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

CWP-19401-2013

Date of Decision: July 05, 2019

Vimal Kumar

... Petitioner

vs.

State of Punjab and Ors

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. H.C.Arora, Advocate,
for the petitioner.

Ms. Ambika Bedi, A.A.G.Punjab.

Mr. J.S.Toor, Advocate,
for respondent No.5.

Mr. Aman Sharma, Advocate,
for respondent No.6.

ARUN MONGA, J.(ORAL)

Grievance of the petitioner herein is that the service period rendered by him in the department of PWD (B&R), Government of Punjab as draughtsman, with effect from 15.05.1975 to 20.11.1990, is not being counted as qualifying service for the purposes of pension, after he joined Nagar Council, Mohali on deputation. Later on, the petitioner was absorbed in Nagar Council, Mohali in Municipal services vide order endorsed on 07.10.1993 (Annexure P-1). Subsequent thereto, he retired from Nagar Council, Nangal as Assistant Municipal Engineer on 31.05.2012. Post retirement, a dispute arose with regard to counting of his previous service under department of PWD (B&R), Government of Punjab.

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2. Learned counsel for the petitioner relies on instructions dated 02.12.2005 (Annexure P-10) issued by the Director of Local Government Punjab to all the Local Bodies in the State, stating that in view of provisions contained in sub-clause (k), (j) (i) of Section 2 of Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 read with Punjab Municipal Committee Employees Pension and General Provident Fund Rules, 1994 and Punjab Improvement Trust Employees Pension and General Provident Fund Rules, 1994, respectively, Government of Punjab, after careful consideration has decided that the services rendered by the employees under Government of Punjab, immediately before joining the service of any Municipal Corporation/ Council/ Improvement Trust will be treated as 'Qualifying Service' for determination of pensionary benefits, provided that the service benefits for such service accrued to an employee under Rule 5.3 (2) of Punjab Civil Service Rules Volume-II immediately on his relieving by the previous department are deposited with the concerned Municipal Corporation/Council/Improvement Trust. It is further stated therein that in case the service benefits under Rule 5.3 (2), *ibid* have not accrued or paid to the employee, in that case, the employee will be required to deposit all the retiral benefits/ pension contribution and leave salary amount for such service period with concerned Municipal Corporation/ Council/ Improvement Trust.

3. Learned counsel for the petitioner submits that in order to avoid delay in release of his pensionary benefits, awaiting the remittance of his dues from his earlier department i.e. PWD (B&R), he has deposited the same from his own pocket in the office of Nagar Council, Nangal,

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from where he last retired.

4. Learned counsel appearing for respondent-Municipal Council, Nangal, under instructions, submits that the factual assertions of the petitioner as put forth by the learned counsel representing him are not controverted and an affidavit to that effect has already been filed before this Court.

5. Learned counsel representing respondents No. 1 to 3 relies on an affidavit dated 25.10.2017 filed by Sh. A.K.Singla, Chief Engineer (Headquarters), PWD (B&R), wherein it has been though categorically deposed that as per instructions dated 02.12.2005, supra, the services rendered by the petitioner in PWD (B&R) Department, is to be counted as qualifying service for pension on deposit of the service benefits. However, in the affidavit, an artificial distinction has been created for denying the petitioner the benefits of circular/instructions dated 02.12.2005 on the ground that since he had relinquished the charge in PWD (B&R) Department on his own and not in public interest and had opted on his own to be absorbed permanently with respondent No.4, therefore, the petitioner is not entitled to be accorded the benefits envisaged under the said Government instructions.

6. The service of the petitioner was thus not computed by respondents No.1 to 3 for the period he served in PWD (B&R) Department for the purpose of retiral benefits. Even though there is no dispute with regard to interpretation of the circular/instructions dated 02.12.2005

7. Having heard the learned counsels for the parties and after careful perusal of the pleadings, especially the instructions dated

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02.12.2005 (Annexure P-10), I am of the view that the stand taken by respondents No.1 to 3 in its affidavit dated 25.10.2017 does not stand the judicial scrutiny.

8. My attention has also been drawn to an affidavit dated 09.07.2015 filed by Director-cum-Special Secretary, Department of Local Government, Punjab, wherein following categorical stand has been taken on behalf of the State

“That Department is of the view that either the Department of Irrigation or the petitioner has to pay the amount of pensionary benefits for the service rendered by him in the Department of Irrigation as per policy of the department dated 02.12.2005 (Annexure R-2/2) to fulfill the condition of Rule 8(4) of Pension Rules, 1994 and gratuity and leave encashment along with interest @ 12% p.a from date of absorption. Further, the Department of Irrigation is also required to refund the amount of leave salary and pension contribution deposited by the Municipal Corporation/Council for the period the petitioner remained on deputation in the Municipal Services. The Examiner, Local Fund Accounts, Punjab has agreed with the above view of this department. Thereafter, a meeting was fixed on 29.09.2014 and it was decided in the meeting to take necessary action as per the advice of the Examiner, Local Fund Accounts, Punjab and Respondent No.5 be advised to take necessary action.

From the above, the Executive Engineer, Communication Division, RSD-Shahpurkandi Township has only made payment to the petitioner regarding leave salary and pension contribution. The case regarding payment of Death-cum-Retirement Gratuity and lump-sum pension of the petitioner has neither been prepared/ forwarded to the Accountant

General (A&E), Punjab as per Rule 5.3(2) of Punjab Civil Services Rules, Volume-II nor they have paid/ transferred the amount of the leave encashment and gratuity payable to the petitioner for the services rendered in their department though a claim thereof has been forwarded by the Respondent No.3, amounting to Rs.4,08,071/- and Rs.2,47,316/- (total Rs.6,55,387/-) respectively along with interest.

It is humbly prayed that the petitioner may be directed to submit his pension papers as per Rule 5.3 (2) of Punjab Civil Services Rules, Volume-II, to the Respondent No.5 for release of Death-cum-Retirement Gratuity and lumpsum pension and the Respondent No.5 may be further directed to make necessary payment to the petitioner or Respondent No.3 on account of their liability.”

9. A conjoint reading of circular dated 02.12.2005 (Annexure P-10) alongwith the candid stand of the State taken in the affidavit dated 09.07.2015 (Annexure P-11), especially in para 8 as reproduced above, filed in another proceedings i.e. CWP-21639-2013 leave no ambiguity to hold that the petitioner is entitled to the benefit as envisaged under circular dated 02.12.2005 (Annexure P-10) which has been rightly interpreted by a later affidavit filed by the Special Secretary, Department of Local Government, Punjab.

10 In the premise, the writ petition is allowed and respondents No. 1 to 3 are directed to grant the benefit of the services rendered by the petitioner with effect from 15.05.1975 to 20.11.1990 in the Department of PWD (B&R) for remitting the benefits on account of contribution towards gratuity, leave encashment and other pensionary benefits arising therefrom alongwith interest as per rules.

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11. Let needful be done within a period of three months from the date of receipt of certified copy of this order.

July 05, 2019
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No