

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10219 of 2015

Date of decision: -08.11.2019

Angrez Kaur

.... Petitioner

versus

State of Punjab and another

... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anurag Goyal, Advocate
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI, J. .

In the present writ petition, the claim of the petitioner is for grant of benefit of service, which she had rendered prior to her joining in the Department of Homeopathy, Punjab in pursuance to appointment order dated 02.03.1995 (Annexure P/1) as a qualifying service for computing her pensionary benefits.

As per the facts mentioned in the writ petition, the petitioner was initially appointed as Typist in Sikh Gurudwara Tribunal, Punjab, which was working under the Election Department. In pursuance to the said appointment dated 05.01.1977, the petitioner started working there and was promoted to the post of Senior Clerk on 01.03.1979. Petitioner was further promoted to the post of Senior Assistant on 19.11.1987. Petitioner continued working with Sikh Gurudwara Tribunal till 12.03.1991, when the Tribunal was dissolved by the State Government. After

the Tribunal was dissolved by the Government of Punjab, petitioner was relieved of the duties and a request was made by the petitioner and other employees at the relevant time, for being absorbed in other department of Government of Punjab. In the meanwhile Sikh Gurudwara Tribunal was reconstituted on 24.02.1992 and the petitioner made a request for her reinstatement on the post, on which she was working. Before the said request of the petitioner could be considered, she was selected in Department of Home Guards, Punjab on the post of Senior Assistant, on which post, the petitioner joined on 17.09.1992.

At the time of appointment of the petitioner in the Department of Home Guards, Punjab as Senior Assistant, the pay of the petitioner, which she was drawing while working with Sikh Gurudwara Tribunal, was protected. The post of the Senior Assistant in the Punjab Home Guards, on which the petitioner was appointed was abolished in September 1994 for want of sanction. The petitioner approached this Court by filing CWP-6277 of 1994 claiming absorption in any other department of Government of Punjab. During the pendency of the said writ petition, the petitioner was offered fresh appointment as Senior Assistant in the Department of Homeopathy, Punjab vide appointment letter dated 02.03.1995 (Annexure P/1) with certain conditions. Learned counsel for the petitioner states that the petitioner opposed some of the conditions, which were incorporated in the appointment letter dated 02.03.1995 such as; appointment was to be treated as fresh

appointment and no benefit of previous service was to be extended to her. Said grievance was raised by the petitioner before this Court when CWP-6277 of 1994 came up for hearing. The objections raised in respect of the clauses mentioned in the appointment letter dated 02.03.1995, were not allowed by this Court while deciding the said writ petition. On attaining the age of superannuation on 30.04.2015, the petitioner retired from the Department of Homeopathy, Punjab and after the retirement, petitioner raised the claim for grant of benefit of service, which she had rendered in Sikh Gurudwara Tribunal from 11.02.1977 till 12.04.1991 as well as in Punjab Home Guards from 17.09.1992 till 28.02.1994 while computing her pensionary benefits. As the said benefits were not being extended to the petitioner, she approached this Court seeking relief of treating the service, which she had rendered with Sikh Gurudwara Tribunal from 11.02.1977 till 12.04.1991 as well as services in Punjab Home Guard from 17.09.1992 till 28.02.1994 as qualifying service for computing pensionary benefits.

Upon notice of motion, respondents have filed reply contesting the claim of the petitioner. In reply, respondents have relied upon conditions of her appointment order dated 02.03.1995 (Annexure P/1), according to which, the appointment of the petitioner in Department of Homeopathy, Punjab was a fresh appointment and no benefit of previous service was to be extended to her and only pay protection was to be granted to her. Therefore, the petitioner is not entitled for benefit of earlier service rendered

by her in Sikh Gurudwara Tribunal from 11.02.1977 till 12.04.1991 as well as in Punjab Home Guards from 17.09.1992 till 28.02.1994 to be counted as qualifying service for computing her pensionary benefits.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The petitioner was appointed in the Department of Homeopathy, Punjab vide order dated 02.03.1995 (Annexure P/1) subject to some terms and conditions. Some of the terms and conditions are as under:-

1. That her appointment will be afresh except that her pay will be protected under the Punjab Civil Services Rules as far as possible.
2. That the service rendered by her in the previous offices will not be counted for any other purposes, except mentioned at Sr. No.1 above.

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5. That she will have to produce medical certificate of fitness from Principal Medical Officer, General Hospital Sector 16 Chandigarh before joining the service.

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12. That she will remain on probation for a period of two years and as the post against which she is posted is a temporary post, the clearing of the probation period satisfactory will not give her the right to be confirmed against the post.

