

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

CWP No.4419 of 2015  
Date of Decision : 08.04.2019.

Chander Bhan. ...Petitioner

Versus

State of Haryana and others. ....Respondents

**CORAM : HON'BLE MR. JUSTICE B.S.WALIA**

Present: Mr. N.S. Bhinder Advocate for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

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**B.S.WALIA, J.** (Oral)

1. Prayer is for the issuance of a writ in the nature of Certiorari for quashing of order Annexure P/11 dated 23.06.2014 vide which the representation submitted by the petitioner for grant of pensionary benefits by counting his service rendered in Haryana State Handloom and Handicrafts Corporation Ltd. Chandigarh (hereinafter referred to as the 'Corporation') was rejected. Prayer is also for quashing condition No.2 in the appointment letter Annexure P/4, dated 23.10.2006, that the period prior to retrenchment of service would not be counted for any purpose and the petitioner would not claim any benefit of the past service. Prayer is also for the issuance of a writ in the nature of Mandamus directing the respondents to count 22 years and 3 months service rendered by the petitioner in the Corporation in view of Rule 17.3-A of CSR Volume-II Part-II and grant pensionry benefits of total service i.e. 31 years 3 months till date of superannuation i.e. 31.10.2015. Prayer is also for directing

the respondents to protect his pay w.e.f. 27.10.2006 i.e. the date the petitioner joined service in the office of respondent No.2 as he was getting higher pay in his previous department as on 14.07.2000 with all consequential benefits along with interest @ 12% per annum on the arrears of pay and allowances in view of the law laid down by Hon'ble the Supreme Court in **Union of India vs. Kamaljit Singh and another 2012 (4) RSJ 125.**

2. Brief facts of the case leading to the filing of the writ petition are that the petitioner was appointed as Clerk-cum-Typist in the Corporation on 11.12.1978. Since, the State Government had decided to wind up the Corporation, the petitioner vide order Annexure P/3 dated 08.03.2001 was retrenched and relieved from service on 09.03.2001. However, on 21.06.2006, the Government of Haryana, vide notification No.GSR/13/Const/Art.309/2006 issued instructions for adjustment of regular employees of Boards/Corporations/Co-Operative Federation and other Public Sector Undertaking who had been retrenched on account of closure or restructuring of organizations between 01.03.2000 to 01.03.2005. The petitioner was retrenched on account of closure of the Corporation on 09.03.2001, therefore was considered for appointment to the post of Clerk in the O/o Director Prosecution, Haryana, in terms of Clause-8 of the instructions which is being reproduced as under:-

“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 benefit 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.”

3. Director Prosecution, Haryana, vide Annexure P/4, offered appointment to the petitioner on the post of Clerk in the Prosecution Department on the conditions contained in the offer letter. Relevant conditions of the offer of appointment letter are reproduced as under:-

“1. In terms of Haryana Government, General Administration Department Notification No.GSR/13/Const/Art.309/2006 dated 21.06.2006 and recommendations made vide memo No.23/23/2005-2 GS-III dated 16.10.2006, you are hereby offered an appointment against a temporary post of Clerk in the pay scale of Rs.3050-75-3950-80-4590 plus usual allowances as may be sanctioned by the Haryana Government from time to time.

2. Your appointment is made afresh on available Group-C post 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 oath or for the period you remained out of service as result of retrenchment in any manner.”

5. You will be placed in seniority list in the cadre below the members of the service already working in the department and your seniority will be in order of the recommendation made by the Chief Secretary to Government of Haryana, in view of your age.

6. You will be on probation for a period of two years, which may further be extended for a period of one year in case your work or conduct is not found satisfactory during the period of probation, your services are liable to be terminated forthwith without assigning any reason.

4. The petitioner submitted joining report in compliance of the terms and conditions contained in offer of appointment letter Annexure P/4. Thereafter, vide order dated 26.11.2014, ACP under Rule 7 (1) of Haryana Civil Services (ACP Rules), 2008 was granted and petitioners pay was stepped up to ₹2400/- as grade pay in the pay band of PB-1, ₹5200-20200+1900 GP w.e.f. 01.11.2014 on completion of eight years of regular service on the post of Clerk. Consequent upon the grant of first ACP, the pay of the petitioner was fixed vide order dated 05.12.2014 and next date of increment was mentioned as 01.07.2015, vide order dated 05.12.2014. Thereafter on 15.12.2014, the petitioner was promoted as Assistant in the pay band PB2-9300-34800+3600 GP and basic pay was fixed at ₹12900/-. Petitioner had made representation Annexure P/9 dated 16.09.2013 for grant of pensionary benefits and counting of service rendered by him in the Corporation besides protection of pay which the petitioner was getting at the time of his retrenchment i.e. 09.03.2001 on joining the post of Clerk in the O/o Director Prosecution, Haryana. However, the same was rejected vide order Annexure P/11 dated 23.06.2014 on the ground that as per the terms and conditions contained in the offer of appointment and para No.2 of the instructions dated 21.06.2006, it had been clearly mentioned that the appointment would be a fresh appointment and that the employee / petitioner would not claim benefit of past service for the period prior to retrenchment or for the period the employee / petitioner remained out of service as a result of retrenchment in any manner. The aforementioned order has been challenged by way of the instant writ petition.

5. Learned DAG contended that reliance placed by learned counsel for the petitioner on the decision of the Full Bench of this Court in CWP No.1640 of 2008 in case titled as Kartar Singh vs. State of Haryana and others,

decided on 06.11.2012, was misconceived as in the said case the services rendered by work charged employees under the same establishment was counted for the purposes of grant of pensionary benefits, whereas in the instant case the petitioner had been retrenched from the Corporation on 09.03.2001 and was offered appointment on account of adjustment in the O/o Director, Prosecution Haryana in terms of notification Annexure R/1 dated 21.06.2006 which categorically provided that the employees of the retrenched Corporation, Boards etc. would be adjusted subject to submission of an affidavit that adjustment would be considered as a fresh appointment and that such employee would not claim any benefit of his past service for the period prior to retrenchment or for the period he remained out of service as a result of retrenchment in any manner. Learned DAG contended that the petitioner having accepted the terms and conditions of appointment as conveyed vide Annexure P/4 i.e. appointment letter dated 23.10.2006 and having joined service pursuant thereto, could not turn around and challenge the terms and conditions contained therein and that too after a lapse of more than 8 years after his joining service. Learned DAG has also relied upon the decision of a Coordinate Bench of this Court in case titled as **Jai Narain Kaushik and others vs. State of Haryana and another CWP No.24484 of 2011**, in respect of an employee who was retrenched from the Haryana State Minor Irrigation Tubewell Corporation and was adjusted in a Government Department on the basis of instructions Annexure R-1 dated 21.06.2006. The Coordinate Bench while taking into account that the case was one where there was a break in service after retrenchment from the Government Corporation/Board and absorption in Government Service, therefore, no benefit could be granted to the petitioner therein for counting of past service. The decision in the aforementioned case

was carried in appeal and vide order Annexure R/3 dated 04.02.2014, appeal was dismissed on the ground that the case of the appellant of reentering into government service after retrenchment and filing an affidavit by the petitioner not to claim the past benefit was a condition precedent to get reentry in service and it was not open to the petitioner therein to challenge the same subsequently. Learned DAG has also relied upon the decision of a Division Bench of this Court in LPA No.1105 of 2017 in case titled as **State of Haryana and others vs. Nathu Singh** wherein the learned Single Judge had allowed the writ petition and directed counting of service rendered by the employee before retrenchment in the light of decision of Hon'ble the Supreme Court in **State of Haryana vs. Deepak Sood and others, Civil Appeal No.4446 of 2008**, decided on 15.07.2008. However, the Division Bench of this Court allowed the appeal and set aside the judgment of the learned Single Judge. Relevant extract of the decision of the Division Bench of this Court is reproduced 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 years after his retirement claiming that his past service be counted for the purpose of pensionary benefits especially, when the service rendered in the Corporation, was not pensionable.”

6. The judgment of the Division Bench in LPA No.1105 of 2017 dated 29.05.2018 was challenged before Hon’ble the Supreme Court but the SLP was dismissed on 07.09.2018. The petitioner herein was also adjusted in the O/o Director Prosecution, Haryana on 23.10.2006 pursuant to his retrenchment on 09.03.2001 in terms of notification dated 21.06.2006 which categorically contained the condition that 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 would not claim benefit of past service for the period prior to retrenchment or for the period he remained out of service as a result of retrenchment in any manner besides offer of appointment Annexure P/4 also contained such conditions in terms of the notification. The petitioner having joined service pursuant to acceptance of offer of appointment is deemed to have accepted all the terms and conditions as contained in the offer of appointment. Thereafter, the petitioner continued in service in the department for close to eight years before raising grievance by way of filing the present writ petition challenging the terms and conditions of his appointment, besides there is no challenge to the instructions Annexure R/1. In the circumstances the petitioner cannot be

permitted to challenge the terms and conditions on which his appointment was made eight years after having accepted the same by joining service.

7. In the light of the position as noted above, I do not find any infirmity with order dated 23.06.2014, rejecting the representation of the petitioner. Accordingly, finding no merit in the writ petition, the same is dismissed.

**(B.S.WALIA)**  
**JUDGE**

08.04.2019

rajesh.k.khurana

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No