202 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.17163 of 2015 (O&M)
Date of decision : January 17, 2020

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

2. CWP No.17165 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

3. CWP No.17166 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

4. CWP No.17168 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

5. CWP No.17169 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

6. CWP No.17171 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

7. CWP No.17172 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

8. CWP No.17174 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

9. CWP No.17175 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

10. CWP No.17177 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

11. CWP No.17178 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

12. CWP No.17180 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

13. CWP No.17181 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

14. CWP No.17182 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

15. CWP No.17184 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

16. CWP No.17186 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

17. CWP No.17187 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

18. CWP No.17190 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

19. CWP No.17191 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

20. CWP No.17192 of 2015 (O&M)

Punjab State Power Corporation Ltd. .... Petitioner

Versus

State of Punjab and others .... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Rajiv Malhotra, Advocate for the petitioner
with Er. Kanwaljit Singh, Joint Secretary/Services-3,
Punjab Power Corporation Limited, Patiala.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. Sunil Kumar Sharma, Sr. Panel Counsel for UOI
in CWP Nos.17168, 17169, 17171, 17172, 17174, 17175,
17177, 17178, 17180, 17181, 17182, 17184, 17186, 17187,
17190 and 17191 of 2015.

Mr. Manwatan Pal Singh, Advocate for respondent Nos.2 and 3
in CWP No.17165 of 2015.

Mr. Nitin Rathee, Advocate for
Mr. Anil Rathee, Advocate for respondent No.3
in CWP Nos.17174 and 17187 of 2015.

Mr. Madan Mohan, Advocate for respondent No.3
in CWP Nos.17182, 17186 and 17190
for respondent Nos.3 and 4 in CWP No.17191 of 2015.

Mr. H.S. Saini, Advocate for respondent No.3
in CWP Nos.17163, 17171, 17175, 17177 and 17181 of 2015
for respondent No.4 in CWP Nos.17165, 17186, 17190
and 17192 of 2015
for respondent No.6 in CWP No.17169 of 2015.

Mr. D.R. Sharma, Advocate
for respondent No.3 in CWP No.17168
for respondent Nos.3 to 5 in CWP No.17169 of 2015
for respondent Nos.3 and 4 in CWP No.17172 of 2015
for respondent Nos. 2 and 4 in CWP No.17178 of 2015.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, the writ petitions details of which have been given in the heading of this order, are being decided as all the writ petitions involve the same question of law and similar facts. For the purpose of the present order, the facts are being taken from CWP No.17163 of 2015.

The present writ petition has been filed by the Punjab State Power Corporation Ltd. (erstwhile Punjab State Electricity Board) (hereinafter referred as 'the Corporation') claiming the reimbursement of amount of pensionary benefits, which have been released to the private respondents, in respect of the services which the private respondents had rendered with the Central Government or the institutions of Central Government or State Government or their institutions, in terms of the order passed by this Court in an earlier litigation, which was initiated by respondent No.3 claiming the pensionary benefits for the total length of service. The grievance, which is being raised in this writ petition is, that though the Corporation has already paid the pensionary benefits to the employees i.e. private respondents, even for the period for which the said employees had rendered services with the Government of India or Government of Punjab or the institutions being run by them, as the case may be, but the proportionate liability, which has been discharged by the Corporation on their behalf, is not being reimbursed, despite a clear direction by this Court. The prayer is for directing the respondents to reimburse the Corporation in respect of the payment made to the employees for the period when the employees had worked with the Government of India, State of Punjab or the Institutions run by them prior to the joining of the Corporation.

Respondent No.3 in the present writ petition i.e. N.S. Sachdeva, prior to the joining of the Corporation in the year 1970, had rendered service with the Military Engineering Service from 31.08.1964 till 06.10.1970. Thereafter, on being discharged from the said authority, respondent No.3 joined the Corporation on 12.10.1970 and continued to work there till he attained the age of superannuation on 30.09.1999. After the retirement of respondent No.3, pensionary benefits were released to him only for the service, which he had rendered with the Corporation and the earlier period for which he served the Western Command, Military Engineering Services, which is a Government of India institution, was not taken into consideration.

