

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 2722 of 2013

Date of Decision : 05.02.2019

Yash Pal Singh Rana

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Ramesh Goyat, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, prayer of the petitioner is that the service which the petitioner rendered in the Punjab Land Development and Reclamation Corporation Limited (hereinafter referred to as 'Corporation') from 01.11.1975 till 20.12.2000 should be treated as a qualifying service for computing the pensionary benefits.

The facts as mentioned in the writ petition are that the petitioner joined as a Clerk on 01.11.1975 with the Corporation which is a Punjab Government Undertaking. He was promoted as a Senior Assistant and continued working with the Corporation till 04.01.2001. While the petitioner was working with the Corporation, the financial status of the Corporation was not stable and the same was to be wound up. During the said period, the post of Superintendent in the District Consumer Disputes Redressal Forum were advertised by the respondents. Petitioner applied

through proper channel and was selected as such vide order dated 20.12.2000 and the petitioner ultimately joined on the said post on 05.01.2001 after the petitioner was relieved from the services of the Corporation in view of the order passed by the Secretary, State Consumer Disputes Redressal Commission, Punjab, dated 20.12.2000. The relevant portion of the order dated 04.01.2001 reads as under :-

“In connection with the order No. SCDRC/Punjab/2K/R/11924, dated 20.12.2000, issued by the Secretary, State Consumer Disputes Redressal commission, Punjab, chandigarh, regarding the appointment of Shri Yash Pal Singh Rana, Senior Assistant (S & S) as Superintendent, he is hereby relieved of his duty today dated 04.01.2001 A.N. on this condition that he shall have to give complete charge of the seat by 12.01.2001 on any working day in the office of Corporation at his own expenses.

*Sd/-
M.S. Dhaliwal, P.C.S.
Managing Director”*

In pursuance to the said relieving order, the petitioner joined the State Consumer Disputes Redressal Commission (hereinafter referred to as 'Commission') on 05.01.2001. He continued working there till attaining the age of superannuation on 20.11.2011.

The grievance of the petitioner is that for the service which he had rendered with the Corporation from 01.11.1975 till 04.01.2001, he has not been extended with the benefit of treating the said service as a qualifying service for computing the pensionary benefits. Learned counsel for the petitioner relies upon the Instructions issued by the Government of Punjab dated 18.04.2016 by which the employees, who were working in the Board Corporation, were permitted to count their previous services in those

Board and Corporation for pensionary benefits. The relevant Instructions are as under :-

“In view of above, those employees of Government of Punjab who have served under State Autonomous Bodies/ Boards and Corporations, their previous service, rendered in such State Autonomous Bodies/Boards and Corporations, shall be counted for the purpose of pension/pensionary benefits as a special one time measure. Whether any such employee is found entitled for the said benefit, the competent Authority shall intimate such employee the amount of employer's share of the Provident Fund/Contributory provident fund alongwith 12% per annum interest as per directions in Civil Writ Petition No. 9251 of 2002-S.C. Chadha Vs. State of Punjab and others and the same will be deposited by such an employee in Treasury within 30 days from the date of receipt of intimation from the competent Authority. The Competent Authority shall grant the pensionary benefits to such employee only after this amount is deposited by him. Accordingly, it may be ensured that such cases are decided as per these instructions at the level Administrative Department.”

Upon notice of motion, the respondents have appeared and filed the reply. The only objection which the respondents have taken is that the petitioner cannot be given the benefit of the past service on the ground that the petitioner left the Corporation on his own before the same was wound up on being selected by way of fresh appointment. Counsel for the respondents states that as per the Clarification issued by the Government on 27.04.2017 (Annexure R-4), the Instructions dated 18.04.2016 will not be applicable upon the petitioner as the same benefit can only be extended to the employees of the Corporations, who were absorbed in the other departments after the Corporation was wound up and as in the present case

the petitioner joined the other department in the Government of Punjab prior to the date when the Corporation was wound up, the benefit cannot be extended.

