IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA No. 999 of 2018 (O&M)
Date of Decision: 26.09.2018

Dr. Jaswant Saini …..Appellant

versus

Uttar Haryana Bijli Vitran Nigam Limited and others

…..Respondents

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Dr. Suresh Kumar Redhu, Advocate, for the appellant.

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KRISHNA MURARI, CHIEF JUSTICE (oral)

This intra court appeal filed under Clause X of the Letters Patent is directed against the judgment and order of the learned Single Judge dated 01.02.2018 dismissing the writ petition filed by the appellant herein seeking a relief of mandamus to command respondent No.1-Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) (hereinafter referred to as 'the Nigam') to release amount of ₹ 10,11,788/- on account of contribution of pro-rata pension and gratuity for the period of service rendered by the appellant-petitioner with the Nigam alongwith 18% interest per annum.

2. The core issue for determination is whether the service rendered by the appellant-petitioner in Nigam is treated to be continued with the service rendered by him in the university so as to enable him to avail the benefit of past service towards qualifying service for pro-rata pension under the old pension scheme. It may be relevant to advert to the following relevant facts necessary for adjudication of the issue raised:-

Admittedly, the appellant-petitioner was appointed as a Shift Attendant in October, 1997 in the then Haryana State Electricity Board (HSEB). Subsequently, the HSEB was dissolved and unbundled into four separate companies all of which were incorporated under the Companies Act, 1956. Accordingly, the services of the appellant-petitioner came to be absorbed in UHBVNL. While in service with the Nigam, in 2008 he was promoted as Assistant Sub Station Attendant.

3. In the meantime Maharishi Dayanand University, Rohtak, advertised posts of Lecturer in the Law Department. Appellant herein applied through proper channel and after being selected was appointed as a Lecturer in the University. He joined the university on 31.12.2008 after resigning from the services of Nigam. Admittedly, while the appellant was in service of the Nigam, he was holding a pensionable post whereas the service conditions of the university entitled the appellant to the benefits of the University General Provident Fund, Pension and leave encashment etc. as per the rules of the University.

4. With effect from 01.01.2006, the Government of Haryana introduced a new Defined Contributory Pension Scheme for its employees vide notification dated 28.10.2005 which was adopted by the University. Since the appellant joined the services of the university on 31.12.2008, as such he was not entitled to the retiral benefits as per the old pension scheme.

5. The case set up by the appellant in the writ petition was that he was entitled to be extended the benefit of service rendered in Nigam and the Nigam wrongly and illegally refused the request made by the university to transfer the specified amount of contribution of pro-rata pension and gratuity in favour of the Finance Officer of the university.

6. Learned counsel for the appellant vehemently contended that a manifest error of law has been committed by the learned Single Judge in dismissing the writ petition and the benefit of past service rendered in Nigam is liable to be counted inasmuch as the appellant continued to remain in service under the Haryana Government.

7. The defence set up by the respondent-Nigam before the learned Single Judge was that the benefit of past qualifying service towards pension to university employees coming from the State Government or Autonomous Body, Central Government or Central Autonomous Body is regulated as per the provisions contained in Policy Instruction OM dated 07.01.2002 issued by the State of Haryana and the same exclusively excludes a Public Sector Undertaking/Public Enterprise/Company registered under the Companies Act; Society registered under the Societies Registration Act from the definition of statutory body/autonomous body. For ready reference, the relevant paragraphs 2 and 3 of the policy instructions/OM are being reproduced hereunder:-

> "2. The question of granting similar benefit to the employees of the State Autonomous Bodies on their absorption in the State Government and vice verse has been under consideration of the State Government for some time in the past. This matter has been considered carefully and it has now been decided that cases for the purpose of grant of benefit of past qualifying service towards pension to the State Government employees going over to a State Autonomous Body or vice versa and employees of the State Autonomous Body moving to another Autonomous Body (both under the Government of Haryana) will be regulated as per the provisions contained herein."
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> "3. Definition of Statutory Body/Autonomous Body – In order to be eligible for the benefits under this Office Memorandum, an employee must have rendered service in a State Autonomous/Statutory Body;
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> (i) That has been created under a Statute/Act of State/Central Government; and
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> (ii) Is financed wholly or substantially from the cess or Central/State Government grants.

> "Substantially" means that more than 50% of the expenditure of the autonomous bodies is met through cess or Central/State Government grants.
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> Explanation: A State Autonomous Bodies includes a State University, but does not include a Public Sector Undertaking/Public Enterprise/Company registered under the Companies Act; Society registered under the Societies Registration Act and private bodies and managements."

8. There is no dispute about the fact that the service of the appellant herein was absorbed in respondent-2 Nigam which admittedly is a company registered under the provisions of the Companies Act, 1956 and thus stands excluded from the definition of State Autonomous Body and thus the service rendered in the Nigam cannot enure to the benefit of the appellant for securing declaration of vested right in old pension scheme as per the position prevailing prior to 01.01.2006.

9. It is also an admitted case that after the appellant-petitioner resigned from the services of Nigam to join the post in the university, the respondent-Nigam cleared all the dues i.e. GPF, leave encashment etc. to the appellant through two cheques dated 22.05.2009 and 02.06.2009 respectively.

10. From the above facts and discussion, it is clear that the respondent-Nigam does not fall within the definition of State Autonomous Body or Statutory Body being a company registered under the Companies Act, 1956 which is specifically excluded from the definition of statutory body or autonomous body as contained in Policy Instructions OM dated 07.01.2002. The services rendered by the appellant in Nigam thus would be of no avail and the benefit of technical resignation from the services of

Nigam is not liable to be extended to the appellant and we find no illegality in the view taken by the learned Single Judge.

The appeal is thus devoid of merits and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

26.09.2018
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No