

CWP No. 11797 of 2016 and other connected cases

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

(1)

CWP No. 11797 of 2016

Date of Decision : 26.03.2019

Duli Chand

...Petitioner

Versus

Haryana Warehousing Corporation and another

...Respondents

(2)

CWP No. 10638 of 2016

K.S. Rao and others

...Petitioners

Versus

State of Haryana and others

...Respondents

(3)

CWP No. 24015 of 2016

Ram Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

(4)

CWP No. 10659 of 2016

Rajender Prashad

...Petitioner

Versus

State of Haryana and others

...Respondents

(5)

CWP No. 11352 of 2016

Braham Prakash

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gaurav Singla, Advocate for
Mr. Gaurav Gupta, Advocate for the petitioner(s).

Ms. Safia Gupta, Assistant Advocate General, Haryana.

Mr. Hitesh Pandit, Advocate
for respondent No. 1 (in CWP No. 11797 of 2016).

Harsimran Singh Sethi, J.(Oral)

By this common order, five writ petitions bearing CWP Nos. 10638 of 2016, 11797 of 2016, 24015 of 2016, 10659 of 2016 and 11352 of 2016 are being disposed of as common question of law and similar facts have been stated in all the writ petitions.

For the sake of convenience, the facts are being taken from CWP No. 11797 of 2016.

The grievance in the present writ petition as raised by the petitioners is that they were initially appointed in Haryana Minerals Limited and worked for substantial number of years. Thereafter, Haryana Minerals Limited was closed down and the petitioners were retrenched from Haryana Minerals Limited after which, they were appointed in various other Boards/Corporations or the State Undertaking in view of the Policy dated 07.01.2002 and continued working there till their retirement. Grievance of the petitioners is that the service, which they rendered with the Haryana

Minerals Limited, was not being treated as a qualifying service for computing the pensionary benefits. The present writ petition has been filed seeking directions to the respondents that the service rendered by the petitioners in the Haryana Minerals Limited should be treated as a qualifying service for computing their pensionary benefits.

The facts as mentioned in the writ petition are that the petitioners joined Haryana Minerals Limited in the year 1988 on the post of Technical Assistant. Petitioners kept working there till the Haryana Minerals Limited was closed down. After the Haryana Minerals Limited was closed, the petitioners were retrenched from service in the year 2001. Not only Haryana Minerals Limited was closed down but there were other various Corporations and Federations, which were closed down by the respondents-State and the employees working therein were retrenched. For the sake of example, Haryana State Minor Irrigation Tubewell Corporation was also closed down so as the employees of the Haryana State Federation of Consumers-CONFED were also retrenched by the State. As there was an agitation and claim made by the retrenched employees for their rehabilitation, the Government of Haryana issued a Notification dated 21.06.2006 by which, a decision was taken that the retrenched employees of the Board Corporations/Public Sector Undertaking/Cooperative Federations be adjusted against the available vacancies for direct recruitment in Group D and C available in the other Board, Corporations and Public Sector Undertakings Federation/Urban Local Bodies Panchayati Raj as well as Department of the State Government. The said adjustment of the retrenched employees was to be carried out within a period of six months. As per the

said Notification, the appointments, which were to be carried out, were to be treated as a fresh appointment and an employee would not be entitled for the benefit of past service prior to the retrenchment or for the period when the employee remained out of service in any manner. The relevant portion of the Scheme is as under :

HARYANA GOVERNMENT
GENERAL ADMINISTRATION DEPARTMENT

Notification

The 21st June, 2006

No. GSR 13/Const./Art. 306/2006. - In pursuance of the provisions as contained in article 309 of the Constitution of India, the Governor of Haryana hereby constitutes a committee consisting of the following officers, to oversee the implementation of the following scheme and to appoint by way of adjustment the retrenched employees of Boards/Corporations/Public Sector Undertakings/Cooperative Federations etc. including Government Departments, namely:-

