

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

- (1)

CWP No. 24308 of 2016 (O&M)
Date of decision: 01.10.2018
- Prithvi Pal Singh and others

...Petitioner(s)
- Versus
- State of Haryana and others

...Respondent(s)
- (2)

CWP-21105 of 2016 (O&M)
Date of decision: 01.10.2018
- Vijay Kumar and others

...Petitioner(s)
- Versus
- State of Haryana and others

...Respondent(s)
- (3)

CWP-22219 of 2016 (O&M)
Date of decision: 01.10.2018
- Kailash Chand

...Petitioner(s)
- Versus
- State of Haryana and others

...Respondent(s)
- (4)

CWP-22231 of 2016 (O&M)
Date of decision: 01.10.2018
- Ramesh Chander

...Petitioner(s)
- Versus
- State of Haryana and others

...Respondent(s)
- (5)

CWP-22629 of 2016 (O&M)

Date of decision: 01.10.2018

Vipan Lal Aggarwal and another
...Petitioner(s)

Versus

State of Haryana and others
...Respondent(s)

(6) CWP-22658 of 2016 (O&M)
Date of decision: 01.10.2018

Asha Rani
...Petitioner(s)

Versus

State of Haryana and others
...Respondent(s)

(7) CWP-22671 of 2016 (O&M)
Date of decision: 01.10.2018

A.K. Bhutani
...Petitioner(s)

Versus

State of Haryana and others
...Respondent(s)

(8) CWP-8809 of 2016 (O&M)
Date of decision: 01.10.2018

Ganpat Rai Sharma and others
...Petitioner(s)

Versus

State of Haryana and others
...Respondent(s)

(9) CWP-8921 of 2016 (O&M)
Date of decision: 01.10.2018

S.K. Sharma and others
...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(10) CWP-4044 of 2017 (O&M)
Date of decision: 01.10.2018

Virender Singh
Versus ...Petitioner(s)

State of Haryana and others
...Respondent(s)

(11) CWP-8350 of 2017 (O&M)
Date of decision: 01.10.2018

Jagdish Parshad Goyal and others
Versus ...Petitioner(s)

State of Haryana and others
...Respondent(s)

(12) CWP-4034 of 2017 (O&M)
Date of decision: 01.10.2018

Manju Bala Sharma
Versus ...Petitioner(s)

State of Haryana and another
...Respondent(s)

(13) CWP-25311 of 2016 (O&M)
Date of decision: 01.10.2018

Hari Ram and others
Versus ...Petitioner(s)

State of Haryana and others
...Respondent(s)

(14) CWP-26776 of 2016 (O&M)
Date of decision: 01.10.2018

Ram Lal
Versus
State of Haryana and others
...Petitioner(s)
...Respondent(s)

(15) CWP-24894 of 2015 (O&M)
Date of decision: 01.10.2018
Dharambir Singh and another
Versus
State of Haryana and others
...Respondent(s)

(16) CWP-15482 of 2015 (O&M)
Date of decision: 01.10.2018
Sadhu Ram
Versus
State of Haryana and others
...Petitioner(s)
...Respondent(s)

(17) CWP-8680 of 2016 (O&M)
Date of decision: 01.10.2018
K.D. Sharma
Versus
State of Haryana and others
...Petitioner(s)
...Respondent(s)

(18) CWP-14204 of 2016 (O&M)
Date of decision: 01.10.2018
Kasturi Lal Khanna
Versus
State of Haryana and others
...Petitioner(s)

...Respondent(s)

(19) CWP-18948 of 2016 (O&M)
Date of decision: 01.10.2018

Harmesh Lal and others
Versus ...Petitioner(s)

State of Haryana and others
...Respondent(s)

(20) CWP-23350 of 2016 (O&M)
Date of decision: 01.10.2018

Dayal Chand
Versus ...Petitioner(s)

State of Haryana and others
...Respondent(s)

(21) CWP-26857 of 2016 (O&M)
Date of decision: 01.10.2018

Adarsh Parkash Nigam
Versus ...Petitioner(s)

State of Haryana and others
...Respondent(s)

(22) CWP-26858 of 2016 (O&M)
Date of decision: 01.10.2018

Yoginder Mohan Bhalla
Versus ...Petitioner(s)

State of Haryana and others
...Respondent(s)

(23) CWP-26859 of 2016 (O&M)
Date of decision: 01.10.2018

Ravinder Kumar Manchanda

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(24)