A bare perusal of the above conditions would show that the said appointment was fresh appointment and the services rendered by her in the previous institutions were not to be counted

for any purpose except for pay protection.

It is also a matter of fact that these conditions were not acceptable to the petitioner. Though, in pursuance to said offer, she had joined the Department of Homeopathy but raised her grievance when CWP 6277 of 1999 came up for hearing, which she had filed before this Court seeking absorption in any other department of Government of Punjab. This Court while passing order dated 30.05.2000, considering the said objections/grievance of the petitioner for declaring condition Nos.1,2,5 and 12, which have been reproduced above, to be nullity as the same were arbitrary and were taking away vested right of the petitioner. This Court after considering the arguments raised on behalf of the petitioner, held that the conditions imposed in order dated 02.03.1995 (Annexure P/1) were valid and legal and the same cannot be treated as oppressive or offensive and rather the Government had shown compassion upon the petitioner by absorbing her in one of the department so that she might not face starvation. Relevant paragraph of the judgment is as under:-

“Let us see what the clauses of the order dated 2.3.1995. This order says that the petitioner may be absorbed in the Homeopathy Deptt. Within three days from the date of issue of the letter in order to honour the undertaking given by the Additional Advocate General, Punjab, Shri K.S. Sidhu, in the Hon'ble Punjab and Haryana High Court, during the hearing of Writ Petition NO.6277 of 1994, and the petitioner was offered a fresh appointment on the post of Sr. Assistant in the Homeopathic Deptt. by clearly bringing to her notice that her appointment will be a fresh except that her pay will be protected as far as possible; the service rendered by the petitioner in the previous office will not be counted for any other purpose excepting mentioned above. It was clearly spelt out that the services of the petitioner shall be

governed by the Ayurvedic Department (Class II Ministerial Services) Rules, 1963. As per clause 12, the petitioner will be considered on probation for a period of two years as the post against which she was posted was a temporary post and even on clearing the probation period, the petitioner will not claim, as a matter of right, to be confirmed against the post. These clauses of the order dated 2.3.1995 were duly accepted by the petitioner and, thereafter, she joined the homeopathic Deptt. when the conditions of services have been accepted by the petitioner, she will not be able to re-agitate the same issue especially when she has not challenged clause no.3. Rather Clauses 1 and 2 clearly indicate that only the pay of the petitioner will be protected and the previous service rendered by her will not be counted for any other purpose. It cannot be said that these clauses are oppressive or offensive, The Govt. had been showing compassion to the petitioner from time to time in order to absorb her in one department or the other so that she may not face starvation. The petitioner accepted the offer of appointment including the terms and conditions and, in these circumstances, it will not be open to the petitioner, at this stage, to say that the terms and conditions of the order dated 2.3.1995 are violative or oppressive or indecent. In this view of the matter, the petitioner is also not entitled to the second relief as prayed for.”

There is no further challenge to this order as the same has been accepted by the petitioner.

Keeping in view these facts, it is clear that this Court had upheld Clauses 1 and 2 of the appointment order dated 02.03.1995 (Annexure P/10). In Clause II, it has been clearly stated that no benefit in respect of the previous service will be given to the petitioner and once the said clause has already been upheld by this Court, the petitioner cannot claim the benefit of previous service as qualifying service for computing her pensionary benefits. Action of the respondents in declining relief for computing earlier service rendered by the petitioner with Sikh Gurudwara Tribunal as well as with Department of Home Guards, Punjab as qualifying service cannot be said to be illegal or arbitrary, rather the same is in

consonance with the terms and conditions imposed upon the petitioner at the time of her appointment with the Department of Homeopathy, Punjab, which was a fresh appointment for all intents and purposes and duly upheld by the Court already.

The question as to whether, once an employee has been given fresh appointment with the clear stipulation that the benefit of past service rendered by him/her in another institution will not be given, whether the services rendered by him/her in another institution can be taken into consideration while computing pensionary benefits was decided by this Court on 24.01.2012 while deciding CWP-24484 of 2011 titled as **Jai Narain Kaushik and others vs. State of Haryana and another.** In Jai Narain's case (supra) in similar circumstances as in the present case, the employees on becoming surplus were retrenched from Haryana State Minor Irrigation Tubewell Corporation, (HSMITC) and were absorbed in the other Government undertakings with a clear stipulation that their past services will not be taken into account for any benefit. Upon retirement, employees approached this Court claiming benefit of past service rendered prior to their retrenchment as qualifying service for computing pensionary benefits. Learned Single Judge of this Court held that keeping in view the stipulation in the scheme of re-employment, wherein it was clearly mentioned that no benefit of past service will be given, the benefit as being sought by the employees in the said petition for taking into consideration their past services as qualifying service is not at all

maintainable and the claim was rejected. Against the said judgement, LPA No.570 of 2012 titled as **Jai Narain Kaushik and others vs. State of Haryana and another** has been filed and the Division Bench of this Court on 4.2.2014, upholding the judgement of the learned Single Judge held that the benefit of past service cannot be given ignoring the condition mentioned for re-employment. Relevant paragraph is as under:-

