

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1105 of 2017 (O&M) in
CWP No.26716 of 2014
Date of Decision: 29.05.2018

The State of Haryana and others

..... Appellants

Versus

Nathu Singh

..... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present: Mr. B. R. Mahajan, A.G., Haryana with
Mr. Ravi Dutt Sharma, DAG, Haryana and
Ms. Apoorv Garg, DAG, Haryana.

Mr. B. K. Bagri, Advocate
for the respondent.

RAJESH BINDAL J.

1. The State has filed the present intra-court appeal impugning therein the order passed by the learned Single Judge dated 27.09.2016 whereby the writ petition filed by the respondent seeking benefit of service rendered by him from 09.12.1974 to 30.06.2002 with Haryana State Mineral Irrigation Tubewell Corporation (for short 'the Corporation') before retrenchment of his service, was directed to be counted as qualifying service for the purpose of pensionary benefits.
2. Mr. B. R. Mahajan, learned Advocate General, Haryana while assailing the order passed by the learned Single Judge submitted that

respondent was working with Corporation and the period for which he worked therein is not in dispute. While he was in service, it was decided to close its operation. Subsequently, it was wound up. The operation of the Corporation was closed on 30.07.2002, as a result of which, all surplus employees were retrenched. They were paid all the benefits due to them. In addition, subsequently some employees were given golden hand-shake. However, some of the employees, as per their seniority, were transferred to other Government Departments/Corporations before the operation of the Corporation was stopped. In the case in hand, the services of the respondent were retrenched on 30.06.2002. All service benefits due to him, in addition to the amount payable as golden hand-shake, were paid and the relationship of master and servant severed.

3. The State in exercise of powers conferred under Article 309 of the Constitution of India notified a Scheme on 21.06.2006 providing for re-employment of the regular retrenched Group 'C' and 'D' employees of Boards/Corporations/Public Sector Undertakings, who had been retrenched from 01.03.2000 to 01.03.2005. The re-employment was to be made against vacancies of direct recruitment in Group 'C' and 'D', against available posts. A committee was constituted. Certain conditions were laid down in the scheme. One of the conditions was that adjustment of the retrenched employees would be subject to submission of affidavit that such adjustment shall be considered as a fresh appointment and no benefit of the past service shall be claimed.

4. In pursuance to the aforesaid scheme, the respondent was appointed as Driver in the Office of the Director General of Prisons,

Haryana, vide appointment letter dated 01.09.2006 i.e. more than four years after his retrenchment from service. It was specifically provided in the appointment letter that the same is made afresh at the minimum of the pay scale. The respondent was to be placed at the junior most level in the seniority list. Accepting the conditions of appointment, the respondent joined service, continued working and on 31.01.2013 even retired on attaining the age of superannuation. No issues were raised regarding claim of any service rendered with the Corporation. About two years after his retirement, the respondent filed a writ petition seeking a direction for counting his service rendered with the Corporation for the purpose of retiral benefits. The same has been erroneously allowed by the learned Single Judge ignoring two Division Bench judgments of this Court exactly on the issue in LPA No.570 of 2012 titled as 'Jai Narain Kaushik and others vs. State of Haryana and another' decided on 04.02.2014 & LPA No.857 of 2014 titled as 'Ajmer Singh vs. State of Haryana and others' decided on 12.08.2014 and further a judgment of Hon'ble the Supreme Court in 'Mrigank Johri and others vs. Union of India and others' (2017) 8 SCC 256.

5. It was further submitted that the learned Single Judge erred while placing reliance upon order passed by Hon'ble the Supreme Court in 'State of Haryana and another vs. Deepak Sood and others', in Civil Appeal No.4446 of 2008 decided on 15.07.2008 and judgment of this Court in 'Suresh Chand and others vs. State of Haryana and others' in CWP No.3792 of 2012 decided on 14.01.2016, which are distinguishable as in those cases, the employees were not re-appointed after retrenchment

of their services. Rather, while in service they were absorbed in different departments. It was further argued that instructions dated 16.12.2010 have also been wrongly relied upon as those would not govern the conditions of service of the respondent, who was appointed on 01.09.2006. In fact those instructions were issued to give benefit of the judgment of Hon'ble the Supreme Court in Deepak Sood's case (supra).

6. On the other hand, learned counsel for the respondent submitted that the learned Single Judge has rightly granted relief to the respondent. After the closure of the Corporation, the employees were absorbed in different Departments/Corporations in a pick and choose manner. The respondent was discriminated. His services were retrenched. He cannot be said to be at fault. Other similarly situated employees were granted those benefits, hence, the respondent should not be discriminated. The judgments relied upon by the learned Single Judge are not distinguishable as is sought to be argued by learned Advocate General, Haryana. He further referred to the policy dated 07.01.2002 in terms of which the employees were entitled to count their service rendered in any non-pensionable organization before absorption in any pensionable department.

7. Heard learned counsel for the parties and perused the paper book.

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/Co-federations/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 Co-operative 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.*

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- 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.

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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 re-employed 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 re-employed 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.

(RAJESH BINDAL)
JUDGE

(DEEPAK SIBAL)
JUDGE

29.05.2018

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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No