

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

CWP No. 3543 of 2017

Date of decision : 18.08.2018

Vinay Dhull

..Petitioner

versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Sandeep, Advocate
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana

RITU BAHRI, J.

This petition under Articles 226/227 of the Constitution of India is for issuance of writ in the nature of certiorari to quash the impugned order dated 20.02.2017 (P-6) by which the terms and conditions of the appointment letter dated 09.12.2013 (P-4) were altered.

Pursuant to advertisement by the Haryana Public Service Commission, one post of Sub Divisional for Haryana State Agriculture Marketing Board (for short 'HSAMB') was advertised and the petitioner was offered appointment letter on 09.06.2010. On 11.06.2010, the petitioner joined as Sub Divisional Officer. Thereafter, on 20.11.2012, Government of Haryana invited applications to fill 04 posts of Sub Divisional Officers (Civil) by way of transfer. The application of the petitioner was forwarded by the Chief Administrator HSAMB on 07.12.2012 and the petitioner was

offered appointment letter dated 09.12.2013 (P-4) and in this appointment

letter, it was specifically mentioned that his pay will be protected on his appointment as Assistant Engineer (Civil) in Haryana Irrigation and Water Resource Department and the petitioner was getting the benefit of pay protection since 19.12.2013. On 20.02.2017, the impugned order was passed against the petitioner withdrawing the benefit of pay protection by altering the condition in the appointment letter dated 09.12.2013.

Learned senior counsel contends that once the petitioner has been offered appointment letter dated 09.12.2013 in which there was a condition that his past service will not be counted for the purpose of seniority but he will be given the benefit of pay protection, thereafter, the terms and conditions of the appointment letter cannot be changed. The petitioner had joined the department by accepting the said terms and conditions.

Learned senior counsel has referred to the judgment of Hon'ble the Supreme Court of India in a case of ***S.I. Rooplal vs. Lt. Governor through Chief Secretary, Delhi, 2000 (1) SCT 630*** wherein the question involved was that is whether a Sub Inspector who was appointed as as such in the B.S.F when transferred on deputation to Delhi Police in the cadre of Sub Inspector (Executive) on being permanently absorbed in the transferred post, is entitled to count his substantive service as Sub Inspector in the B.S.F for the purpose of his seniority in the cadre of Sub Inspector (Executive) in Delhi Police. The writ petition was allowed and it has been observed as under:-

21. *A perusal of clause (iv) of the Memorandum shows that the author of this Memorandum has taken inconsistent views in regard to the right of*

a deputationist to count his seniority in the parent department. While in the beginning part of Clause (iv) :in clear terms he says that if a deputationist holds an equivalent grade on regular basis in the parent department, such regular service in the grade shall also be taken into account in fixing the seniority. In the latter part the author proceeds to say-"subject to the condition that he will be given seniority from the date he has been holding the post or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department whichever is later."The use of the words "whichever is later" negatives the right which was otherwise sought to be conferred under the previous paragraph of Clause (iv) of the Memorandum. We are unable to see the logic behind this. The use of the words "whichever is later"being unreasonable, it offends [Article 14](#) of the Constitution. It is also argued on behalf of the appellants that this Memorandum is further violative of Articles 14 and 16 of the Constitution inasmuch as it arbitrarily takes away the service rendered by the deputationist when he is absorbed in Delhi Police which right of a civil servant cannot be taken away without authority of law. We have noticed earlier that the petitioners who are the appellants in the civil appeals, were regularly appointed as Sub-Inspectors in the BSF on the date of their deputation. We have also accepted the fact that the post of Sub-Inspector held by them in the BSF is equivalent to the post of Sub- Inspector (Executive) in the Delhi Police to which they stood deputed. That being the case, in view of the judgment in the cases of R.S. Mokashi, Wing Commander J. Kumar and Madhavan (supra), it is clear that they are entitled to count the service rendered by them in the post of Sub-Inspector in the BSF for the purpose of seniority in the cadre of Sub-Inspector (Executive) in Delhi Police. Therefore, such a right of the petitioners/ appellants could not have been taken away in the garb of an Office Memorandum which is impugned in the above writ petition. This view of ours finds support from a judgment of this Court in the case of [K. Anjaih & Ors. v. K. Chandraiah and Ors.](#), [1988] 3 SCC 218. In that case this Court was considering a statutory regulation which in almost similar terms used in the Office Memorandum with which we are concerned, deprived the civil servants of their past service in the department. The Regulation involved in the said case reads:

"9 (1) The persons drawn from other departments will carry on their service and they will be treated as on other duty for a tenure period to be specified by the Commission or until they are permanently absorbed in the Commission whichever is earlier.

(2) The services of those staff members working in the Commission on deputation basis and who opted for their absorption in the Commission, shall be appointed regularly as the staff in the Commission, in the cadre to which they belong, as per the orders of Government approving their appointments batch by batch and to determine the seniority accordingly. For this purpose the Commission may review the promotions already affected."

22. *It is clear from the ratio laid down in the above case that any Rule, Regulation or Executive Instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned Memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the Memorandum, as has been prayed in the writ petition, the rights of the appellants could be preserved, we agree with the prayer of the petitioners/ appellants and the offending words in the Memorandum "whichever is later" are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text of the impugned Memorandum. Consequently, the right of the petitioners/appellants to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub- Inspector (Executive) in the Delhi Police, is restored.*

23. *Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the inter-se dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly.*

Still if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned.

Learned senior counsel has further relied upon a judgment of Hon'ble the Supreme Court of India in a case of ***State of Haryana and another vs. Deepak Sood and others, passed in SLP (C) No. 14099-2016 and connected matters, decided on 15.07.2008*** wherein the respondents joined the service in the Octroi Branch of the Municipal Committee in the State of Haryana. Subsequently due to closure of the Octroi Branch of the Municipal Committee in the State of Haryana, they were absorbed in the Education Department, Haryana. They applied for grant of ACP Grade, which was denied on the ground that they have not completed 10 years of service in State of Haryana. SLP filed by the State was dismissed and it has been observed as under:-

A similar question came up before this Court in the case of (1) Dwijen Chandra Sarkar and another versus Union of India and another reported in AIR 1999 SUPREME COURT 598. In almost identical situation a person was transferred to another department on administrative grounds and his past service of 16 years was not counted. He challenged the same and matter ultimately reached before this Court

and this Court after considering the matter came to the conclusion that granting them higher grade under the Scheme for time bound promotion does not therefore, offend the condition imposed in the transfer order. It was observed by this Court, We are, therefore, of the view that the appellants are entitled to the higher grade from the date on which they have completed 16 years and the said period is to be computed on the basis of their total service both in the Rehabilitation Department and the P & T Department."

Their Lordships referred to earlier judgments given by this court i.e. in the case of Renu Mullick versus Union of India 1994 (1) SCC 373. In this case also in identical situation the benefit was given to incumbent likewise in Raksha Mantri versus V.M. Joseph reported in 1998 (5) SCC 305 and in the case of A.P. State Electricity Board versus R. Parthasarathi reported in 1998 (9) SCC 425. The same principle was re-affirmed recently in the case of State of Maharashtra & Ors. Vs. Uttam Vishnu Pawar (2008) 2 SCC, 646 to which one of us (A.K.Mathur, J.) was a party, wherein in para 13 it was observed as under :-

Therefore, in view of the consistent approach of this Court, it is no more res integra that the incumbent on transfer to the new department may not get the seniority but his experience of the past service rendered will be counted for the purpose of other benefits like promotion or for the higher pay scale as per the Scheme of the Government."