Feeling aggrieved against the action of the Corporation, in not counting the previous service rendered by him with the Military Engineering Services as a qualifying service for computing pensionary benefits, he approached this Court along with another employee, namely, Partap Ji Arora by filing CWP No.16531 of 2010. In the said writ petition, the claim of respondent No.3 was that the Central Government had issued instructions on 31.03.1982 wherein, it was decided that any employee, who had worked in State of Punjab before joining any institution of Government of India will be entitled for the benefits of counting of that service as a qualifying service for computing the pensionary benefits and on similar lines, the State of Punjab also issued instructions on 20.05.1982 wherein, it was decided that any of its employee, who has also worked with the Government of India or any of its institutions, will be entitled for the benefit of the said service as qualifying service for computing the pensionary benefits. Both these instructions were adopted by the Corporation by Resolution dated 25.11.1985, thereby agreeing to count the service, which an employee had rendered with the Government of India, State of Punjab or its Institutions run by them, as qualifying service.

The claim of respondent No.3 before this Court was that keeping in view the instructions dated 25.11.1985 issued by the Corporation, the petitioner was entitled for the benefit of counting the service rendered by him in the Military Engineering Service from 31.08.1964 till 06.10.1970 as a qualifying service for computing the pensionary benefits.

The said writ petition filed by respondent No.3 (herein) was allowed by this Court vide order dated 23.02.2011. The said writ petition was allowed in terms of CWP No.12278 of 2010, which was filed by a similarly situated employee, namely, Ramesh Chander Mahajan. The relevant paragraph of the judgment passed in CWP No.16531 of 2010 is as under:

> *"Learned counsel for the respondents fairly state that the controversy involved in this writ petition stands answered by an order dated 5th October, 2010 passed by this Court in CWP No.12278 of 2010 [Er. Ramesh Chander Mahajan v State of Punjab & Ors.*
>
> *The writ petition is accordingly disposed of in the same terms. The needful shall be done within a period of six months from the date a certified copy of this order is received.*
>
> *Disposed of Dasti."*

In ***Ramesh Chander Mahajan's*** case (*supra*), this Court held that the service which an employee had rendered with the Government organization/Government of India before joining the Corporation will be taken into consideration as a qualifying service for computing the pensionary benefits. A direction was issued to the Corporation to re-determine the qualifying service and grant the consequential benefits to the employees. It was further directed that the Government of India, its Agencies or other Boards, where an employee had discharged the duties prior to the joining of his/her services in the Corporation, will verify the particulars of the service of the employee and will intimate the Corporation in that regard and will also reimburse the Corporation as per their proportionate share in lump-sum, which the Corporation will pay to the said employee. The relevant paragraph of the judgment is as under:

> *"3. Learned counsel for the parties are ad-idem and to the extent that the question as to whether or not the service rendered in a Government Organization/Government of India before joining the respondent Board is to be counted towards 'qualifying service' for the purpose of pensionary benefits is no longer res-integra and stands settled by this Court in more than one decisions. While dismissing LPA No.115 of 2006 (The Punjab State Electricity Board vs. The State of Punjab & Ors., a Division Bench of this Court vide order dated 12.09.2008 (Annexure P-19) has held as follows:-*
>
> *" We have given our careful consideration to the submission made at the Bar. It is true that the case of C.L. Malhotra Vs. State of Punjab and*

> *others and Harbans Singh Kohli Versus Punjab State Electricity Board and others, a direction was issued by this Court to the Government of India to determine and release, in favour of the State Electricity Board, within three months the amount of its liability towards pension payable to the employees, whereupon the Punjab State Electricity Board was required to release the benefits to the employees. But keeping in view the fact that any such direction is likely to cause avoidable delay in the release of the pension in favour of the employees, we see no compelling reason why we should make the release of the pensions to the employees dependent upon whether the Punjab State Electricity Board receives or does no receive the contribution from the Government of India. It is not doubt true that in terms of the scheme, which has been formulated by the benefit of such service shall be granted to the petitioner towards the 'qualifying service' within a period of two months thereafter;*
>
> *(ii) The Government of India/its Agencies/other Boards shall also be at liberty to verify the service particulars of the petitioners and intimate the P.S.E.B. in this regard and reimburse to the P.S.E.B. their proportionate share in lump sum towards the pension and other retiral benefits payable to the petitioners within a period of six months.*

Feeling aggrieved against the said decision, the Corporation filed LPA No.1214 of 2011 and the Division Bench was please to dismiss the said LPA on 21.07.2011 along with other Letter Patent Appeals, which were preferred by the Corporation. Not feeling satisfied, the Corporation challenged the order passed by this Court by filing Special Leave Petition No.8094 of 2012 before Hon'ble the Supreme Court of India, which was also dismissed on 14.02.2014.

