

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Amended CWP No. 6945 of 2015

Date of decision : August 27, 2018

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Devi Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Naveen Daryal, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl.A.G., Haryana.

Mr. Namit Kumar, Advocate for respondents no. 3 & 4.

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RITU BAHRI, J.

The petitioner is seeking a writ of certiorari for quashing the orders dated 15.5.2014 and 27.1.2014 (Annexures P-7 & P-6), whereby his claim for counting his ad hoc service w.e.f 9.9.1983 to 16.12.1988 as a qualifying service for all intents and purposes of the pensionary benefits has been rejected.

The petitioner was appointed as a Electrician Instructor on ad hoc basis through employment exchange against a vacant post of Electrician Instructor at ITI, Narwana vide appointment order dated 09.09.1983 (Annexure P-1) in the pay scale of Rs.600-1100/-. The petitioner was

selected to the regular post of Operator Grade-I vide GM Thermal Plant P.T.P.S., HSEB, Panipat dated 09.12.1988 and joined the same on 17.12.1988 (F/N) after being relieved from the ad hoc post of Electrician Instructor on 16.12.1998 by the Principal ITI, Narwana. The petitioner has been working regularly in the erstwhile HSEB service (now HPGCL/HVPNL) from 17.12.1988 (F/N) up to date of the superannuation i.e. 31.3.2012 as an Executive Engineer on regular basis. He made a representation on 11.12.2013 (Annexure P-4) for counting his ad hoc service in the Department of ITI Narwana as qualifying service for the purpose of pensionary benefits. He has referred to the judgments in the cases of *SC Kathuria vs. Punjab Electricity Board reported in 2008 (1) RSJ 261*, *Mohinder Singh vs. State of Haryana and others cited in 1991 (3) RSJ 613* and *Hari Chand vs. Bhakra Bias Management Boards & Others in 2005(2) RSJ 237 (DV)* on the proposition that if an application is made through proper channel for regular appointment in some other Department than the benefit of past service has to be counted towards pensionary benefits. The petitioner has further placed on record orders dated 27.8.2012 and 23.5.2012 (Annexure P-5 Colly.), whereby Sh. V.P Thukral and Sh. Hardip Singh were allowed the benefits of the past service towards pensionary benefits by the Department. Respondents no. 1 & 2 rejected the claim of the petitioner for counting the ad hoc service for the purpose of pensionary benefits vide order dated 27.1.2014 (Annexure P-6). Vide order dated 15.5.2014 (Annexure P-7) respondents no. 3 & 4 also rejected the claim of the petitioner for counting the past service towards pensionary benefits after the retirement on 31.3.2013.

Counsel for the petitioners is seeking quashing of the above said two orders (Annexures P-6 and P-7) on the ground that they are against the provisions of Rule 3.17 CSR, Vol-II.

The stand taken by the respondents in the written statement is that comments were sought from the Director/ITI Education Department vide letter dated 28.1.2014 (Annexure R-3/3) regarding counting the past service rendered by him in Industrial Training Department, Haryana as Electrician Instructor during 9.9.1983 to 16.12.1988 towards pensionary benefits. In response to this letter, Director General of Industrial Training Department, Haryana vide his letter dated 19.3.2014 (Annexure R-3/4) intimated that his office has already conveyed to Sh. Devi Singh, XEN/Retd. on the subject cited matter vide letter dated 27.1.2014, wherein it is stated that:-

“Devi Singh, Ex. Electrician Instructor who had worked in this department on ad hoc basis from 9.9.1983 to 16.12.1988 while working on ad hoc basis, he was selected in HSEB and joined on 17.12.1988.

Sh. Devi Singh worked on ad hoc basis in ITI Department & his services were regularized by this department. Hence, his service in this department cannot be recognized pensionable under Haryana Govt.

Sh. Devi Singh, Ex. Electrician Instructor is taking the shelter of FD Instructor dated 11.6.1974, 31.01.1984 & 07.01.2002.

FD's instructions dated 11.06.1974 are not applicable in his case because his entire services were not regularized by any department under Haryana Govt.

As such his appointment is just as made shift arrangement, since FD's Instructions dated 11.06.1974 are not applicable in this, therefore, question of applicability of FD's Instructions dated 31.01.1984 shall not arise. FD's Instructions dated 07.01.2002 are also not applicable in his case because his service rendered in ITI department is neither permanent/temporary nor pensionable. It is merely just as make shift arrangement as enumerated in FDs letter dated 11.6.1974.

In view of the position explained above, audit is of the view that the case of Sh. Devi Singh, Ex. Electrician Instructor does not cover under any rules/Instructions.”

From the letter dated 19.3.2014 (Annexure R-3/4), it was evident that the previous employer of the petitioner i.e the Director/General of Industrial Training Department, Haryana had rejected his plea and moreover the previous employer was not ready to discharge the pension liability of the petitioner. It was submitted in the reply that the request of the petitioner was considered and his claim was rightly rejected for past

service benefit, which was also conveyed to the petitioner vide office memo dated 15.5.2014 (Annexure R-3/5). It was further submitted in the reply that the petitioner had admitted that Sh. Hardeep Singh, AEE, Sh. R.L Sehgal and Sh. V.P Thukral have been allowed past service benefit rendered in Irrigation Department, Haryana for counting the qualifying service towards pension subject to deposit of pension and contribution by his previous employer i.e irrigation Department, Haryana. Whereas in the case of the petitioner the previous employer i.e the Director/General of Industrial Training Department, Haryana has rejected his claim and has also not deposited pension liability of the petitioner. Hence the petitioner cannot claim parity on the basis of the order (Annexure P-5 Colly.) in favour of V.P Thukral and Hardeep Singh.

Counsel for the State has referred to the Instructions issued by the Financial Commissioner & Secretary to Government of Haryana, Finance Department (Annexure R-3/2). These Instructions relate to counting of service for the purpose of pension of the employees of the State Government and State Autonomous Bodies seeking absorption in Central Autonomous Bodies and Central Government/Central Autonomous Bodies respectively and vice versa. The relevant portion is reproduced hereas under:

4. Where no terminal benefits for the previous service have been received, the previous service in such cases will be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with principles laid down in this letter. In no case, pension

contribution/liability shall be accepted from the employees concerned.

As per the above instructions, the previous service will be counted as qualifying service for pension in such cases only if the previous employer accepts pension liability for the service, which in the present case has been denied. Vide letter dated 19.3.2014 (Annexure R-3/4), the previous employer of the petitioner i.e the Director/General of Industrial Training Department, Haryana had rejected his plea and moreover the previous employer was not ready to discharge the pension liability of the petitioner. Director General of Industrial Training Department, Haryana had informed the petitioner vide letter dated 27.1.2014 (Annexure R3/4) that his service rendered in ITI Department is neither permanent/temporary nor pensionable. It was merely a make shift arrangement and his case was not covered under any Instructions. Thereafter, Haryana Vidyut Prasaran Nigam Ltd. rejected the case of the petitioner vide letter dated 15.5.2014 (Annexure R-3/5). Once the previous employer has declined the liability of the pension towards service, no ground for considering the past service of the petitioner from 9.9.1983 to 16.12.1988 towards pensionary benefits is made out. The petitioner cannot claim parity with the cases of V.P Thukral and Hardeep Singh (Annexure P-5 colly.) and it is clarified in the reply that the Irrigation Department had paid their part of the pensionary benefits.

In view of all that has been discussed above, there is no merit in present writ petition and the same is hereby dismissed.

27.08.2018

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No