Therefore, in the series of judgments given by this Court the view has been taken that in case of a transfer/absorption from one department to another or from public sector to State though the benefit of the seniority may be denied to the incumbent but not for other benefits like pay fixation and for the pensionary benefits. Therefore, when the benefit of past service rendered in the parent department was given for fixation of pay and pensionary benefits, there is no reason why the past service should not be counted for grant of ACP Grade. Consequently, we are of the view that the view taken by the Division Bench of the High Court in the impugned judgment and order is correct and there is no ground to interfere in this appeal. Consequently, this appeal is dismissed but with no order as to costs.

On the other hand, learned State counsel has argued that the petitioner has not worked under Haryana Government during the period from 12.06.2010 to 18.12.2013 and thus the services rendered by him cannot be treated as service rendered under Haryana Government. The provisions of Rule 4.4 CS Vol-I Part-I are applicable in cases of those employees who worked under Haryana Government and got pay from consolidated funds of State of Haryana. Petitioner is not entitled for protection of pay and is to be treated as fresh entrant.

Learned State counsel has supported the impugned order whereby condition in the appointment letter has been altered on the ground that since condition No. 2 (a) and 10(iii) were contradictory to each other, the case of the petitioner was sent to Finance Department Haryana for seeking clarification that whether the petitioner is entitled for 1st A.C.P Scale of Rs.15600-39100+Grade Pay 6000/- w.e.f 01.07.2015 by counting his past service rendered in HSAMB. The Finance Department vide U.O dated 19.08.2016 (R-1) clarified that the services rendered by the petitioner in the Boards/Corporations is not a Government service as per provisions of C.S.R and employee appointed in Haryana Government from Board Corporations will be treated as fresh entrant. The Finance Department further advised to amend the appointment letter of the petitioner by modifying clause No. 10 (iii) in accordance with condition No. 2 (a) of the appointment letter. Thereafter, Chief Secretary to Government of Haryana vide U.O dated 10.01.2017 advised to take appropriate decision as per advise of t he Finance Department.

Heard learned counsel for the parties.

The only question for consideration before this Court is that once the petitioner has been offered appointment letter dated 09.12.2013 in which there was a condition that he will be given initial pay scale of Rs.9300-34800+Grade Pay 5400 and his past service will not be counted for the purpose of seniority and only his pay will be protected, thereafter, can the department after 04 years of his service, alter the condition of the appointment letter on the ground that there was a contradiction in the appointment letter of the petitioner.

The writ petition deserves to be allowed, as the petitioner for all intents and purposes, has joined the new department by leaving his old job by accepting all the conditions of the appointment letter dated 09.12.2013. He was ready that his past service be not counted for seniority but his pay be protected.

The judgments mentioned above by learned counsel for the petitioners are to the effect that experience of past service rendered by an employee will be counted for the purpose of the benefits like promotion or for the higher pay scale, as per the scheme of the Government. However, in the present case, there was a condition in the appointment letter of the petitioner that the service rendered by him in the parent department of Haryana Government will not be counted for the purpose of seniority on his appointment but it was also mentioned that his pay will be protected on his appointment as Assistant Engineer (Civil) in Haryana Irrigation and Water Resource Department. The benefit of pay protection as per clause 10 (iii) of the appointment letter cannot be held to be contradictory of clause 2 (a) of the appointment letter. The petitioner has been given appointment letter

after following the due process of law, as Haryana Irrigation and Water Resource Department invited applications vide circular dated 20.11.2012 from all department of Haryana State/corporation and in pursuance of the circular dated 20.11.2012, the Chief Administrator, HSAMB recommended the name of the petitioner.

In view of the discussions made above, the present writ petition is allowed and order dated 20.12.2012 (P-6) is set aside. Accordingly, the pay of the petitioner shall remain protected in terms of condition No. 10 (iii) of appointment letter dated 09.12.2013 (P-4) with all consequential benefits.

(RITU BAHRI)
JUDGE

18.08.2018
G Arora

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>