1. *Chief Secretary to Government, Haryana. : Chairman*
2. *Financial Commissioner and Principal Secretary to Government, Haryana, Finance Department. : Member*
3. *Financial Commissioner and Principal Secretary to Government, Haryana, Coordination Department : Member*
4. *Legal Remembrancer and Secretary to Government, Haryana, Law and Legislative Department. : Member*

Scheme

The scheme is regarding re-employment of regular retrenched Group C and D employees of Boards/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/ Cofederations/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 18.5.2006 shall be considered for adjustment.*
- 4. All vacancies of direct recruitment in Group 'C' posts and in Group 'D' posts in Government Department/ Boards/Corporations/Co-operative Federations/Public Sector Undertakings/Urban Local Bodies/Panchayati Raj Institutions shall be kept aside for adjustment from amongst retrenched employees.*
- 5. The adjustment of employees retrenched from Boards/Corporations/Public Sector Undertakings including Co-operative Federations would be treated as a special case in itself in the public interest. The adjustment of retrenched employees shall be at the discretion of the Government and such employees will have no legal right in this regard. Therefore, all Departments/ Boards/State Public Sector Undertakings and other Government organizations would send a requisition for the number of posts to be filled up from amongst the retrenched employees to a Screening Committee to be constituted for the purpose.*
- 6. The adjustment of the employees shall be as a one time measure.*
- 7. The Screening Committee shall devise a scheme with the approval of Chief Minister, on the basis or following broad parameters for adjustment of the retrenched employees, namely:-*
 - (i) The adjustment shall be made either on an equivalent post carrying the same designation and nature of duties or on a lower post as per the availability of the vacancies subject to*

the condition that an employee occupying Group C post at the time of retrenchment shall not be considered for adjustment on a Group D post. The prescribed qualifications and age requirements for the purpose of adjustment of the retrenched employee shall be relaxed in view of his/her past experience in case of equivalent post. However, adjustment of a retrenched employee on a non-equivalent post shall be subject to his/her fulfilling the prescribed qualifications for the concerned post.

- (ii) The adjustment shall be made either on an equivalent post carrying the same designation and nature of duties or on a lower post as per the availability of the vacancies subject to the condition that an employee occupying Group 'C' post at the time of retrenchment shall not be considered for adjustment on a Group 'D' post as per appropriate term and conditions.*
- (iii) Group 'D' retrenched employees shall be considered for adjustment against Group 'D' vacancies and the concept of equivalence of post shall not be applicable.*
- (iv) The eligible persons shall be considered for adjustment on the basis of seniority of age.*
- 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 before 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.*
- 9. The Group 'C' posts in Government Departments/ Boards/Corporations etc. against which the retrenched employees are to be adjusted as a consequence of this policy, shall be excluded from the purview of the Haryana Staff Selection Commission with effect from 18.5.2006.*
- 10. This policy is in supersession of any other policy in existence and shall come into effect from 18th May, 2006."*

In pursuance to the said Scheme, the cases of the employees were taken up for consideration for appointment and in the case of the present petitioner, he was appointed as a fresh candidate with the Haryana State Warehousing Corporation on 30.10.2006. Petitioner continued working till he retired. The present writ petition was filed by the petitioner relying upon the order passed by this Court in CWP No. 8021 of 2009, decided on 05.03.2010 titled as ***Sher Singh Vs. State of Haryana***, wherein, a Coordinate Bench of this Court allowed the claim of the petitioner therein for counting the service which Sh. Sher Singh had rendered with the Haryana State Minor Irrigation Tubewell Corporation for the grant of ACP benefit. Learned counsel for the petitioner relied upon the decision in CWP No. 17343 of 2007 titled as ***Jai Parkash Vs. The State of Haryana and others***, decided on 28.11.2008, wherein, the Division Bench also allowed the benefit of service rendered by the petitioner in the said writ petition for computing the retiral benefits.

Learned counsel for the petitioner also relies upon the order passed by this Court in CWP No. 3792 of 2012 titled as ***Suresh Chand and others Vs. State of Haryana and others*** alongwith CWP No. 11987 of 2015, titled as ***Subhash Arora Vs. State of Haryana and another***, decided on 14.01.2016, wherein, the benefit of service rendered by those employees has been directed to be taken into account as a qualifying service for computing the pensionary benefits. The prayer of the petitioner by placing reliance upon these judgments is to grant him the benefit of the service, which he had rendered in Haryana Minerals Limited for computing their pensionary benefits.