As the order passed by this Court in ***Ramesh Chander Mahajan's*** case (*supra*) became final and the Corporation was directed to release the benefits to the concerned employees after taking into consideration the service rendered by the said employees in the Central Government or its Institutions as a qualifying service, the Corporation recalculated their qualifying service and granted the consequential benefit of counting the said service as a qualifying service, which they had rendered with the Central Government or its institutions. After making the payments to the employees, the reimbursement of the same was sought by the Corporation from the Central Government or its institutions, keeping in view the order passed by this Court in ***Ramesh Chander Mahajan's*** s case (*supra*), which has already been reproduced hereinabove, in respect of the proportionate liabilty.

As the reimbursement as being claimed by the Corporation was not done by the Central Government or its Institutions, present writ petitions have been filed by the Corporation seeking direction from this Court to the Government of India or its institutions, as the case may be, for reimbursing the Corporation in respect of the payment, which has been made to the concerned employees for the period which the employees have served with the Government of India or its institutions, as the case may be.

Upon notice of motion, the respondents have put in appearance.

Even the employees, to whom the pensionary benefits have been released by the Corporation, have also been impleaded as respondents and have also appeared raising their concerns.

A preliminary concern raised on behalf of the respondents is that the demand of reimbursement, which is being raised by the Corporation has not been calculated properly as required under the Rules as well as under the order passed by this Court under which, the proportionate liability was to be recovered. The objection raised is that without taking into consideration the total length of service of employees, reimbursement for the total length of service, which employees had rendered with the Government institutions, has been asked for whereas, under the Rule only the proportional liability, keeping in view the total length of service of the employees, was to be reimbursed by the Central Government or its institutions.

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

This Court while deciding the claim of the employees for counting the services, which they had rendered with the Central Government or its Agencies, as a qualifying service, has held that the service which the employee had rendered with the Central Government of India or its Agencies, is to be treated as a qualifying service for computing the pensionary benefits. Further direction was given to the Corporation to recompute the pensionary benefits by treating the service rendered by an employee with the Central Government or its agencies, as a qualifying service. Upon recomputation of the pensionary benefits, Corporation was to release the arrears and claim the proportionate amount from the Central Government or its Institutions keeping in view the total length of service.

In order to appreciate the concerns of the parties, it is relevant to note here that the Government of Punjab had issued instructions on 14.05.1986 wherein, it is decided as to how the pension of the employees, who had worked in the Central autonomous bodies and the Central Government, prior to their joining the Government of Punjab, is to be calculated. As per the instructions dated 14.05.1986, the service rendered by an employee with the Central autonomous bodies or the Central Government is to be taken into account as a qualifying service and the Central Government and the autonomous bodies shall discharge their liability towards the pension by paying in lump-sum as a one time payment. The said payment is to be calculated on pro-rata pension, service gratuity, terminal gratuity, death-cum-gratuity for the service up to the date of absorption of the employee. Further, the pro-rata pension is to be determined, keeping in view the provisions given in Chapter 11 of Punjab Civil Services Rules,Volume-II as amended from time to time. The relevant instructions in this regard are as under:

> *"Subject: Counting of service for the purpose of pension of the employees of the State Government and State Autonomous Bodies seeking absorption in Central Autonomous Bodies and Central Government/ Central Autonomous Bodies, respectively and vice-versa.*
>
> *(A) In case post/service is pensionable in the new organization:-*
>
> *(i) Where an employee born on pensionable establishment is allowed to be absorbed in such an organization, the service rendered by him shall be*

> *allowed to be counted towards pension under the new organization irrespective of the fact whether the employee was temporary or permanent in the old organization. The pensionary benefits will however, accrue only if the temporary service is followed by confirmation. If he/she retires as a temporary employee in the new organization he/she will get terminal benefits as are normally available to temporary employees.*
>
> *The Government/Autonomous Bodies will discharge their pension liability by paying in lulmp-sum as a one time payment, the prorata pension/service gratuity/terminal gratuity and death-cum-retirement gratuity for the service upto the date absorption in autonomous bodies/Governments as the case may be, Prorata pension will be determined with reference to the commutation table in Chapter 11 of the Punjab Civil Services Rules, Volume-II as amended from time to time.*

Learned counsel for the petitioner on instructions from Er. Kanwaljit Singh, Joint Secretary/Services-3, Punjab Power Corporation Limited, Patiala, who is present in Court, states that the computation of the share of the Central Government or its institutions, reimbursement of which is being claimed in these writ petitions, has not been calculated on prorata but has been calculated keeping in view the total length of service, which an employee has rendered with the the Central Government or its Institutions.

Learned counsel for the petitioner very fairly admits that keeping in view 1986 instructions, the Central Government or its institution are liable for the prorata pension reimbursement keeping in view the total length of service, which an employee had rendered in total with the Central

Government or its Institutions and the petitioner-Corporation. Learned counsel for the petitioner after seeking instructions from the officers of the Corporation, states that the Corporation will re-calculate the share of the Central Government or its Institutions, as the case may be, where the employees have discharged duties prior to the joining the Corporation, and thereafter a demand will again be raised by calculating their share keeping in view the instructions dated 14.05.1986 as reproduced above.

While re-calculating the proportionate share, which will be informed to the Central Government or its Institutions, the Corporation will provide details of the period for which the same has been calculated, so that the same could be verified by the Central Government or its Agencies.

Learned counsel for the respondents states that keeping in view the statement made by the learned counsel for the petitioner, their grievance with regard to the claim of reimbursement, which was raised, stands satisfied. The prorata share, which the Government of India or its Institutions are liable to pay under Rules read with the order passed by this Court in ***Ramesh Chander Mahajan's*** case (*supra*) as already reproduced hereinbefore, for which claim will now be raised by the Corporation after re-calculation, will be released within a period of four months after the fresh claim of reimbursement is raised by the Corporation.

Further, in case, there is any dispute with regard to the amount which the Corporation has paid on behalf of the Government of India or its Institution and ultimately, it is found that the Government of India or its Institution is not liable to reimburse the full amount as being claimed from them due to wrong calculations and the amount paid by the Corporation was over and above the entitlement of the employee, the Corporation will be within its jurisdiction to re-claim the said amount from the concerned employee, in accordance with law.

It is made clear that in case, the Corporation has to re-claim the amount from the employees, the same can only be done after affording due opportunity of hearing to the said employees and by passing an appropriate order in that regard.

Learned counsel for the respondents further states that the liberty be given to the respondent-Department to verify the incredentials of all the employees as to whether they have worked or not with the Government of India or its organizations, for which they have been paid before the claim of the the Corporation for the reimbursement of the amount is undertaken.

The said plea is belated. In case, any employee had not worked with the institutions, the same plea should have been taken in the earlier litigation wherein, the employee approached this Court claiming the benefit of counting the service rendered with the Central Government or its institution as a qualifying service. All the institutions were party to the said litigation. As admittedly no such objection was ever taken by the official respondents in the earlier litigation and master and servant relationship was never denied and the Corporation in good faith, keeping in view the averments made in those petitions that the employee had worked with the said institutions prior to joining of the Corporation, which went unrebutted, has already remitted the amount to the concerned employee, therefore, this plea cannot be taken by the Central Government or its institution at this stage so as to deny the reimbursement to the Corporation.

But at the same time, an employee if he/she has not performed the duties with the Government of India or its Institution and by making fake claims has got an excess amount from the Corporation beyond entitlement, the Central Government will be at liberty to initiate proper action against the concerned employee. In case it is found that he/she has not worked with the Department but still has received the benefit by suppressing the actual and correct facts, authority will be within their jurisdiction to recover the excess amount apart from other remedies available.

Keeping in view the above, as the Corporation has undertaken to reconsider all the cases of reimbursement and to re-calculate the liability of the Central Government or its institutions afresh, keeping in view the proportionate liability of Government of India or such institutions, keeping in view the instructions dated 14.05.1986, the present writ petitions are disposed of as having been rendered infructuous. The Corporation will be at liberty to claim the proportionate share of the liability of the Central Government of India and its institutions by re-calculating the same and the admissible liability under the Rules will be reimbursed by the respondents-institutions within a period of four months, as undertaken by the learned counsel for the respondents.

All the aforesaid writ petitions stand disposed of in the abovenoted terms.

(HARSIMRAN SINGH SETHI)
JUDGE

January 17, 2020
sarita
Whether speaking / reasoned Yes Whether Reportable: Yes