“When rejecting their case, it was specifically noticed by the authorities that their case is not similar to the one set up by them because in those cases employees were taken into Government service by transfer/absorption from one department to another or from Public Sector to State and before their retrenchment, retrenchment compensation was not given to them. Whereas in the case of appellants, they were sent out of service on account of Corporations, in which they were employed, going in loss and of which there was no chance of revival. It was also noticed that before their names were considered for re-employment, all the employees gave an undertaking that they would not claim benefit of past service. It is also not in dispute that the employees were not asked to re-deposit the compensation amount received by them with the State Authorities. The learned Single Judge has rightly, by taking note of ratio of judgment of the Supreme Court in State of Haryana v. Deepak Sood & Others (Civil Appeal No. 4446 of 2008, decided on 15.7.2008) said that condition imposed was not irrational and was perfectly justified. In the case of Deepak Sood (supra), there was no disruption in service. The employees were taken into service before closure of Corporation in which they were working. Retrenchment compensation was not paid to them. Reliance of counsel for the appellants on the judgment of Supreme Court in Balmer Lawrie & Co. Ltd. v. Partha Sarathi Sen Roy and Others 2013(2) S.C.T. 231 is also of no help to the present appellants. That was the case in which service of an employee was terminated in terms of conditions of services. That was not a case of closure of corporation and adjusting a retrenched employee. In the present case, Corporations in which the appellants were working went into loss. Those were closed. Retrenchment compensation was

paid as per Rules and thereafter a favour was shown to the appellants by taking them back into service in a way denying opportunity of entry into service to large number of young persons. In the case of Balmer Lawrie (supra), situation was altogether different. Taking note of that case, it was said by the Supreme Court that service conditions need to be fair and reasonable. That was a case of entry in service. But in the present case, it is re-entry into service after retrenchment. Filing of an affidavit by the appellant not to claim past benefit was a condition precedent to get re-entry in service. It is not open for the appellants to challenge the same at this stage. No case is made out to cause interference by this Court in the present appeal and the writ petitions mentioned above.
Dismissed.”

Again, the same question of law arose for consideration before this Court in CWP-21633 of 2013 titled as Ajmer Singh vs. State of Haryana and others and the learned Single Judge again held that services rendered in Haryana State Minor Irrigation Tubewell Corporation Limited from where the petitioners therein were retrenched cannot be given after the said petitioners retired from office of Director, Development and Panchayat Haryana. A Co-ordinate Bench of this Court held that once there was clear stipulation that the subsequent appointment is fresh appointment and no benefit of past service will be given, an employee cannot claim the same for computing pensionary benefits. Relevant paragraph of the judgement is as under:-

“The facts, as have been narrated above, do not require reiteration as there is no dispute on them. The determinative factor, as far as the claim of the petitioner is concerned, is dependent upon the terms of his appointment. The appointment letter, which has been issued to the petitioner and Condition No. 2 thereof has been reproduced in the impugned order,

which reads as follows:-

“ 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 service as a result of retrenchment in any manner.”

It has further been mentioned in the impugned order that the benefit of prior service has only been granted to those employees who were declared surplus and subsequently appointed on transfer basis in other departments and the benefit of pay protection has been given to them. This precisely is the reasoning given by the Hon'ble Supreme Court in Deepak Sood's case (supra) where similar claim, as has been made by the petitioner, was made but in the light of the fact that their appointment has been made on the basis of the transfer, they were granted the benefit of counting of the past service rendered by them in the Municipal Corporation for granting them the ACP Grade. Petitioner, unfortunately, has been appointed as a fresh hand and, therefore, has been held entitled to the minimum of the pay of the post being offered to him. This is the basic distinction between the claim of the petitioner and that of employees, whose cases were considered by the Supreme Court in Deepak Sood's case (supra). The appointment of the petitioner determines his claim. As the appointment of the petitioner was a fresh one, the previous service cannot be taken into consideration. The impugned order dated dated 26.07.2013 (Annexure P-8) is in accordance w with law and, therefore, does not call for any interference by this Court.