Upon notice of motion, reply has been filed on behalf of the respondents. In the reply, the respondents have come up with the plea that the petitioner is the retrenched employee, who was retrenched after the establishment, where he was working, was closed down. After the retrenchment, the petitioner remained out of service for quite some time and thereafter only in pursuance to the Policy, which was framed by the Government of Haryana in the year 2006, a fresh appointment was given to the petitioner keeping in view the provisions/conditions laid down in the said Policy. Learned counsel for the respondents states that as per Clause 8 of the said Policy, the petitioner is not entitled for counting the benefit of past service for any purpose and, therefore, the claim of the petitioner is contrary to the Policy under which he was appointed with the respondent-Corporation and hence the claim is liable to be rejected. Learned counsel for the respondents further states that there is no challenge to Clause 8 of 2006 Policy and in the absence of the same, the prayer which has been made by the petitioner for counting the past service rendered by him in Haryana Minerals Limited, is liable to be rejected.

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

Before adverting to the law which has been relied upon by the petitioners in their favour to claim the relief of counting of the past service rendered by them with the Haryana Minerals Limited as a qualifying service, the facts needs to be noticed as to how the petitioners came into service of the respondent-Corporation. It is an admitted fact that the petitioners were retrenched from the Haryana Minerals Limited after the

same was closed down. After closing down of the said Undertaking, petitioners remained out of service. They only got fresh appointment with the respondent-Corporation in pursuance to the Notification issued by the Government of Haryana dated 21.06.2006, reproduced hereinbefore. Said Notification granted the petitioners fresh appointment but with several conditions. Clause 8 of the said Notification is very clear that no benefit of service rendered prior to the retrenchment or for the period when the employee remained out of service will be granted **in any circumstances/manner**. As the said condition is not under challenge, the petitioners cannot claim the benefit of the past service. Once the appointment of the petitioners was made under the Notification dated 21.06.2006, all the conditions mentioned in the said Notification are applicable upon the petitioners and, therefore, according to Clause 8, the petitioners will not be entitled for the benefit of past service rendered by them with the Haryana Minerals Limited **in any circumstances/manner**.

This question arose for the consideration before this Court on an earlier occasion and a Coordinate Bench of this Court while deciding CWP No. 24484 of 2011, titled as ***Jai Narain Kaushik and others Vs. State of Haryana and another***, decided on 24.01.2012, rejected the plea of counting the service rendered by a retrenched employee in its parent department for the grant of benefit under the Assured Career Progression Scheme. By a detailed order, the said benefit was rejected by this Court. Reasons given by the respondents for denying the claim for counting the past service rendered by a retrenched employee in the parent department were upheld. The relevant paragraph of the said judgment is as under:-

“Present is a case where there is break in service i.e. after the retrenchment from the Government Corporation/ Board and absorption in Government service and no benefit of pay protection, pensionary benefits etc. has been granted to the petitioners. The respondents while considering the representations of the petitioners has, in detail, gone into all the aspects which have been projected by the petitioners in the present writ petition and dealt the same in accordance with law. The relevant portion of the impugned order dated 11.07.2011 (Annexure P12) culling out this aspect reads as follows:-

“The case of Sh. Jai Kishan, ARC has been examined and the brief facts of the present case are as under:-

Sh. Jai Kishan was appointed to the post of ARC in the Irrigation Department vide office order bearing Memo No.2/13/2006-2EII dated 20.10.2006. Prior to this appointment he was working in Haryana State Minor Irrigation Tubewell Corporation. Due to closure of the said corporation his services were retrenched and he was given retrenchment compensation by the Corporation. Being model and welfare State the grievances of such retrenched employees were considered and as a welfare measure/kind gesture it was decided to give them appointment in the Government Departments Boards/Corporations with the following condition:-

“The adjustment would be subject to the submission by the retrenched employees 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.”

