitioner was released with the pensionary benefits which included 100% commuted value of pension for the said service.

State of Haryana vide letter dated 19.03.1981 issued a scheme called "Liberalization of Pensionary Benefits" under which, a decision was taken that for a retiree, on attaining the age of 70 years, the commuted part of his pension for which he has received lump sum amount, would be allowed restoration. In respect of the above scheme, State of Haryana has been giving the relief of restoring 1/3rd of the pension which was commuted.

One Sh. O.P. Katyal, who was also the employee of Haryana State Electricity Board initially, and was sent on deputation with the Chandigarh Industrial and Tourism Development Corporation and was absorbed there in 1984, sought relief of restoration of his pension under the

said scheme. The claim of Sh. O.P. Katyal was not considered by the respondents for which he filed a writ petition being CWP No.5686 of 2012 wherein an order was passed by this Court on 09.04.2014 giving directions to the respondents to decide his representation.

While considering the representation filed by Sh. O.P. Katyal, the respondents passed an order on 11.03.2014 (Annexure P-22) granting him the benefit of restoration of 1/3rd of commuted portion of the pension.

After the said benefit was granted to Sh. O.P. Katyal, the petitioner, who claimed that he is also similarly situated as Sh. O.P. Katyal, approached the respondents for the grant of the same relief. The claim made by the petitioner was referred to the office of Advocate General Haryana for opinion and office of the Advocate General found that the petitioner is not entitled for the said relief as the department has relaxed certain conditions in case of Sh. O.P. Katyal and it is not necessary for the department to relax the conditions in every case and, therefore, advised the department to decline the request of the petitioner.

On the basis of said opinion, vide order dated 09.07.2015, the request of the petitioner for the restoration of 1/3rd of the pension was declined. This order has been impugned by the petitioner in the present writ petition.

Reply has been filed by the respondents.

It has been stated by the respondents that as the petitioner was granted 100% pension at the time when he was absorbed in the National Hydro Electric Power Corporation, hence petitioner is not entitled for the restoration of his pension under the instructions issued by the Government

of Haryana.

Further, it has been argued before this Court today that the case of the petitioner is not similar to that of Sh. O.P. Katyal and therefore the petitioner is not entitled for the benefit as granted to Sh. O.P. Katyal vide order Annexure P-22 dated 11.03.2014. It is further contended that the case of the petitioner is not covered under the judgment of the Hon'ble Supreme Court of India dated 15.12.1995 titled as Welfare Association of Absorbed Central Government Employees in Public Enterprises and others Vs. Union of India and others.

I have heard learned counsel for the parties and gone through the record.

The counsel for the petitioner is relying on the case of Sh. O.P. Katyal to seek the benefit as granted to Sh. O.P. Katyal vide order dated 11.03.2014 (Annexure P-22). The petitioner is claiming that the petitioner is similarly situated as Sh. O.P. Katyal and therefore two similarly situated employees cannot be discriminated and hence the petitioner is also entitled for the same relief as being granted by respondents themselves to Sh. O.P. Katyal.

Bare perusal of Annexure P-22 dated 11.03.2014, it is clear that Sh. O.P. Katyal is similarly situated as the petitioner. Sh. O.P. Katyal was initially appointed in Haryana State Electricity Board and thereafter, he was sent on deputation to Chandigarh Administration where he was permanently absorbed in the year 1984 and it is only after his absorption in Chandigarh Administration, he was paid gratuity and full commuted pension in the year 1985 for the period he spent in Haryana State Electricity Board.

In the present case also, the petitioner who was initially appointed in Haryana State Electricity Board, went on deputation with the National Hydro Electric Power Corporation in the year 1973, where he was ultimately absorbed on 01.06.1984 and after the absorption, the petitioner was also paid the same benefit as were paid to Sh. O.P. Katyal.

There is no difference in both the cases, as being pointed out by the counsel for the respondents in respect of the service carrier of the petitioner and Sh. O.P. Katyal. Once the petitioner is similarly situated as Sh. O.P. Katyal, the petitioner is entitled for the same benefit as has been extended by the respondents themselves vide order dated 11.03.2014 as Annexure P-22. Otherwise, the same will be discrimination between the similarly situated employees.

Counsel for the respondents has stated that the petitioner is not entitled for the relief as being claimed i.e. 1/3rd of the commuted pension in view of the judgment dated 15.12.1995 passed in **Welfare Association of Absorbed Central Government Employees in Public Enterprises and others Vs. Union of India and others**. In fact, a bare perusal of the order Annexure P-22 dated 11.03.2014 will show that the respondents have relied on this judgment to grant the benefit to Sh.O.P. Katyal. In case if the judgment is applicable in case of Sh. O.P. Katyal, then there is no reason as to why the said judgment is not applicable in the case of the petitioner. Therefore, this arguments being raised by counsel for the respondents is contrary to the facts and their own order.

In view of the above, impugned order Annexure P-24 is set aside. The respondents are directed to grant the petitioner the same benefit as has been extended to Sh. O.P. Katyal vide order dated 11.03.2014

(Annexure P-22).

Let the necessary order granting the relief to the petitioner be passed by the respondents within a period of three months from the receipt of copy of this order. However, there will be no order as to costs.

The writ petition is disposed of in above terms.

November 21, 2018
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No