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

It is a matter of fact that the petitioner had worked in Punjab Government Undertaking, namely, Punjab Land Development and Reclamation Corporation Limited from 01.11.1975 till 04.01.2001. The petitioner was relieved from the said service with due approval from the competent authority to join the new assignment. It is also not disputed that when the petitioner joined the new place i.e. Punjab State Consumer Disputes Redressal Commission, the Corporation was already in the process of being wound up. The employees, who were there at the time of wounding up the Corporation, were also absorbed in other Institutes of the Government of Punjab. Therefore, the petitioner cannot be denied the benefit of the service only on the ground that he joined the new assignment before the actual wounding up of the Corporation. Once the process of winding up was in operation, the petitioner was well within its right to choose his service career in order to earn the livelihood hence, he joined the new assignment with due permission of the Managing Director of the Corporation, which is clear from the relieving order dated 04.01.2001.

Further, in some what similar circumstances, this Court while deciding CWP No. 25876 of 2012 on 02.09.2014 has held that the earlier service rendered in a Corporation is to be counted even if an employee left the Corporation before the same was wound up. The relevant paragraph of the said judgment is as under :-

“The petitioner prays for counting of service rendered by him with the Punjab State Leather Development Corporation (hereinafter referred to as the Corporation) for the purpose of qualifying service for pension and other retiral dues.

It is not in dispute that the petitioner had worked on regular basis from 19.11.1981 to 09.02.1997 with the Corporation which was a statutory body. The petitioner was sent on deputation to the respondents where by virtue of Annexure R-2, he was absorbed in the service of the Directorate of Evaluation, Punjab against the post of Driver.

Learned counsel for the petitioner contends that the case of the petitioner is squarely covered by the ratio of the judgment rendered by this Court in CWP No. 506 of 2008 titled Ish Kumar Arya Vs. State of Punjab and another, decided on 22.3.2010.

The respondents denied the benefit to the petitioner solely on the ground that the petitioner's employment in the Directorate of Evaluation should be considered to be a fresh appointment with no benefit of the previous service as the petitioner's service had not been rendered as surplus, as was the case of the petitioners who had filed C.W.P. No. 506 of 2008 (supra).

On due consideration of the matter, I am of the opinion that the case of the petitioner is squarely covered by the decision rendered by this Court in C.W.P. No. 506 of 2008 (supra) which in turn was rendered on the basis of another decision of this Court in C.W.P. No. 9251 of 2002 titled Subhash Chander Chadha and others Vs. State of Punjab and others decided on 15.9.2005 where similar relief had been granted to the petitioners therein.

The reasoning adopted by the respondents has to be discarded outrightly as it would not make any difference if an employee had been rendered surplus and then absorbed in

State service or in any other contingency which has been dealt with authoritatively in the precedents of this Court noticed above.”

Therefore, the reason which is being given by the respondents that the petitioner was not declared surplus but left on his own before the Corporation was wound up, is not good reason to deny the benefit of counting the service rendered in the Corporation as qualifying service to the petitioner.

Not only this, the employees, who were working alongwith the petitioner, had approached this Court seeking relief of counting their services in the Corporation. Those writ petitions have already been allowed by this Court and the orders were upheld by the Division Bench of this Court. This Court while deciding CWP No. 10008 of 2006 on 23.02.2010 has held that the employees of the Corporation were entitled to count the service which they had rendered in the Corporation as a qualifying service for the grant of the pensionary benefits. The relevant paragraph of the said judgment is as under :

The petitioners seek quashing of the orders dated 17.11.2004 [Annexure P-7], 17.02.2005 [Annexure P-8], 7.3.2006 [Annexure P-11] and 8.3.2006 [Annexure P-12] whereby the benefit of service rendered by them in the Punjab Land Development and Reclamation Corporation, has been declined.

The petitioners, after serving in the Indian Army w.e.f. 13.8.1962 to 31.8.1977 and 28.1.1963 to 31.1.1978 respectively, were appointed as Bulldozer Operators with the Punjab Land Development and Reclamation Corporation [in short 'the Corporation'] on 10.7.1978 and 3.7.1979, respectively. The afore-stated Corporation was undisputedly

owned and controlled by the Government of Punjab. The State Government having taken a decision to wind-up a part of the Corporation's work, it decided to transfer the services of the petitioners to the Agriculture Department as Beldars. The petitioners were consequently declared surplus in the Corporation and were absorbed as Beldars in the Agriculture Department, Government of Punjab, vide order dated 10.07.1997. After serving in the said Department, they have retired on attaining the age of superannuation w.e.f. 31.10.2004 and 28.2.2005, respectively. The petitioners have been denied the pensionary benefits on the plea that the 'government service' rendered by them is less than ten years. While holding so, the respondents have declined to count the services rendered by them in the Corporation.

Aggrieved, the petitioners have approached this Court.

*Relying upon a decision of this Court dated 26.02.2008 rendered in **CWP no. 7120 of 2002 [Smt. Krishna Khullar v State of Punjab & Ors.]**, it is urged on behalf of the petitioners that the services rendered by them in the Corporation need to be counted towards pensionary benefits in the Government Department. In **Smt. Krishna Khullar's** case, this Court observed as follows:-*

*“The question as to whether the service rendered by a government employee in a State controlled autonomous body, including the Boards/Corporations, etc., would count towards the total qualifying service for the grant of pension and other retiral benefits under the Civil Service Rules is no longer res integra. The petitioner has placed reliance upon a judgment of this Court dated 6.11.2001 rendered in CWP No.4055 of 1994 (**Kapur kaur & Ors. v. State of Punjab & Ors.**) (Annexure P-4) as well as a judgment dated 16.11.1993 (Annexure P-7) passed in CWP*

No.17073 of 1991 (Vijay Laxmi & Ors. v. State of Punjab & Ors.). In R.P. Singla v. State of Punjab, 2002 (3) RSJ 504, the service rendered with Govt. of Punjab was ordered to be amalgamated with the service rendered in PSEB for the purpose of retiral benefits. Similarly, in CWP No.4007 of 1999 (Gurbax Singh v. U.O.I. & Ors.) decided on May 26, 2000, a Division Bench of this Court directed to count service as a govt. employee the service rendered with the Sports Authority of India for the purpose of retiral benefits”.

For the reasons assigned in Smt. Krishna Khullar's case [supra], the writ petition is allowed. The impugned orders are quashed and the respondents are directed to count the service rendered by the petitioners in the Corporation towards pensionary service in the Government Department and release the retiral benefits within four months from the date a certified copy of this order is received, failing which the petitioners shall be entitled to interest @ 7% per annum. However, if the petitioners are required to refund some monetary benefit drawn by them from the Corporation for the purposes of grant of pensionary benefits from the Government Department, they are willing and shall be required to do so.”

The above mentioned order was challenged by the State of Punjab by filing LPA No. 1122 of 2010 which was dismissed by the Division Bench of this Court on 04.10.2010. The relevant paragraphs of the said judgment is as under :-

“The only question that would arise in the present proceeding is whether the service rendered by the respondents-writ petitioners in the Corporation can be counted for the purposes of reckoning their pensionary entitlements and other retirement benefits.

The simple stand of the appellant-State projected before

the learned single Judge, as is evident from the reply filed, appears to be that service in the Corporation rendered by the petitioners cannot be counted for the purpose of reckoning their pensionary entitlements. The said ground has also been urged before us in the present appeal.

We have taken into account the submissions advanced on behalf of the rival parties, the decision rendered by learned single Judge and further another judgment of the Division Bench of this court in the case of State of Punjab and others vs. Subhash Chander Chadha and another, 2009(3) S.C.T. 654.

In the aforesaid case, the Bench had occasion to consider a more or less identical situation where the State had refused an employee of the Punjab State Handloom and Textiles Development Corporation Limited (PUNTEX) subsequently absorbed in one of its departments, to refund the employer's share of contributory provident fund so as to be entitled to pension and other pensionary benefits. The Division Bench took the view that absorption was not an incident of fresh recruitment and further that such absorption having been made on the basis of the option exercised by the employee as was made available by the respondent-State, the State cannot be allowed to resile from the earlier stand taken and embark upon a course of action to the prejudice of the absorbed employee. The facts of the present case are largely identical. We are, therefore, of the view that the principles laid down in Subhash Chander Chadha's case (supra) would govern the instant matter also. We, therefore, respectfully concur with the view taken by the learned single Judge. The order under challenge is reiterated by dismissing the appeal."

Not only this, even after this Court held that the services rendered by the employees in the Corporation is to be treated as a qualifying service, the respondents did not grant the benefit to the similarly situated persons and other writ petition bearing CWP No. 3833 of 2011 was filed by

the similarly situated persons, which was also allowed by this Court on 04.03.2011. The said judgment is reproduced hereunder:-

“Petitioners have filed this petition seeking directions in the nature of mandamus directing the respondents to count the services rendered by them in the Punjab Land Development and Reclamation Corporation towards pensionary/retiral benefits etc.

It is admitted position that the controversy involved in this petition is squarely covered by a judgment of this court dated 23.02.2010 passed in CWP No. 10008 of 2006, wherein following observations have been made :-

“Relying upon a decision of this Court dated 26.02.2008 rendered in CWP No. 7120 of 2002 (Smt. Krishna Khullar Vs. State of Punjab and others), it is urged on behalf of the petitioners that the services rendered by them in the Corporation needs to be counted towards pensionary benefits in the Government Department. In Smt. Krishna Khullar's case, this Court observed as follows :-

“The question as to whether the service rendered by a government employee in a State controlled autonomous body, including the Boards/Corporations etc., would count towards the total qualifying service for the grant of pension and other retiral benefits under the Civil Service Rules is no longer res integra. The petitioner has placed reliance upon a judgment of this Court dated 06.11.2001 rendered in CWP No. 4055 of 1994 (Kapur Kaur & Others Vs. State of Punjab & Others) (annexure P-4) as well as a judgment dated 16.11.1993 (Annexure P-7) passed in CWP No. 17073 of 1991 (Vijay Laxmi & Others Vs. State of Punjab &

Others) in R.P. Singla Vs. State of Punjab, 2002 (3) RSJ 504, the service rendered with Govt. of Punjab was ordered to be amalgamated with the service rendered in PSEB for the purpose of retiral benefits. Similarly, in CWP No. 4007 of 1999 (Gurbax Singh Vs. U.O.I. & Others) decided on May 26, 2000, a Division Bench of this Court directed to count service as a Govt. employee the service rendered with the Sports Authority of India for the purpose of retiral benefits.”

For the reasons assigned in Smt. Krishna Khullar's case (supra), the writ petition is allowed. The impugned orders are quashed and the respondents are directed to count the service rendered by the petitioners in the Corporation towards pensionary service in the Government Department and release the retiral benefits within four months from the date a certified copy of this order is received, failing which the petitioners shall be entitled to interest @ 7% per annum. However, if the petitioners are required to refund some monetary benefit drawn by them from the Corporation for the purposes of grant of pensionary benefits from the Government Department, they are willing and shall be required to do so.

Disposal of. Dasti.”

In view of the above, this petition is, accordingly, allowed. Petitioners shall be entitled to the similar relief as granted in the aforesaid judgment.”

Learned counsel for the respondents is not able to dispute the above mentioned decision in respect of the relief granted to the similarly situated employees for counting their services which they rendered in the Corporation. It has been admitted by the respondents during the course of hearing that actual relief has already been extended to the employees in

pursuance to the order reproduced above.

In view of the above, the present writ petition is allowed. The respondents are directed to take into account the service which the petitioner had rendered in the Corporation from 01.11.1975 till 04.01.2001 as a qualifying service for computing the pensionary benefits. Let, the commutation of the pensionary benefits be done by the respondents within a period of two months from the date of receipt of certified copy of this order. The actual benefits including the arrears for which the petitioner will be entitled for, should also be released to him within a period of next one month. It is made clear that the petitioner shall be entitled for interest @ 9% per annum on the said amount from the date it became due i.e. the date of retirement till the payment of the same. Counsel for the petitioner states that whatever the petitioner had got at the time of leaving the Corporation in January, 2011, the same shall be deposited back by the petitioner alongwith interest as per procedure. Let the calculation be done by the respondents about the amount to be deposited by the petitioner and the petitioner shall be informed about the same and after the petitioner deposits his contribution, the benefits shall be released to him as directed above.

February 05, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes
Whether reportable? Yes