According to the above decision condition in Para No.1 was also mentioned in his appointment letter dated 2.10.2006 which is as under:-

“(2) Your appointment is made afresh on available Group C post i.e. ARC 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.”

Sh. Jai Kishan, ARC accepted the same.

Whereas in Deepak Sood case the employees were appointed on transfer basis in the Public Health Department before closure of Minor Irrigation Tubewell Corporation and subsequently it was decided to permanently absorb these employees in the Public Health Department. The benefit of pay protection was given to these employees on the basis that they never remained out of service whereas in the present case Sh. Jai Kishan, ARC remained out of service from 30.07.2002 to 02.10.2006 and retrenchment compensation was given to him. As per terms and conditions of his appointment letter, he has been treated a fresh appointee. Therefore, the facts and circumstances of Deepak Sood case and the case of Sh. Jai Kishan, ARC are different. It is necessary to mention here that after the judgment of Supreme Court of India in Deepak Sood case the whole issue was examined by the Competent Authority i.e. Finance Department and accordingly office memorandum bearing letter No.6/48/2009-PR(FD) dated 16.12.2010 has been issued wherein all the provisions of service rules and different incentive schemes introduced by the State Government from time to time have been explained including provisions of ACP scales if he is fit for promotion, whereas, Sh. Jai Kishan, ARC is junior in the cadre and benefit of past service rendered by him in Haryana State Minor Irrigation Tubewell Corporation has not been given towards seniority. Therefore, he will be entitled to the benefit of ACP Scale after the completion of 10 years regular satisfactory service from the date of his appointment in the Irrigation Department. Therefore, claim of Sh. Jai Kishan, ARC cannot be acceded and his representation dated 24.02.2011, which was received on 01.03.2011 is hereby rejected.”

A perusal of the above would show that the claim of the petitioners have been duly considered by the respondents in accordance with law giving justified reasons for rejecting the same hence the same does not call for any interference by this Court. The

present writ petition thus stands dismissed.

Letters Patent Appeal No. 570 of 2012 was filed against the said order, which was also rejected by the Division Bench, hence the judgment attained finality.

One Sh. Ajmer Singh also filed CWP No. 21633 of 2013, wherein also, a direction was sought that the services rendered by him as a Junior Engineer with the Haryana State Minor Irrigation Tubewell Corporation Limited prior to his re-appointment, in pursuance to the Notification dated 21.06.2006, be counted for the grant of pensionary benefits. The said writ petition was dismissed by the learned Single Judge on 29.01.2014 rejecting the claim of Sh. Ajmer Singh. Against the said decision, Sh. Ajmer Singh preferred an LPA No. 857 of 2014, which came to be decided by the Division Bench on 12.08.2014. Division Bench dismissed the said LPA upholding the order passed by the learned Single Judge and held that the past service cannot be taken into consideration for any purpose. Relevant portion of the said order is as under:-

“The instant Letters Patent Appeal has been filed by Ajmer Singh against the order dated 29.1.2014 passed by the learned Single Judge, whereby the writ petition (CWP No. 21633 of 2013) filed by the appellant seeking direction to the respondents to count the service rendered by him as Junior Engineer (Civil) in the Haryana State Minor Irrigation Tubewell Corporation Limited (hereinafter referred to as ‘the Corporation’), has been dismissed. The order dated 26.7.2013 (Annexure P-8) passed by the Director, Development and Panchayat, Haryana (respondent No.2), rejecting the claim of the appellant, was also challenged in the said writ petition.

Though there is a delay of 51 days in filing the appeal and the appellant has filed application (CM No. 1955-LPA of 2014) for

condoning the delay, yet we have heard learned counsel for the appellant on merits, and gone through the order, passed by the learned Single Judge.

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 reproduced 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."

Thereafter, one Sh. Nathu Singh approached this Court by filing CWP No. 26716 of 2014 seeking the same relief as being claimed by the petitioners herein that the service, which Sh. Nathu Singh had rendered with the Haryana State Minor Irrigation Tubewell Corporation, should be counted as a qualifying service for the grant of the pensionary benefits. The said writ petition was allowed by the learned Single Judge on 27.09.2016. The claim was allowed and a direction was issued to the respondents to count the said service which Sh. Nathu Singh had rendered with the HSMITC before being retrenched. Against the said judgment, State of Haryana preferred an LPA No. 1105 of 2017. The Division Bench considered all the facts including the Policy issued by the respondent-State on 21.06.2006 and the Policy dated 07.01.2002 in terms of which the service rendered in a non-pensionable organization before absorption was sought to be counted as a qualifying service for the grant of pensionary benefits. Division Bench held that as the appointment in pursuance to the Notification dated 21.06.2006 was a fresh appointment, no benefit of past service could be granted to the employees. The relevant paragraph of the said judgment is as under:-

"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

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.*

While rejecting the claim, this Court considered the judgment of the Division Bench in Suresh Chand's case, which is being relied by the petitioner herein also for the grant of benefit but Division Bench distinguished the same. Against the said order passed by the Division Bench, Sh. Nathu Singh preferred an SLP No. 23416 of 2018, which was dismissed by Hon'ble the Supreme Court on 07.09.2018.

Therefore, as per the law which has already attained finality, the employees, who have been appointed afresh in pursuance to the Notification dated 21.06.2006, after being retrenched from their earlier establishment, are not entitled for counting their past service rendered in their parent establishment in any manner much less as qualifying service for the grant of pensionary benefits.

The question which is being decided in the present writ petitions, again arose for consideration before a Coordinate Bench in the

bunch of writ petitions bearing CWP No. 24308 of 2016 and other connected cases, which have been decided on 01.10.2018. Coordinate Bench after relying upon the judgment of the Division Bench in ***The State of Haryana and others Vs. Nathu Singh***, has categorically held that the employees who were appointed after the closure of their earlier establishment in pursuance to the Notification dated 21.06.2006, are not entitled for the benefit of counting of their past service **in any circumstances/manner** for any relief. Coordinate Bench held that as the claim of the similarly situated employees have already been rejected by the Division Bench in ***The State of Haryana and others Vs. Nathu Singh (supra)***, no relief can be granted.

As far as the reliance, which is being placed by the petitioners upon the order passed by this Court in CWP No. 8021 of 2009, decided on 05.03.2010 titled as ***Sher Singh Vs. State of Haryana***, the same is not applicable in the present case. Those employees were not governed by the Notification dated 21.06.2006 as they were absorbed in other Board/Corporations in pursuance to the decision taken by the Government dated 09.09.1978. Nothing has been pointed out by the counsel for the petitioner(s) that the similar clause that the past service rendered by an employee in the parent organization will not be taken into consideration, existed in those cases as well. Therefore, no benefit can be derived from the order passed by this Court by the petitioner by placing reliance on CWP No. 8021 of 2009, titled as ***Sher Singh Vs. State of Haryana and others***, decided on 05.03.2010. Similar is the case in respect of CWP No. 17343 of 2007, titled as ***Jai Parkash Vs. The State of Haryana and others***, decided

on 28.11.2008. In the said judgment also, the petitioners were not appointed afresh in pursuance to the Notification dated 21.06.2006 and, therefore, the said judgment is on different facts and cannot be made applicable in the case of the petitioners to grant them the relief.

In respect of the decision rendered by this Court in **CWP No. 3792 of 2012, titled as Suresh Chand Vs. State of Haryana**, the said judgment has been noticed by the Division Bench while deciding LPA No. 1105 of 2017 and it has been held that the same is not applicable in the present case for the reason that those incumbents were already working with the Haryana State Agriculture Marketing Board on deputation before being absorbed therein. The said judgment has already been distinguished by the Division Bench and, therefore, the petitioners cannot claim any benefit of the same in the present writ petitions for the grant of the relief.

No further argument has been raised on behalf of learned counsel for the petitioners in support of his claim.

In view of the above, all the writ petitions fail and are dismissed without there being any order as to costs.

March 26, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*