

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21972-2016

Date of Decision : October 12, 2018

Santokh Singh

.... Petitioner.

Versus

State of Punjab and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Sarabjit Khaira, Advocate
for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab
for the respondent-State.

Mr. J.S.Lalli, Advocate,
for respondents No.2 to 4.

Mr. Vivek Chauhan, Advocate,
for respondents No. 5 and 6.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of directions to the respondents to release the pensionary benefits to the petitioner by granting emergency service benefit to him as ex-serviceman in Army for the period from 26.10.1962 to 09.01.1968.

2. As per the petitioner, he was enrolled as a Driver with the Punjab Home Guards and Civil Defence on 1.10.1986 and retired on

...

5.11.1999. Pensionary benefits were released to him. However, the petitioner served in Indian Army (Emergency Service) for the period from 05.02.1962 to 17.10.1968 and requested the respondents to calculate the pensionary amount after adding the service rendered by him, but the respondents did not take any action and the petitioner is entitled to the same.

3. Respondents herein filed short reply by way of affidavit taking the plea that as per record, the petitioner was appointed in GREF on 8.10.1969 and was discharged on 8.5.1970 due to reduction in establishment while he was serving with 12 Surfacing Platoon. NE service document in respect of the petitioner have already been destroyed on completion of its mandatory retention period, except the following particulars:-

a)	GS Number	146525
b).	Rank/Trade	PNR
c).	Name	Santokh Singh
d).	Father's Name	Sh. Ganna Singh
e).	Date of Birth	05 February, 1944
f).	Date of appointment	08 October, 1969
g)	Date of Discharge/NE	08 May, 1970
h).	Cause of Discharge/NE	Due to reduction in establishment.
i)	Last Unit	12, Surfacing Platoon (GREF)
j)	Name of NOK	Smt. Gurmit Kaur (Wife)
k)	Home Address	Village & PO Pakariwal, District Gurdaspur (Punjab).

4. Respondents mainly took the plea that the petitioner had earlier filed Civil Suit No.79 of 2008 at Civil Courts, Gurdaspur and that civil suit was contested before the Court of competent jurisdiction and the

...

same was decided by the said Court on 20.03.2012 (Annexure R-5/1) by passing detailed judgment and decree and the findings were given that the petitioner had not completed the minimum period of service as required for claiming pensionary benefits. The present writ petition is not maintainable and the same is hit by the principle of *res judicata*.

5. Having considered the submissions made by learned counsel for the parties and fact that as per the plea taken by the respondents, the petitioner was not eligible for pensionary benefits as he had not completed the mandatory period and as per the record, his date of appointment is 08.10.1969 and date of discharge/NE is 08.05.1970.

6. The main point involved in this case is that the petitioner had earlier chosen to avail the remedy of filing a civil suit and that suit had already been decided by the Court of competent jurisdiction vide judgment and decree dated 20.3.2012 (Annexure R-5/1) and the findings were given against the petitioner. Thereafter he had not challenged the said judgment and decree in appeal thereby the same has attained the finality. Thereafter, the present writ petition is not maintainable rather, the same is hit by the principle of *res judicata* as per view taken by Hon'ble Apex Court in **Executive Engineer, ZP Engg. Divn. Vs. Digambara Rao, 2005(1) SCT 636; Pondicherry Khadi & Village Industries Board Vs. P. Kulothangan and Anr. 2003(4) SCT 913.**

7. Hon'ble Division Bench of this Court in **Gulzar Singh Vs. Director State Transport, 2017 (3) SCT 53** while discussing and interpreting Section 10(1)(c) of the Civil Procedure Code, 1908 and

...

Sections 9 and 11 and the scope of alternative remedy as well, observed that if any person challenges the termination in Civil Court and thereafter raises industrial dispute, both the remedies are independent and co-existent and available to a workman, but he cannot invoke the other remedy after availing one of them unsuccessfully. He must avail one of these remedies and cannot avail both. Quite identical are the facts of the present case as in the present set of facts, after his suit was dismissed, the petitioner was to avail the remedy of appeal/revision, if he was aggrieved of passing of the order by Civil Court. Identical view as taken by Co-ordinate Bench of this Court in **Hoshiarpur Central Cooperative Bank Ltd. Vs. Presiding Officer, Labour Court and another** 2005(1) RSJ 222.

8. In view of the above, the present writ petition is not maintainable and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

October 12, 2018.
som

Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes