

CWP No.20989 of 2014 (O&M) and connected petitions

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Sr. No. 219

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

CWP No.20989 of 2014 (O&M)

Date of Decision: 26.02.2019

Kuldeep Singh and another

... Petitioners

Versus

Haryana Power Generation Corporation Limited and others

... Respondents

CWP No.1929 of 2015 (O&M)

Ashok Paul

... Petitioner

Versus

Haryana Power Generation Corporation Limited and others

... Respondents

CWP No.23020 of 2014 (O&M)

Anurag Jain and another

... Petitioners

Versus

Haryana Power Generation Corporation Limited and others

... Respondents

CWP No.51 of 2014 (O&M)

Naresh Kumar

... Petitioner

Versus

Haryana Vidyut Prasaran Nigam Limited and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. R.K.Malik, Senior Advocate with
Mr. S.K.Rana, Advocate,

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for the petitioners.

Mr. A.S.Sheoran, Advocate for
Mr. Jai Singh Yadav, Advocate,
for the petitioner in CWP No.51 of 2014.

Mr. P.S.Poonia, Advocate,
for the respondent-Corporation.

Mr. Parveen Chhabra, Advocate for
Mr. Gagandeep Wasu, Advocate,
for the respondents in CWP No.51 of 2014.

Mr. Pankaj Mulwani, DAG, Haryana.

ARUN MONGA, J.(ORAL)

Learned Senior counsel appearing for the petitioners at the outset submits that the case of the petitioners is squarely covered by a judgment rendered by this Court in **CWP No.21363 of 2013** decided on 11.01.2016 titled as **Er. Suchitra Chaudhary Vs. State of Haryana and others.**

2. Per contra, learned counsel for the respondent-Corporation contends that in view of repeal of Punjab Civil Services Rules, Volume I, Part I and II, applicable to Haryana State vide Rule 7 of Haryana Civil Services Rules, 2016 (hereinafter referred to "CSR, 2016") read with Explanation in Clause 3 of the Office Memo dated 07.01.2002 (Annexure P-16) adopted by the respondents, the petitioners are not entitled to the benefits sought by them.

3. I have gone through the judgment in Suchitra Chaudhary's case (*supra*) and have heard the rival contentions of the learned counsels appearing for various parties. I am in agreement with the argument of the learned Senior counsel that

the judgment, *ibid* is squarely applicable to the present case.

4. I do not find any merit in the argument advanced by learned counsel for the respondent-Corporation. A welfare State cannot indulge in discrimination and Article 14 of Constitution of India shall override any Rules or Instructions, which are contrary thereto. The benefit given to other similarly placed persons cannot be denied to the petitioners on the ground that Punjab CSR Volume I, Part I and II has been repealed vide Rule 7 of Haryana CSR, 2016 and adopted by the respondents. To my mind, the reliance placed by learned counsel for the respondents on Rule 7 of the Haryana CSR, 2016 is misplaced and is not acceptable.

5. My aforesaid view is also fortified by another single Bench judgment rendered by this Court in CWP No.4998 of 1996 decided on 11.01.2012 titled as ***Ashok Bhardwaj Vs. The Commissioner and Secretary to Government of Haryana, Irrigation Department, Haryana, Chandigarh and others*** (Annexure P-23). The relevant whereof is extracted hereinbelow:-

*“Division Bench in the case of **S.C.Kathuria Vs. Punjab Electricity Board, reported in 2008 (1) RSJ (261)** has observed that if a Government employee of 'A' department with prior approval of the authority concerned with proper channel joins the another department of the Government, his past service shall be counted.*

In the present case Electricity Board, in the reply, admits that petitioner has applied to the Electricity Board through the proper channel, therefore, I find that petitioner is entitled to count his past service in the

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Irrigation Department for the purpose of pensionary benefits.”

6. I am also informed by the learned Senior counsel for the petitioners as also Mr. D.S.Malik, learned counsel for the petitioner in CWP No.1929 of 2015 that LPA No.774 of 2012 filed against the judgment dated 11.01.2016 has also been dismissed.

7. Learned counsel for the respondent-Corporation has tried to distinguish the above judgment on the ground that the petitioner therein was previously employee in a pensionable organization and, therefore, he was held entitled to the benefit of pension. The said argument is also devoid of any merit in view of the fact that in the present case petitioners were employees of pensionable organization. That apart, the advertisement No.2/2009 (Annexure P-1), upon which the petitioners had applied for the respective posts, did not state that they would not be entitled to the benefit of past service rendered by them. The contention of the learned counsel for the respondent-Corporation that appointment letter dated 31.05.2010 (Annexure P-4) clearly stated that the petitioners would not be entitled to benefit of past service is devoid of any merit in view of the fact that once having led the petitioners to seek employment on the basis of advertisement, which is silent about the past service, the new conditions could not have been imposed on the petitioners to their detriment, even if, they had accepted the said appointment letter.

8. Learned counsel for the respondents places heavy reliance on a judgment rendered by the Coordinate Bench of this

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Court in case titled as *Jaswant Saini Vs. Uttar Haryana Bijli Vitran Nigam Limited and others* in CWP No.16476 of 2015 decided on 01.02.2018 (Annexure R-1), wherein it has been held that where the employee forfeits his right to seek the benefit of past service by choosing to go from a pensionable organization to a non-pensionable organization, he is not entitled to re-kindle his right to seek the benefit of past service.

9. Having perused the above-said judgment as relied upon by the learned counsel for the respondent, I find it was a case where an employee working in the erstwhile Haryana State Electricity Board (Pensionable Organization) opted to go to Maharishi Dayanand University, Rohtak (Non-Pensionable Organization). Admittedly, the Rules and Regulations applicable to the MDU, Rohtak are distinctly different from those as applicable in the case of Haryana Power Generation Corporation Limited. As against this, the petitioners herein, chose to join a pensionable organization after leaving an earlier pensionable organization. It is not the case that employees of the respondent organization are not given the benefit of pension.

10. Learned Senior counsel for petitioners has rightly contended that Haryana Power Generation Corporation Limited from time to time has been adopting the Rules and Regulations/Instructions issued by Government of Haryana and, therefore, it cannot deny the applicability of the same in the case of the petitioners. Particularly, when all the other similarly situated

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employees of the Corporation have been granted the benefit for past service as reflected from Annexures P-17 and P-21.

11. In view of the above discussion and the reasons contained therein, present petitions are allowed. The respondents are directed to give the benefit of past service rendered by the petitioners and grant all consequential benefits to the petitioners.

12. However, it is made clear that petitioners shall only be entitled for pensionary benefits and no other pecuniary benefits qua past service shall be payable to them. Let the needful be done within a period of 3 months from the date of receipt of a certified copy of this order.

13. Petitions are allowed in the aforesaid terms.

(ARUN MONGA)
JUDGE

26.02.2019

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No