

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 206

Civil Writ Petition No.26889 of 2014 (O & M)

Date of Decision: February 27, 2018

Birju Ram

..... PETITIONER

VERSUS

State of Punjab & others

..... RESPONDENTS

. . .

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

. . .

PRESENT: - Mr. R.K. Arora, Advocate, for the petitioner.

Mr. Manoj Bajaj, Additional Advocate General, Punjab.

Mr. Sudhanshu Makkar, Advocate, for respondent No.2.

Mr. Tarun Singla, Advocate, for respondent No.3.

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Jaspal Singh, J

Through the instant petition moved under Article 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of Mandamus, directing respondents to grant regular pension and other retiral benefits by treating him as deemed regular employee in terms of law laid down by the Hon'ble Apex Court in **Yashwant Hari Kattakkar vs. Union of India & others, 1996(7) SCC 113** as well as release of consequential benefits.

The facts giving rise to the instant petition are that petitioner initially joined as Charge-man on March 10, 1949 in Bhakra Dam Project. On completion of project, his services were transferred to Beas Dam Project. He was relieved from Bhakra Dam Project on November 06, 1961. He

joined Beas Dam Project on the same day and rendered services upto September 19, 1980 when he was declared surplus and retrenched. However, on intervention of the Hon'ble Apex Court, petitioner alongwith others was absorbed in Mukerian Hydel Project w.e.f. April 22, 1982 by granting benefit of continuity in service and thereafter, he retired/discharged from services on June 02, 1993 upon attaining the age of superannuation while working in Mukerian Hydel Project in the Department of Irrigation, Punjab.

It has further been averred that after retirement, no regular pension has been paid to petitioner and he is only being paid pension @ Rs.205/- from the EPF Organization on account of his CPF. Though he rendered services for about four decades but he was not granted pension. Hence this petition.

Contention of learned counsel for the petitioner is that petitioner who has rendered such a long service of more than 4 decades, should have been treated/deemed to be a regular employee and in such a situation, he deserves the benefit of regular pension. He deserves to be treated as regular employee for all intents and purposes. In case **Yashwant Hari Katakhar (supra)**, the Hon'ble Apex Court has categorically held observed that the appellant having served the Government for almost two decades, it would be unfair and travesty on the part of the Government to treat him temporary/ quasi permanent to deny him pensionary benefits. In the instant case, impugned action of the respondents in not releasing pension and other retiral benefits after rendering 44 years of service in different projects under the State of Punjab is arbitrary, illegal and malafide, deserves to be quashed. Resultantly, petitioner deserves the benefit of regular pension.

On the other hand, contention of learned counsel for the

respondents is that firstly, claim of the petitioner deserves to be rejected

being time barred and there being delay and laches. Petitioner retired/discharged from service in the year 1993 and after expiry of more than 2 decades, he has preferred the instant petition. It is well settled by now that in service matter, certain questions should not be re-opened after a lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There is an inordinate delay in the present case for making such a grievance and this alone is sufficient to declare interference under Article 226 of the Constitution and to reject the writ petition. In this context, learned counsel for the respondents have relied upon the Hon'ble Apex Court judgment rendered in **Civil Appeal Nos.6505-7506 of 1996**, decided on December 11, 1997.

While coming on merits of the case, learned counsel for the respondents have contended that petitioner does not deserves the benefits claimed through the instant petition. He was initially appointed by Bhakra Dam Project authorities and the whole service rendered by him while he remained posted at the aforesaid Dams. The Chief Engineer (Dams) was competent authority to take decisions for regularization of services of work-charged employees working at the project(s). Moreover, petitioner opted CPF scheme and is being paid pension by the Employees Provident Fund organization. Now, claim of petitioner for pension is otherwise not maintainable after the lapse of a period of 21/22 years. Learned counsel for the respondents, accordingly, prayed for dismissal of the petition.

This Court has given a deep thought to the rival submissions made by learned counsel for the parties and scanned various documents available on file.

Undisputably, petitioner joined as charge-man in the year

were transferred to Beas Dam Project. He was relieved from Bhakra Dam Project on November 06, 1961 and joined Beas Dam Project, same day. Ultimately, he was declared surplus and retrenched on September 19, 1980. Thereafter, he joined Mukerian Hydrel Project w.e.f. April 22, 1982 with continuity of service and was discharged/retired on June 02, 1993 on attaining the age of superannuation. From the aforesaid undisputed facts, this is clear that though petitioner served the department for a considerable period of more than four decades but his services were never regularized. He opted CPF scheme and EPF organization started disbursing pension on the basis of said scheme.

The instant petition was preferred in the month of December 2014 and till then, he has been receiving pension from EPF organization, for which, he had opted and now after a lapse of more than two decades, he intends to switch over the pension scheme which is not legally and factually justified. Firstly, instant petition suffers from delay & laches and there is no explanation for such a long delay of 21 years. Moreover, if this petition is entertained and his services are regularized, there would be a number of after-effects and repercussions vis-à-vis co-employees. Otherwise also, he cannot be allowed to switch over the pension scheme after 22 years when he has opted for CPF scheme and is being paid pension by EPF organization. On merits also, claim of the petitioner is not legally and factually maintainable. His services were never regularized at any point of time, nor he earlier lodged any such claim. Since the petitioner at the time of his superannuation opted the pension scheme and is getting the same till date, now his plea that State of Punjab should treat him as regular employee by counting his previous service, is not permissible. There is no provisions in

considered for granting pensionary benefits, especially when he is already getting pension under the CPF scheme. At this juncture, he cannot be allowed to switch over the pension scheme. Thus, taking the case of the petitioner from any of the angles, instant petition is not maintainable and deserves to be dismissed.

In the light of aforesaid discussion, instant petition is dismissed with no order as to costs.

February 27, 2018
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No