The contention of the counsel for the petitioner with regard to his claim viz-a-viz Sh. Brij Bhushan Sharma, who was a Pump Operator and was appointed in the PWD (Public Health) Department and after having been declared surplus and retrenched from the Haryana State Minor Irrigation Tubewell Corporation Limited who is stated to have been granted the benefit, as has been made by the petitioner,

cannot be made a precedent especially when the benefit, if any, conferred on such an employee, if he is similarly placed as the petitioner, wrongly, cannot entitle another employee for claiming the same benefit, which is not permissible in law and that cannot be treated as a ground for seeking parity as it would amount to perpetuating illegality, which the Court cannot be a party to.

Finding no merit in the present writ petition, the same stands dismissed.”

Against the said judgement, LPA No.857 of 2014 titled as **Ajmer Singh vs. State of Haryana and others** was filed which was also dismissed by the Division Bench of this Court on 12.08.2014 holding that benefit of past service cannot be given as the same will be contrary to the conditions of employment. Relevant paragraph is as under:-

“In this case, the appellant joined as Junior Engineer (Civil) in the Corporation on 16.10.1979. The said Corporation was closed and services of the appellant were dispensed with, with effect from 30.7.2002. Subsequently, on a representation made by the appellant, he was appointed as Junior Engineer in the office of the Director, Development and Panchayat, Haryana, in the year 2006. The said appointment of the appellant was a fresh appointment, as is clear from Condition No.2 of his appointment letter, which has been re-produced in the impugned order passed by the learned Single Judge. The said Condition specifically provided that the appointment of the appellant was afresh and the appellant will be entitled to draw minimum pay of the post being offered. He shall not claim any benefit of the past service. The learned Single Judge, after considering the said Condition, has come to the conclusion that claim of the appellant for counting his past service was rightly rejected by respondent No.2. The contention raised by the appellant that some similarly situated employees were given the said benefit has also been considered and it has been found as a fact that those employees were not given fresh appointment, rather being surplus, they were transferred to other Departments, and in that situation, the benefit of past service was

given to them.

Learned counsel for the appellant does not dispute the aforesaid Condition of appointment of the appellant. However, he again argued on discrimination, but it has not been disputed that the similarly situated employees, who were given the benefit of past service, were not given fresh appointments, rather they were transferred to other Departments, where their past services were counted. So far as the claim of the appellant viz-a-viz Shri Brij Bhushan Sharma, who was a Pump Operator in the Corporation and was appointed in the PWD (Public Health) Department, is concerned, it has been observed by the learned Single Judge that the said appointment cannot be made a precedent, especially when the benefit, if any, conferred on such an employee, if he is similarly placed as the appellant, wrongly, cannot entitle another employee for claiming the same benefit. We are of the same view that an illegality cannot be perpetuated and the doctrine of 'parity' or 'right to equality' under Article 14 of the Constitution of India cannot be invoked. Thus, we do not find any illegality in the impugned order passed by the learned Single Judge. Dismissed.”

This question again came up for consideration as to whether a service, which the employee had rendered prior to his/her fresh appointment, can be taken into consideration as qualifying service for grant of pensionary benefit. A Division Bench of this Court on 29.05.2018 in LPA No.1105 of 2017 titled as **State of Haryana and others vs. Nathu Singh** held that where an employee has been appointed with a clear stipulation that subsequent appointment is fresh appointment and no benefit of previous service will be given and previous service cannot be taken into account for any purpose including computing of pensionary benefits, the same cannot be claimed. Relevant paragraph is as under:-

“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.”

The said order passed by the Division Bench of this Court on 29.05.2018 has already been upheld by the Hon'ble Supreme Court of India in SLP (c) No. 23416 of 2018 on 07.09.2018 and review petition has also been dismissed by the Hon'ble Supreme Court of India on 28.11.2018. Once a Division Bench of this Court has held that in case of fresh appointment with clear stipulation that the benefit of past service will not be given was made, an employee cannot claim benefit of past service for any purpose. In the present case, the petitioner was made aware of the conditions of appointment order dated 02.03.1995 (Annexure P/1) that her appointment is fresh appointment and no benefit of past service will be extended to her except fixation of pay, which has already been extended to her while in service. Therefore, the claim of the petitioner for treating her services rendered by her in Sikh

Gurudwara Tribunal as well as with Punjab Home Guards as qualifying service for computing pensionary benefits cannot be allowed. No interference is called for.

Dismissed with no orders as to costs.

(HARSIMRAN SINGH SETHI)
JUDGE

08.11.2019

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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |