IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-25646 of 2014 (O&M)
Date of decision: 13.12.2019

Deenu Khan (deceased) through LRS ... Petitioners

versus

State of Haryana and others ... Respondents

CWP-11106 of 2015

Surjit Singh ... Petitioner

versus

State of Haryana and others .... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.P. Bhandari, Advocate
for the petitioner(s).

Mr. Gaurav Jindal, Addl. A.G. Haryana.

Mr. Sandeep Goyal, Advocate
for respondent No.4.

***

HARSIMRAN SINGH SETHI, J.

By this order, above mentioned two writ petitions,which involve the same question of law and similar facts are being decided. For the purpose of this order facts are being taken from CWP No.25646 of 2014.

The grievance which is being raised in the present writ petition

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

is that the service, which the petitioner has rendered with Fish Farmers Development Agency (hereinafter referred as 'FFDA') has not been taken into account as qualifying service for computing pensionary benefits of the petitioner. The prayer of the petitioner is that the said service, for which the petitioner has already been granted the benefit of pay protection and the same has also been taken into consideration for the grant of benefits under Assured Career Progression Scheme and leave encashment, should be taken into account as qualifying service for computing pensionary benefits.

FFDAs came into being in the year 1976. Initially, the said agency was established at Karnal and, thereafter, keeping in view the result being given by the said agency by the year 1999, FFDAs were created in all the districts of the State of Haryana. Initially all the employees of the FFDAs were the employees of Fisheries Department, Haryana, who were sent on deputation there to discharge the duties. There were 216 posts, which were sanctioned in the various FFDAs and out of the said 216 posts, 172 posts were held by the employees of the Fisheries Department, Government of Haryana by way of deputation. Against remaining 44 posts, recruitment was done by FFDAs and petitioner was appointed as fisheries extension worker during the said recruitment. The grant-in-aid was given to the FFDAs by the Government of Haryana and the salary, which was being paid to the employees of the FFDAs, who were on deputation or recruited by the FFDAs, was being paid by the State Government. Initially, the Deputy Commissioner of the concerned district was the administrator of the FFDA but later, FFDAs were governed/administrated by the Director Fisheries Department. This was for

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

the reason that most of the employees, who were working in FFDAs were on deputation from the Fisheries Department, Haryana.

It is a matter of fact that in the year 2004, the Fisheries Department, Haryana as well as FFDAs were restructured by the Commissioner and Secretary of Government of Haryana, Department of Fisheries and certain posts existing in the Fisheries Department as well as in FFDAs were abolished. Further, keeping in view the order of the Government of Haryana, the FFDAs were merged with Fisheries Department. The order restructuring the department of Fisheries and merger of FFDA with fisheries department of Government of Haryana was passed on 26.05.2004. Consequently, upon the merger of the FFDAs with the Fisheries Department, the employees who were working in FFDAs, who were recruited fresh by the said agency, were also absorbed in the fisheries department of Haryana vide order dated 17.12.2004. After the said absorption, the petitioner who was working in FFDA was absorbed as fisheries extension worker in the Fisheries Department of Haryana Government. At the time of absorption, all the employees were asked to give an affidavit that they will abide by the terms and conditions of the absorption as and when approved by the Government and they were to be appointed in the initial pay scale of the post against which, they were absorbed . Petitioner also gave the said affidavit, copy of which has been attached by the respondents as Annexure R-3 with the additional affidavit.

While absorbed staff was working in the Fisheries Department, Government of Haryana vide letter dated 21.4.2008, all the absorbed employees were granted the benefit of pay protection, which they were drawing in the FFDAs. Though, initially, at the time of absorption of the

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

employees of FFDAs into the Fisheries department of Government of Haryana in the year 2004, no benefit of the previous service rendered in FFDAs was granted to them but it is a matter of fact, which is not denied by the learned counsel for the respondents, that after the said absorption, even the period of service which the employees had rendered in FFDAs was taken into account for granting them the benefit of ACP Scheme. The order to this effect passed by the Government of Haryana on 15.09.2015 has been attached as Annexure R-7 by the respondents with additional affidavit. It is not disputed by the learned counsel for the respondents that the benefit of leave encashment for the period spent by the employees in FFDAs has already been extended to them. The only benefit which has not been extended to the employees who were earlier working with FFDAs is counting of their service, which they have rendered in FFDA, as qualifying service for computing pensionary benefits.

It is matter of fact that when the petitioner retired from service on attaining the age of superannuation on 30.11.2013, he was granted the pensionary benefits, which benefit was later on withdrawn by the respondents on the ground that the petitioner did not had ten years service with the Fisheries department, Government of Haryana and, therefore, petitioner is not entitled for the pensionary benefits, which order is impugned in the present writ petition.

In CWP No.11106 of 2015, the benefit of pension was not granted and the prayer of the petitioners in both the writ petitions is that the service, which they had rendered in FFDA be treated as qualifying service for computing their pensionary benefits.

Upon notice of motion, respondents have filed reply. In the

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

reply, it has been stated that at the time when the merger of FFDAs with the Fisheries Department was under consideration in June, 2004, a draft was prepared for the conditions to be laid down for absorption, wherein, as per condition No.7, it was proposed that no benefit of the service rendered in the FFDAs will be given while calculating pensionary benefits and, therefore, keeping in view the said proposal, the benefit of the service rendered by the petitioners in FFDA cannot be taken into account as qualifying service for computing the pensionary benefits. In the reply, respondents have admitted that benefit of pay protection has already been given to the petitioners while being absorbed in the department of Fisheries. Further, the service rendered with the FFDA has been taken into account for the grant of benefit under Assured Career Progression Scheme. It has also been admitted by the respondents in the reply that even the benefit of leave encashment in respect of the service rendered by employees in the FFDA has been extended. Relevant paragraph of the reply is as under:-

> "That the pay of these employees was protected by the Government vide U.O. No.23/26/2008-2GS-III dated 01.04.2008. The true typed copy of order dated 01.04.2008 is annexed herewith as Annexure R-2. This benefit of pay protection was granted to the petitioner at the time of joining in the Fisheries Department w.e.f .17.12.2004.
>
> That the case regarding the clarification/reconsideration for grant of 2nd ACP to the employees of Fish Farmers Development Agencies merged into the Fisheries Department was sent to the Government. The FD vide U.O. No.8/12/2005-1PR(FD) dated 28.08.2015 advised that the service rendered in Fish Farmers Development Agency can be considered for grant of ACP subject to fulfilment to other terms and conditions of ACP Rules, which was further approved by the Government vide memo NO.545-F-1-2015/12719 dated 15.09.2015. The true typed copy of FD U.O. No.8/12/2005 IPR (FD) dated 28.08.2015 is annexed as Annexure R-3. The true translated copy of order dated 15.09.2015 is annexed herewith as Annexure R-4. Accordingly after counting continuous service by the petitioner Sh. Deenu Khan rendered in the Fish Farmers Development Agency, the petitioner is entitled for 2nd ACP

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

> amounting to Rs.61,247. It is also relevant to mention here that due to the pending case of inadvertent payment on account of pensionary benefits amounting to Rs.5,12,898- made to the petitioner in the Hon'ble High Court, the due amount of Rs,61,247/- on account of 2nd ACP has been kept on hold.
>
> That while working in the Agency, no GPF number was allotted to the petitioner and no GPF subscription was deducted from the salary of the petitioner, as there is no such provision of allotment of GPF account to the employees working in the agency, neither any contribution towards pension was deducted from his salary for the award of pension. The Hon'ble Supreme Court of India had held number of times that the mistake can be rectified at any time when it comes to the notice. Therefore, the petitioner is not entitled to any relief from this Hon'ble Court by invoking the extra ordinary Writ jurisdiction under Article 226/227 of the Constitution of India.
>
> That for the purpose of grant of leave encashment to the petitioner the service rendered by the petitioner in the Fisheries department is to be taken into consideration from his date of joining in the Fisheries department. Accordingly in regard to grant of leave encashment, the total service rendered by the petitioner in the Fisheries Department i.e. From 17.12.2004 (joining date of the petitioner) to 30.11.2013 (date of retirement) was calculated in regard to calculation of leave encashment, which comes to the total amount of Rs.70,893/- of 106 days, whereas the petitioner was granted an inadvertent amount of Rs.80,256/- vide Bill No.48 dated 10.01.2014 in account of leave encashment, which is in excess to the tune of Rs.9363/-.

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

The only question posed before this Court is whether in the facts and circumstances of the present case, service, which has been rendered by the petitioners in FFDAs, can be treated as qualifying service for computing their pensionary benefits.

First of all, it has to be noticed here that FFDA, where the petitioners were initially appointed was merged with the Fisheries Department. Once the FFDA was merged with the Fisheries Department, the benefit of service, which the petitioners have rendered with the FFDA cannot be ignored while computing the pensionary benefits. It is not the case where the petitioners became surplus from a particular department

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

and they were retrenched and, thereafter, were absorbed in any other department so as to deny them the benefit of the service rendered in the previous department. In the present case, it is admitted by the respondents that FFDAs were merged in the Fisheries Department and merger does not take away the right of an employee to claim the benefit of service rendered by him/her prior to the said merger and that too for pensionary benefits.

A Co-ordinate Bench of this Court while deciding CWP No.16541 of 1990 titled as **Lt. Col. Gurdev Singh Sandhu (Retd.) vs. Union of India** on 06.03.1992, has held that where there is merger between the two departments, the incumbents, who are being absorbed upon merger, are entitled for counting their total length of service for computing pensionary benefits. Relevant paragraph of the judgement is as under:-

> "After hearing the learned counsel for the parties, I am of the view that there is considerable force in the argument of the learned counsel for the petitioner. If an incumbent had no choice, whether to be absorbed in the Indian Army or the Territorial Army and he had to obey the orders of the appropriate Authority regarding the absorption from the State Force service, then there is no justification not to count the State force service for purposes of pension, especially when such service has been counted for purpose of seniority. No doubt, Indian Army and Territorial Army are two different Forces, but here the question is of counting a particular service in these two Forces for purposes of pension. There is no reasonable nexus with any object which is sought to be achieved about this classification that for one Force the State Force service will be counted and not for the other. Even no basis have been laid to make this distinction and what object is to be is achieved also not forthcoming. In this view of the matter, I hold that the action of the respondent in not counting the State Force service of the petitioner for purposes of pension, arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution of India.

Further, a co-ordinate Bench of this Court, has held that where two cadres are merged, the service rendered in one cadre cannot be taken

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

away even for the grant of seniority. A Co-ordinate Bench of this Court while deciding CWP No.3476 of 1985 titled as **Raj Mal Bhatia vs. Punjab State Civil Supplies Corporation** on 17.05.1991 has held that where two cadres are merged, the employees are entitled for counting the total length of service rendered on both the cadres. Relevant paragraph of the judgement is as under:-

> "I am not impressed by the argument of the respondents that according to the Regulations of the Corporation, which came into force on 1st April 1979, the seniority was to be determined on the basis of length of service on a post and not in the service as was envisaged by the draft regulations. Apart from what I have held above that this was a case of merger, and therefore, the length of service of the petitioners against the posts of F.P.As would be taken to be service on the post of Inspectors. I am of the view that the posts of F.P.As were abolished on 29th September, 1978 and the Regulations of the Corporation came into force on 1st April, 1979. Prior to 1st April, 1979, the draft Regulations were being followed and the petitioners seniority had to be determined according to the length of service in the Corporation and not on a post. Consequently the petitioners right to get their seniority determined in accordance with the length of service in the Corporation was there on 29th September, 1978, when the posts of F.P.As were abolished. The passing of formal orders of adjusting/appointing the petitioners as Inspectors on 17th April, 1979 was just a ministerial act. Therefore, even according to the draft regulations which were being followed, the seniority had to be reckoned on the basis of length of service in the Corporation.

The present case is also the case of merger of two departments. From the facts and circumstance of this case, it is clear that Fisheries department was administrating authority of FFDAs before merger of FFDAs in Fisheries department, hence, the service rendered in FFDAs by the petitioners cannot be ignored for the grant of pensionary benefits. Therefore, the action of the respondents in declining the benefit of the service rendered in FFDA by treating it as previous department is incorrect. Once the FFDA's were merged with the Fisheries Department,

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

the FFDAs are to be treated as Fisheries Department for all intent and purposes and, therefore, service, which the petitioners had rendered with the FFDA cannot be ignored for grant of pensionary benefits.

Further the question of grant of benefit of previous service also came up for consideration before the Hon'ble Supreme Court of India. Hon'ble Supreme Court of India while deciding Civil Appeal Nos.5363-64 of 1997 on 14.12.1999 titled as **S.I. Rooplal vs. Lt. Governor through Chief Secretary, Delhi** held that where an employee has been absorbed in a new department, declining the benefit of previous service will be violative of Articles 14 and 16 of the Constitution of India. Relevant paragraph of the judgment is as under:-

> "It is clear from the ratio laid down in the above case that any Rule, Regulation or Executive Instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned Memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the Memorandum, as has been prayed in the writ petition, the rights of the appellants could be preserved, we agree with the prayer of the petitioners/ appellants and the offending words in the Memorandum "whichever is later" are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text of the impugned Memorandum. Consequently, the right of the petitioners/appellants to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police, is restored.

In S.I. Rooplal's case (Supra), Hon'ble Supreme Court of India has granted seniority on absorption in a new department by counting service rendered in the previous department. If the benefit of seniority can

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

be granted on absorption, declining the benefit of the said service while computing pensionary benefits will be totally discriminatory and violative of Article 14 of the Constitution of India. Therefore, declining the benefit of service rendered by the petitioner in FFDA for computing his pensionary benefits cannot be sustained being contrary to the settled principle of law.

Further, it is clear that even when the FFDA's were working separately, the same were under the Fisheries Department of Government of Haryana and 75% employees of the Fisheries Department were working on deputation in FFDAs. The FFDAs were controlled by the Director, Fisheries Department or the Deputy Commissioner of the concerned district, as the case may be, at the relevant time. Once, even while working in the FFDA, the controlling authority of the petitioners was Fisheries Department and they were being paid salary by the Government of Haryana, declining of the benefits of counting the service rendered in FFDAs as qualifying service, is totally without any rationale. Petitioners continued working without any interruption from the date they were appointed in the FFDAs till their retirement therefore, the benefit of service rendered by them in FFDAs cannot be ignored for computing pensionary benefits.

Even otherwise, keeping in view the facts recorded above, it is clear that service, which the petitioners had rendered in the FFDAs, has been taken into account for pay protection after being merged in the Fisheries Department . Once the benefit of the said service has been given for pay protection, there is no rationale as to why the said service cannot be taken into account as qualifying service for computing pensionary

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

benefits. Further, it has been admitted by the respondents themselves that the service rendered by the petitioners in the FFDA has been taken into account while granting benefit of Assured Career Progression Scheme. So, once the benefit of service rendered in FFDA is to be taken into account for grant of higher pay scale, the same cannot be declined for taking into account as qualifying service for the grant of pension.

Further, even while computing benefit of leave encashment, which is a retiral benefit, the service which the petitioner had rendered in FFDA has been taken into account. Leave encashment is a retiral benefit and when for a particular retiral benefit, service rendered by the petitioner in FFDAs has been taken into account, there is no rationale to decline the benefit of the said service for another retiral benefit such a gratuity and pension.

Learned counsel for the respondents has not been able to point out any valid justification for declining the petitioners, the benefit of service rendered by them in FFDA. The only reason given by the State counsel is that as before the merger, there was proposal to decline the benefit of service rendered in FFDAs towards the pension, hence, the said benefit has not been extended to the petitioners. Nothing has been placed on record that the said proposal was ever brought into force at the time of actual merger, which was carried out in December 2004. The proposal was made in June, 2004 but there is nothing on record that it was accepted by the competent authority at the time when the actual merger of FFDAs with the Fisheries Department was undertaken. A bare perusal of order dated 26.05.2004 (Annexure P/13), which is an actual order of merger, does not have any such restriction. Further, in the affidavit which was taken from

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

the petitioners, before they were merged with fisheries department of Haryana, it has been mentioned that they will abide by any terms and conditions, which were yet to be approved by the Government in respect of the merger. No approval of the Government for the proposed condition of denying the benefit of service rendered by the petitioners in FFDA for the grant of pension has been placed before this Court. Therefore, it cannot be said that there was any condition approved by the competent authority at the time of merger that petitioners will not be granted the benefit of service rendered in FFDA for the grant of pension.

Even if, it is assumed for the sake of arguments that proposal which was made in May, 2004 for declining the benefit of service rendered by the employee in FFDA is to be treated as qualifying service still, the same has to be on valid justification and rationale. Keeping in view the subsequent development which has come into being, once after merger, which was effected in December, 2004, the petitioners have been granted the benefit of service rendered in FFDAs towards pay protection, leave encashment, grant of benefit of ACP scheme and grant of higher pay scale, there is no valid justification for declining the benefit of same service towards the grant of pensionary benefits.

Therefore, in view the facts and circumstance which have been detailed above, no justifiable reason has been given by the respondent-State to deny the petitioners, the benefit of service which they had rendered in the FFDA to be treated as qualifying service for computing pensionary benefits.

No other argument has been raised by the learned counsel for the respondents.

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

In view of the above, the claim of the petitioners is allowed. Service rendered by the petitioners in FFDA, which was controlled by the Fisheries Department, Haryana and for which the petitioners were being paid salary by the Government of Haryana cannot be declined to be treated as qualifying service for computing pensionary benefits.

Let pensionary benefits after the retirement of the petitioners be recalculated and for whatever benefits, the petitioners are entitled under this order be released to them within a period of three months from the date of receipt of certified copy of this order.

At this stage, learned counsel for the respondents states that while the petitioners were working in FFDA, there was no contribution deposited by the petitioners toward contributory fund. Learned counsel for the respondents relies upon memorandum issued by the department on 07.01.2002, which deals with the situation, where the person has been appointed from non-pensionable to pensionable post. Relevant portion of the said instructions is as under:-

> **"On appointment from non-pensionable to pensionable organisation:**
>
> If pension scheme is not in existence in the previous Organisation but the same is in existence in the new organisation, in such case on appointment/absorption of an employee of State Autonomous Body in any Department under Haryana Government, he will have the option to get benefit of qualifying service rendered in the previous organisation for the purpose of pension in new organisation by foregoing employer's share of CPF with interest received from the old organisation which will be paid to new Organisation. This option will be exercised within six months from the date of appointment on regular basis in the new Organisation. If no option is exercised within the stipulated period, the employee shall be deemed to have opted to receive and retain CPF benefits. Option once exercised shall be final."

A bare perusal of the above would show that where a person who has been appointed from non-pensionable post to pensionable post,

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document

he/she has to deposit the employee's share of GPF with interest.

Learned counsel for the petitioners prays that petitioners are ready to deposit their contribution towards GPF in respect of service which they had rendered with FFDA along with interest and their contribution be deducted from the arrears of the pensionary benefits, which petitioners become entitled for under this order.

Learned counsel for the respondents raises no objection to the said prayer and submits that the petitioner's contribution will be deducted alongwith interest by the respondents from the arrears of the recalculated pensionary benefits, for which the petitioners will be found entitled under this order and rest of the amount will be released in their favour within a period of two months from the date of receipt of certified copy of this order.

Both the writ petitions stand allowed in above terms.

(HARSIMRAN SINGH SETHI)
13.12.2019 **JUDGE**
aarti

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

AARTI SHARMA
2020.01.17 14:47
I attest to the accuracy and
integrity of this document