CWP-26860 of 2016 (O&M)
Date of decision: 01.10.2018

Naresh Kumar Jain

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(25)

CWP-26861 of 2016 (O&M)
Date of decision: 01.10.2018

Gaja Nand Bansal

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(26)

CWP-26862 of 2016 (O&M)
Date of decision: 01.10.2018

Mahavir Parshad Sharma

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(27)

CWP-26863 of 2016 (O&M)
Date of decision: 01.10.2018

Saroj Bala

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(28) CWP-26864 of 2016 (O&M)
Date of decision: 01.10.2018

Dharam Raj ...Petitioner(s)
Versus

State of Haryana and others ...Respondent(s)

(29) CWP-26865 of 2016 (O&M)
Date of decision: 01.10.2018

Ajit Singh ...Petitioner(s)
Versus

State of Haryana and others ...Respondent(s)

(30) CWP-26866 of 2016 (O&M)
Date of decision: 01.10.2018

Gulshan Rai ...Petitioner(s)
Versus

State of Haryana and others ...Respondent(s)

(31) CWP-26867 of 2016 (O&M)
Date of decision: 01.10.2018

Sudhir Kumar Sehgal ...Petitioner(s)
Versus

State of Haryana and others ...Respondent(s)

(32) CWP-26868 of 2016 (O&M)

Date of decision: 01.10.2018

Chhattar Singh

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(33)

CWP-26869 of 2016 (O&M)

Date of decision: 01.10.2018

Devi Ditta

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(34)

CWP-26870 of 2016 (O&M)

Date of decision: 01.10.2018

Gobind Ram

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(35)

CWP-26871 of 2016 (O&M)

Date of decision: 01.10.2018

Suresh Kumar

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(36)

CWP-40 of 2017 (O&M)

Date of decision: 01.10.2018

Karam Chand

...Petitioner(s)

Versus

State of Haryana and others
...Respondent(s)

(37) CWP-45 of 2017 (O&M)
Date of decision: 01.10.2018

Chhuni Lal
...Petitioner(s)
Versus

State of Haryana and others
...Respondent(s)

(38) CWP-61 of 2017 (O&M)
Date of decision: 01.10.2018

Kusum Lata
...Petitioner(s)
Versus

State of Haryana and others
...Respondent(s)

(39) CWP-71 of 2017 (O&M)
Date of decision: 01.10.2018

Ram Kanwar
...Petitioner(s)
Versus

State of Haryana and others
...Respondent(s)

(40) CWP-73 of 2017 (O&M)
Date of decision: 01.10.2018

Baldev Raj Chawla
...Petitioner(s)
Versus

State of Haryana and others
...Respondent(s)

(41) CWP-585 of 2017 (O&M)
Date of decision: 01.10.2018

Shiv Dutt ...Petitioner(s)
Versus

State of Haryana and others ...Respondent(s)

(42) CWP-590 of 2017 (O&M)
Date of decision: 01.10.2018

Bhalle Ram Kaushik ...Petitioner(s)
Versus

State of Haryana and others ...Respondent(s)

(43) CWP-591 of 2017 (O&M)
Date of decision: 01.10.2018

Satvir Singh ...Petitioner(s)
Versus

State of Haryana and others ...Respondent(s)

(44) CWP-659 of 2016 (O&M)
Date of decision: 01.10.2018

Sanjay Mehta and others ...Petitioner(s)
Versus

State of Haryana and others ...Respondent(s)

(45) CWP-1637 of 2017 (O&M)
Date of decision: 01.10.2018

Mangal Singh ...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(46)

CWP-1654 of 2017 (O&M)
Date of decision: 01.10.2018

Vijay Kumar Gupta

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(47)

CWP-1711 of 2017 (O&M)
Date of decision: 01.10.2018

Sital Sarkar

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(48)

CWP-3320 of 2017 (O&M)
Date of decision: 01.10.2018

Surender Kumar Saini and others

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(49)

CWP-3695 of 2017 (O&M)
Date of decision: 01.10.2018

Sarwan Lal

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(50)	CWP-3696 of 2017 (O&M) Date of decision: 01.10.2018	
Omi Devi		...Petitioner(s)
Versus		
State of Haryana and others		...Respondent(s)
(51)	CWP-3702 of 2017 (O&M) Date of decision: 01.10.2018	
Kuldeep Singh		...Petitioner(s)
Versus		
State of Haryana and others		...Respondent(s)
(52)	CWP-3703 of 2017 (O&M) Date of decision: 01.10.2018	
Ved Parkash Khanna		...Petitioner(s)
Versus		
State of Haryana and others		...Respondent(s)
(53)	CWP-3710 of 2017 (O&M) Date of decision: 01.10.2018	
Shakuntla Rani		...Petitioner(s)
Versus		
State of Haryana and others		...Respondent(s)
(54)	CWP-3790 of 2017 (O&M) Date of decision: 01.10.2018	

Savita Sharma
Versus
State of Haryana and others
...Petitioner(s)
...Respondent(s)

(55) CWP-3993 of 2017 (O&M)
Date of decision: 01.10.2018

Ram Gopal
Versus
State of Haryana and others
...Petitioner(s)
...Respondent(s)

(56) CWP-6442 of 2017 (O&M)
Date of decision: 01.10.2018

Manohar Lal Popli
Versus
State of Haryana and others
...Petitioner(s)
...Respondent(s)

(57) CWP-6448 of 2017 (O&M)
Date of decision: 01.10.2018

Shanno Devi
Versus
State of Haryana and others
...Petitioner(s)
...Respondent(s)

(58) CWP-6477 of 2017 (O&M)
Date of decision: 01.10.2018

Dhan Kumar
Versus
State of Haryana and others
...Petitioner(s)

...Respondent(s)

(59) CWP-6815 of 2017 (O&M)
Date of decision: 01.10.2018

Rohtas Singh ...Petitioner(s)
Versus

State of Haryana and others ...Respondent(s)

(60) CWP-6819 of 2017 (O&M)
Date of decision: 01.10.2018

Om Singh ...Petitioner(s)
Versus

State of Haryana and others ...Respondent(s)

(61) CWP-7610 of 2017 (O&M)
Date of decision: 01.10.2018

Chhote Lal ...Petitioner(s)
Versus

State of Haryana and others ...Respondent(s)

(62) CWP-7673 of 2017 (O&M)
Date of decision: 01.10.2018

Ramesh Chander ...Petitioner(s)
Versus

State of Haryana and others ...Respondent(s)

(63) CWP-7680 of 2017 (O&M)
Date of decision: 01.10.2018

Rohtas Singh
...Petitioner(s)
Versus
State of Haryana and others
...Respondent(s)

(64) CWP-7929 of 2017 (O&M)
Date of decision: 01.10.2018

V.K. Sahni and others
...Petitioner(s)
Versus
State of Haryana and others
...Respondent(s)

(65) CWP-9776 of 2017 (O&M)
Date of decision: 01.10.2018

Dalip Kumar
...Petitioner(s)
Versus
State of Haryana and others
...Respondent(s)

(66) CWP-9777 of 2017 (O&M)
Date of decision: 01.10.2018

Nar Singh Dass
...Petitioner(s)
Versus
State of Haryana and others
...Respondent(s)

(67) CWP-20418 of 2016 (O&M)
Date of decision: 01.10.2018

U. Narasimhullu and another
...Petitioner(s)
Versus
State of Haryana and others

...Respondent(s)

(68) CWP-12195 of 2016 (O&M)
Date of decision: 01.10.2018

Balbir Singh

...Petitioner(s)

Versus

UHBVN and others

...Respondent(s)

(69) CWP-5268 of 2018 (O&M)
Date of decision: 01.10.2018

Sita Ram and another

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

(70) CWP-5260 of 2018 (O&M)
Date of decision: 01.10.2018

Om Parkash and others

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Raman B. Garg, Advocate
with Ms. Gitanjali, Advocate,
for the petitioner(s) in CWP Nos.24308, 21105, 22231,
8809, 8921, 25311 of 2016 and CWP-8350 and 7929
of 2017.

Mr. Raj Kaushik, Advocate for the petitioner(s)
in CWP-22219, 22629, 22671, 26776, 26857 to 26871 of
2016 and CWP-4044, 4034, 40, 45, 61, 71, 73, 585, 590,
591, 659, 1637, 1654, 1711, 3695, 3696, 3702, 3703, 3710,
3790, 3993, 6442, 6448, 6477, 6815, 6819, 7610, 7673,
7680, 9776 and 9777 of 2017.

None for the petitioner(s) in CWP-22658-2016.

Mr. Ashish Chaudhary, Advocate for the petitioner(s)
in CWP-24894 of 2015 and CWP-8680-2016.

Mr. Sanjiv Gupta, Advocate for the petitioner(s)
in CWP-15482-2015.

None for the petitioner(s)
in CWP-14204 and 18948 of 2016.

None for the petitioner(s)
in CWP-23350 of 2016.

Mr. Sunil K. Nehra, Advocate
for the petitioner(s) in CWP No.3320 of 2017.

Mr. Gaurav Gupta, Advocate for the petitioner(s)
in CWP Nos.12195 and 20418 of 2016.

Mr. S.K. Bhardwaj, Advocate for the petitioner(s)
in Nos. 5268 and 5260-2018.

Mr. B.R. Mahajan, Advocate General, Haryana with
Mr. R.D. Sharma, DAG, Haryana,
Mr. Apoorv Garg, DAG, Haryana and
Mr. Saurabh Mago, AAG, Haryana for the State.

Mr. B.R. Mahajan, Sr. Advocate with
Mr. Sandeep Moudgil, Advocate
for respondent Nos.2 & 3 in CWP No.22671 of 2016
for respondent Nos.30 & 31 in CWP No.24308 of 2016
for respondent Nos.38, 39 & 40 in CWP No.21105 of 2016
for respondent Nos.30 to 32 in CWP No.8809 of 2016
for respondent Nos.28 to 31 & 35 in CWP No.25311 of 2016
for respondent Nos.25 & 26 in CWP No.7929 of 2017.
for respondent Nos.1 & 3 in CWP No.12195 of 2016.
for respondent Nos.11 & 12 in CWP No.8350 of 2017.
for respondent No.12 in CWP No.18948 of 2016.

Mr. Pritam Saini, Advocate,
for respondent-HSMITC.

Mr. Hitesh Pandit, Advocate
for the respondent No.2 in CWP-26859-2016 and 73 &
3790 of 2017; for respondent No.27 in CWP-7929-2017;
for respondent No.7 in CWP-8921-2016 .

Mr. K.K. Gupta, Advocate,
respondent No.8 in CWP No.3320 of 2017
for respondent No.33 in CWP No.21105 of 2016
for respondent No.33 in CWP No.25311 of 2016.
Mr. S.K. Biriwal, Advocate
for respondent No.3 in CWP-20418 of 2016.

Mr. Sanjeev K. Sharma, Advocate for
Mr. Kuldeep Tiwari, Advocate
for respondent No.27 in CWP-25311-2016.

Mr. B.R. Mahajan, Senior Advocate with
Mr. Prateek Mahajan and Mr. Manpreet Ghuman, Advocates
for respondent Nos.26 to 29 & 32 in CWP No.24308 of 2016
for respondent Nos.34 to 37 in CWP No.21105 of 2016
for respondent No.1 in CWP No.7218 of 2016
for respondent Nos.29 & 33 in CWP No.8809 of 2016
for respondent Nos.1 to 3 in CWP No.22629 of 2016
for respondent Nos.5 & 6 in CWP No.8921 of 2016
for respondent Nos.2 & 3 in CWP No.22671 of 2016
for respondent Nos.11 & 12 in CWP No.8350 of 2017
for respondent No.2 in CWP No.40 of 2017
for respondent No.3 in CWP No.61 of 2017
for respondent Nos.6, 7, 17 & 18 in CWP No.3320 of 2017
for respondent No.22 to 24 in CWP No.7929 of 2017

Mr. Pranav Chadha, Advocate,
for respondent-BBMB.

None for respondent No.2 in CWP-4044-2017.

Jitendra Chauhan, J. (Oral)

By way of this common judgment, a batch of 70 writ petitions mentioned above are being decided as common questions of law and facts are involved in the petitions. However, the facts are being derived from CWP-24308-2016 in order to avoid repetition.

By way of instant writ petition(s), the petitioners seek issuance of directions to the respondents to grant the past service benefits rendered by the petitioners in the respondent HSMITC towards pension and other retiral benefits along with arrears of pension with interest @ 18% p.a., from the date of accrual till payment in terms of judgments dated 14.01.2016 (Annexure P-7 and P-8) passed by this Court.

The petitioners who were retrenched from Haryana State

Minor Irrigation and Tubewells Corporation (for short 'HSMITC') were adjusted in the various other respondent departments and therefore, they are seeking that their services rendered in HSMITC should be computed as qualifying service for the purpose of grant of pension and other pensionary benefits.

Learned counsel for the petitioners refers to the decisions rendered in CWP-3792 of 2012 titled as **Suresh Chand and others** Vs. **State of Haryana and others**, on 14.01.2016 (Annexure P-7) in CWP-10017 of 2014 titled as **Prem Parkash Gupta** Vs. **State of Haryana and others**, on 14.01.2016 (Annexure P-8) and in CWP-26716 of 2014 titled as **Nathu Singh** Vs. **State of Haryana and others**, on 27.09.2016 (Annexure P-10) to submit that in identical matters, the past service of the petitioner(s) rendered in HSMITC had been counted as qualifying service for the purpose of pension and other pensionary benefits. The case of the present petitioners is similar to the case of petitioners in Annexure P-7, P-8 and P-10, therefore, they are also entitled for the pension and other pensionary benefits.

On the other hand, learned counsel for the respondents submit that the judgment as relied upon by learned counsel for the petitioners in case of Nathu Singh's case (supra) has been set aside by a Division Bench of this Court against which the Special Leave to Petition filed by the petitioner(s) before Hon'ble the apex Court also stands dismissed.

At this stage, Mr. Raman B. Garg, counsel for the petitioner (s), though admits that the SLP stands dismissed, however, he states that against the same, the review application is still pending adjudication before Hon'ble the Supreme Court.

I have heard learned counsel for the parties and perused the record with their able assistance.

Undisputedly, the petitioners were working with HSMITC which was closed in the year 2002. Upon closure, some of the petitioners were retrenched or transferred and absorbed in different Government Departments or Corporations. They were paid retrenchment compensation like DCRG/Gratuity, leave encashment etc., in terms of Section 25(O) of the Industrial Disputes Act. Even, some of the petitioner have since retired. The petitioners are claiming the pension and other pensionary benefits by counting their service rendered in HSMITC as qualifying service. The issue involved in the batch of petitions is settled by a Division Bench while setting aside the findings recorded by learned Single Judge as relied upon by learned counsel for the petitioners in case of Nathu Singh's (supra). The Division Bench observed as under:-

“8. The undisputed facts on record are that the respondent was working with the Corporation. The period, as is available in the pleadings, is from 09.12.1974 to 30.06.2002, though not relevant for the purpose of decision of the controversy in issue. The Corporation closed its operation on July 30, 2002. Thereafter the process of winding up continued. Some of the employees of the Corporation, as submitted by the learned Advocate General, were transferred and absorbed in different Government

Departments or Corporations before it closed its operation whereas the surplus were retrenched. They were paid all their service benefits in addition to the amount payable under the golden hand-shake scheme. The respondent received entire amount payable to him, as a result, the relationship of master and servant was severed.

9. The State notified the Scheme in exercise of powers conferred under Article 309 of the Constitution of India on 21.06.2006. The aforesaid scheme provided for re-employment of regular retrenched Group C' and 'D' employees of the Boards/Corporations/Public Sector Undertakings etc., who were retrenched during the period from 01.03.2000 to 01.03.2005. Re-employment was to be made against the vacancies meant for direct recruitment. A committee headed by the Chief Secretary to the Government of Haryana was constituted to examine the cases for re-employment. Employees who were less than or 55 years of age as on 18.05.2006 were to be considered for adjustment. The adjustment was subject to submission by the retrenched employee an affidavit declaring that he shall be considered as a fresh appointee and will not claim any benefit of his past service prior to retrenchment. Policy was issued in supersession of any other policy in existence. The relevant clauses of the policy are reproduced hereunder:-

“The scheme is regarding re-employment of regular retrenched Group C and D employees of Board/Corporations/Public Sector Undertakings etc., who were retrenched during the period from 1.3.2000 to 1.3.2005 against the vacancies of direct recruitment of Group C and D available in the Boards/Corporations/Public Sector Undertakings/Cofederations/Urban Local Bodies/Panchayati Raj including the departments of the State Government within a period of six months taking into consideration the following provisions:-

- 1. The State Public Enterprises and Apex Cooperative Federations, which have been closed, shall not be re-opened.*
- 2. The regular employees of the Boards/Corporations/Co-operative Federations and other Public Sector*

Undertakings who have been retrenched on account of closure or restructuring of these organizations between 1st March, 2000 to 1st March, 2005, shall be considered for adjustment.

3. The employees who are less than or 55 years of age as on 18.05.2006 shall be considered for adjustment.

xxxx

8. The adjustment would be subject to the submission by the retrenched employee of an affidavit declaring that the adjustment so provided would be considered as a fresh appointment and he/she would not claim benefit of past service for the period prior to retrenchment or for the period he/she remained out of service as a result of retrenchment in any manner.

xxxx

*10. This policy is in supersession of any other policy in existence and shall come into effect from 18th May, 2006.”
(emphasis supplied)*

10. After the aforesaid scheme was notified, vide letter dated 01.09.2006 the respondent was offered appointment in the office of the Director General of Prisons, Haryana. It was specifically mentioned in the offer of appointment that the same shall be a fresh appointment; the appointee shall be placed at the bottom of the seniority list and further that if the conditions mentioned in the offer of appointment are acceptable, the addressee may report for duty. The relevant conditions from the offer of appointment are extracted below:-

“In terms of Government Haryana, General Administration Department Notification No. GSR 13/Const./Art. 309/2006, dated 21st June, 2006 and recommendations made vide Memo No.23/23/2005-2GS-III dated 14.08.2006. You are hereby offered an appointment against a temporary post of Driver in the office of Director General of Prisons, Haryana, 3-4 Bays Building, Sector-14, Panchkula, in the pay scale of Rs.4000- 100-4800-EB100-6000+Special Pay Rs.200/- plus usual allowances as may be sanctioned by the Haryana Government from time to time.

2. Your appointment is made afresh on available Group 'C' post and you will be entitled to draw minimum pay of the post being offered. Accordingly, you will not claim any benefit of the past service for the period prior to retrenchment as per your declaration on oath or for the period you remained out of services as result of

retrenchment in any manner.

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4. You will be placed junior in seniority list in the cadre below the members of the services already working in the department and your seniority will be in order of the recommendation made by the Chief Secretary to Government of Haryana in view of your age.

5. You will be on probation for a period of two years, which may further be extended for a period of one year. In case your work or conduct is not found satisfactory during the period of probation, your services are liable to be terminated forthwith without assigning any reason.

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14. If you are willing to accept this offer on the conditions mentioned above, you should report yourself for duty to this office within 15 days from the date of receipt of this letter. If you fail to join by this date, your name will be removed from the selection list.” (emphasis supplied)

11. The respondent, after accepting the terms and conditions in the letter of offer of appointment, joined the service as a driver in the office of the Director General of Prisons, Haryana. He served there and on 31.01.2013 retired on attaining the age of superannuation. Nearly two years thereafter, he filed the writ petition in this Court with the following prayer:-

“To issue a writ of certiorari/mandamus directing the respondents for counting the previous service rendered in HSMITC in terms of judgment CWP No.20670 of 2010; Subhash Chander and others vs. State of Haryana and others decided on 05.01.2011 reported in SLR 2011 (6) page 606 and after counting the service release the retiral benefits of the petitioner which has been withheld without any reason with interest of the delayed amount at Leave Encashment, Gratuity, pension, LTC and interest on the delayed payment of GPF along with interest @ 18 per annum in view of the judgment of Hon'ble Apex Court in Vijay Mehrotra case and the Division Bench of this Hon'ble High Court in Mehar Chand case.”

12. It is important to note that validity of either any of the conditions laid down in the scheme or any of the conditions in the letter of offer of appointment was not challenged.

13. The learned Single Judge allowed the writ petition

while referring to the instructions issued by the State on 16.12.2010. Reference was also made to the order passed by Hon'ble the Supreme Court in Deepak Sood's case (supra) and to an order of this Court in Suresh Chand's case (supra).

14. The issue under consideration before Hon'ble the Supreme Court in Deepak Sood's case (supra) was different. In that case, staff working in Octroi Branch of Municipal Committee, Panipat was declared surplus and the same was absorbed in Education Department. As per the terms and conditions of absorption, past service of those employees was to be counted for the purpose of fixation of pay and pensionary benefits. However, for the purpose of grant of benefit of ACP and seniority, their past service was not to be counted. Hon'ble the Supreme Court considering the fact that the State had been benevolent by absorbing the surplus staff in different departments found their action to be quite anomalous in granting benefit of past service for the purpose of pay and pensionary benefits but not for the purpose of seniority and grant of ACP. Deepak Sood's case (supra) was not a case in which the surplus employees were retrenched and after a break were re-employed in different departments. Rather, it was a case of absorption on transfer from one department to another. In these circumstances it was opined that benefit of seniority may be denied to the incumbent but for other benefits like pay fixation, pensionary benefits and grant of ACP grade, past service is required to be counted. Thus, the facts in the present case and Deepak Sood's case (supra) are clearly distinguishable. Reliance on the aforesaid order passed by Hon'ble the Supreme Court by the learned Single Judge to grant relief to the respondent, hence, is misplaced.

15. Instructions dated 16.12.2010, which have been referred to, also do not take the case of the respondent any

further as those were issued to grant benefit to all employees who were similarly placed as the employees who were parties in Deepak Sood's case (supra).

16. Order passed by the Division Bench of this Court in Suresh Chand's case (supra) is also not relevant and is distinguishable on facts for the reason that the employees therein were working with the Corporation who were to be declared surplus on account of the Corporation running into loss. The incumbent therein was already working with the Haryana State Agricultural Marketing Board as Junior Engineer on deputation basis and was absorbed therein on 06.07.2002 before even the Corporation closed its operation. It was not the case where the employee was retrenched on account of the closure of the Corporation and had taken all his service benefits. Rather, it was a case of continuity in employment. Thus, Suresh Chand's case (supra) has also been wrongly relied upon by the learned Single Judge.

17. Reliance on the Office Memorandum dated 07.01.2002 by learned counsel for the respondent is equally misplaced. The aforesaid Memorandum was issued on the following subject:-

“Counting of service for the purpose of pension of the employees of State Government on their appointment in an Autonomous Body (Statutory Body) under Haryana Government or on seeking absorption in a State Autonomous Body or vice versa and also on appointment from one Autonomous Body to another (Statutory Body) both under Government of Haryana.”

18. Para 4 of the aforesaid Office Memorandum provided the scope of its application. It applies in the cases of the employees, who are appointed from one organization to another on an application forwarded through proper channel and are absorbed in service with consent of the parent employer or are appointed on transfer basis. The Memorandum is not applicable in case of the employees

who had already retired or have been re-employed after retirement. Relevant paras thereof are extracted below:-

“4. Scope of the Office Memorandum: This O.M. Would apply to the employees who are in service and have not been retired from service on the date of issue of this O.M. and also subject to the condition that such employees applied for the job from one organization to the other through proper channel or should have been absorbed in the service with the prior consent of parent employer of the employee concerned or appointed on transfer basis.

5. Exclusion: This O.M. shall not apply in the case of employees already retired or who have been reemployed after retirement and in case where the selection/appointment in the other entity is not through proper channel. This O.M. shall not be applicable in the case of employee coming over to the Government from Public Sector Undertakings/Societies/Private Managements and such of the statutory bodies, which are not wholly/substantially funded by the State Government/Central Government.”

19. As per the aforesaid conditions laid down in the Office Memorandum dated 07.01.2002, the case of the respondent is not covered therein as it is the case where respondent was retrenched from his earlier service, had withdrawn all his service benefits and thereafter was appointed afresh by a different Department.

20. Now coming to the judgments which directly dealt with the issue raised in the present appeal. In Jai Narain Kaushik's case (supra) and connected petitions, employees were similarly placed as the respondent is. They had also been retrenched from the Corporation or Haryana State Cooperative Consumer Federation Limited or Haryana Mines and Minerals Corporation Limited. The employees therein had also received their all service benefits at the time of retrenchment. After a break in service ranging from two to four years, they had been employed in terms of the scheme dated 07.01.2002. They filed writ petitions claiming benefit of past service. While referring to the terms and conditions contained in the scheme, the offer of appointment and also noticing the distinguishing features in the judgment

of Hon'ble the Supreme Court in Deepak Sood's case (supra) the Division Bench upheld the orders passed by the learned Single Judge denying the benefit of past service. The distinguishing feature being that the employees who were before the Court had taken their all service benefits at the time of retrenchment and they were reemployed afresh after a gap of two to four years. Hence, there was no continuity of service as such.

21. To the same effect is the order passed by this Court in Ajmer Singh's case (supra) where the order passed by the learned Single Judge denying relief to a similarly placed employee was upheld. In Mrigank Johri's case (supra), the issue under consideration before Hon'ble the Supreme Court was grant of benefits of past service after absorption in a different department where they were working on deputation. The issue considered was as to whether in Office Memorandum which generally provide for the benefit of service rendered in the previous cadre on an equivalent post, on being absorbed in another department would apply to a case where the absorption is on specified terms and conditions. The question was answered in negative. It may be so in general principle. However, the position would be different if the absorbing department stipulates the condition of giving willingness to sacrifice the benefit of past service. On failure, the employee may be repatriated to his parent department. Once such employees had accepted the conditions with their eyes open and never challenged the same, it would not be open for them to raise the issue later on. Relevant paras thereof are extracted below:-

“29. The contentions may be elaborate but the crux of the issue is whether the OMs referred to aforesaid which generally provide for the benefit of service rendered in the previous cadre in an equivalent post on being absorbed in another department would apply to a case

where the absorption is on specified terms and conditions with the benefit of such past service in the previous cadre as well as the period of service rendered on deputation being denied ?

30. Our answer to this query is in the negative for which we proceed to pen down reasons.

31. It is no doubt true that the OM dated 29.5.1986 as modified by OM dated 27.3.2001 did provide for the benefit of the previous service rendered in the cadre. This is in effect also the ratio of the judgment in Sub Inspector Roop Lal vs. Lt. Governor (2000) 1 SCC 644. This would also be in conformity with the normal service jurisprudential view. However, it would be a different position if the absorbing department clearly stipulates a condition of giving willingness to sacrifice the seniority while preserving all other benefits for the absorbee (which are accepted) failing which the option was available to the absorbee to get himself repatriated to the parent department. The terms and conditions are categorical in their wording that the absorbees would be “deemed to be new recruits” and the previous service would be counted for all purposes “except his/her seniority in the cadre”. The appellant accepted this with open eyes and never even challenged the same. Their representations to give them the benefit of their past seniority was also turned down and thereafter also they did not agitate the matter in any judicial forum. The controversy was thus not alive and it was not open for them to challenge the same after a long lapse of period of time. In fact on the day of filing of the OM, any prayer to set aside the terms and conditions of absorption would have been clearly barred by time under Section 21 of the Administrative Tribunals Act, 1985.

32. The appellants sought to rake up the issue only when the seniority list was finalized. This was preceded by the draft seniority list. Whatever may be the dispute of seniority qua other persons, insofar as the appellants were concerned, their seniority was based on the terms and conditions of their absorption. The position of the appellants in the seniority list was thus a sequitur to the

terms and conditions of their absorption. We are of the view that it is precisely for this reason, anticipating that their claim would be time barred, that a challenge was laid only to the seniority list without challenging the terms and conditions of absorption though in the grounds, a plea was raised against the terms and conditions of absorption. Unless the terms and conditions of absorption were to be set aside, the seniority list prepared was in conformity with the same.

33. Even otherwise, as noted above, since the appellants accepted the terms and conditions of absorption, they could not plead otherwise.

34. We are in agreement with the submission of the respondents that this issue has been squarely dealt with in Indu Shekhar Singh vs. State of U.P. (2006) 8 SCC 129 where almost identical issues have been dealt with by holding that the State was within its right to impose conditions where the employees had the option to exercise their right of election. The entitlement was not under any rules but under what was called the residuary power.”

22. In the case in hand as well, as has been noticed above, there were specific conditions laid down in the letter of offer of appointment regarding appointment being afresh; at the beginning of the scale; to be placed at the bottom of the seniority and with no benefit of past service. Specific condition was there that in case the aforesaid conditions are acceptable to the person concerned, he may join service. The respondent with his eyes open joined service. Meaning thereby, he accepted all the terms and conditions as laid down in the letter of offer of appointment. Further, he continued to serve the department for a period of more than six years without raising any grievance or challenging the terms of his appointment or the scheme under which his appointment had been made. He, now cannot be permitted to turn around and file a petition nearly two years after his retirement claiming that his past service be counted for the purpose of pensionary benefits especially, when the service rendered in the Corporation, was not pensionable.

23. For the reasons mentioned above, in our view the issues raised in the writ petition have not been properly appreciated by the learned Single Judge. The order, thus,

deserves to be set aside. Ordered accordingly. As a consequence thereof, the writ petition filed by the respondent is dismissed, holding that the respondent shall not be entitled to count service rendered in the Corporation before re-employment for pensionary benefits.”

In the instant case, the issue raised in the present petitions has been well settled by way of detailed judgment by Division Bench of this Court, which has attained finality upto Hon'ble the Supreme Court. Admittedly, no stay has been granted by Hon'ble the Supreme Court in the review application.

In view of the above, finding no merit in the instant petition (s) and the same are hereby dismissed.

Photocopy of the judgment be placed on the connected files.

01.10.2018

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No