

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

**CWP No.18587 of 2016 (O&M)
Date of Decision: 14.02.2020.**

Jasmer Singh

....Petitioner.

Versus

Punjab State Electricity Board and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Argued by: Mr. Mukesh Arora, Advocate for the petitioner.

Mr. R.L. Sharma, Advocate for respondents No.1 and 2.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab
for respondents No.3 and 4.

Suvir Sehgal, J.

Prayer in the instant writ petition is for issuance of writ in the nature of certiorari for quashing speaking order dated 26.09.2014 (Annexure P1) issued by respondent No.2 (Director, Hydel Design Organisation, Chandigarh) denying the benefit of service from 21.01.1981 to 15.09.1997 rendered by the petitioner under respondents No.1 (Punjab State Electricity Board now Punjab State Power Corporation) and 2 before joining service under respondents No.3 (Director, Technical Education and Industrial Training, Punjab) and 4 (Principal Industrial Training Organisation Bassi, Pathana). A further prayer has been made for issuance of a writ of mandamus directing respondents No.1 and 2 to deposit pension

and leave contribution as determined in reference to commutation table given in Chapter XI of Punjab Civil Service Rules Volume-II in accordance with the instructions contained in Government letter dated 14.05.1986 (Annexure P2) for counting of service of the aforesaid period rendered under respondents No.1 and 2 with a further direction that after the deposit of the contribution by respondents No.1 and 2, the service for the aforesaid period be counted in continuation to the service rendered after 15.09.1997 under respondents No.3 and 4 till his superannuation for the purposes of pension and other retiral benefits admissible under the Rules.

The petitioner had served as a Carpenter-cum-Mason under respondents No.1 and 2 from 21.01.1981 to 15.09.1997. The petitioner applied for appointment as Carpenter Instructor with respondents No.3 and 4 through proper channel and on his appointment, he submitted a technical resignation with respondents No.1 and 2. Since the period rendered by the petitioner with respondents No.1 and 2 was not being counted for the purposes of pension and other retiral benefits, petitioner filed CWP-15161-2014, wherein this Court vide order dated 01.08.2014 (Annexure P4) issued a direction to the respondents to consider the claim of the petitioner as contained in representation dated 27.01.2014 by passing a speaking order. In compliance with the said order, respondent No.3 passed a speaking order dated 07.08.2015 (Annexure P3) whereby sanction was granted for counting previous service rendered by the petitioner from 21.01.1981 to 15.09.1997 under respondents No.1 and 2 towards pension and other retiral benefits in view of the instructions dated 14.05.1968 (Annexure P2) of the Punjab Government. Respondent No.2 also passed a speaking order dated 26.09.2014 (Annexure P1) in compliance with the direction passed by this

Court, whereby the petitioner was not found eligible for grant of pensionary benefits from PSPCL and it was mentioned that the liability to pay the pension was that of respondents No.3 and 4. The petitioner submits that he had rendered 16 years' service with respondents No.1 and 2 and for this period of service rendered by him, he had not received any pension or any other terminal benefits from the said respondents. He submits that despite the orders, Annexure P3, having been passed by respondent No.3, the aforesaid period is not being counted for the purposes of pension since the proportionate payment for the said period has not been released by respondents No.1 and 2.

Upon notice, respondents No.1 and 2 filed their written statement, wherein they justified the order dated 26.09.2014 (Annexure P1) and submitted that the liability to pay pension to the petitioner is that of respondents No.3 and 4 since the petitioner was serving with respondents No.3 and 4. It was admitted by the said respondents that the petitioner had applied through proper channel for appointment with respondent No.4 and had submitted his resignation from the post with the answering respondents. Still further, they submitted that the claim for contribution/liability of pro-rata pension of the service rendered by the petitioner with them is to be raised by respondents No.3 and 4 after calculation of pension in view of the provision contained in Punjab Civil Service Rules Volume-II, Chapter IX, which is applicable to the employees of the answering respondents. In addition, it is the stand that respondent No.3 is under statutory obligation to calculate the retiral benefits by counting the service rendered by the petitioner with respondents No.1 and 2 and pay the calculated pension and thereafter, claim the contribution/liability from the answering respondents.

In their separate reply, respondents No.3 and 4 submitted that they had passed order dated 07.08.2015 (Annexure P3) whereby they had sanctioned the period from 21.01.1981 to 15.09.1997 towards pension and other retiral benefits. They further submitted that the relief being claimed in the writ petition is to be granted by respondents No.1 and 2 and not by them.

The petitioner filed replication to the written statement of respondents No.1 and 2, wherein, he submitted that he has retired during the pendency of the writ petition on attaining the age of superannuation after having rendered two years' extended service on 30.06.2018. He further submitted that since respondents No.1 and 2 were not calculating and paying pro-rata pension to respondents No.3 and 4, he was not getting the benefit for the aforesaid period in dispute.

Counsels for the parties have been heard and material placed on the record has been perused.

The Government of Punjab vide letter No.17/2/80-IFPIII/9485, dated 14.05.1986 (Annexure P2) issued instructions regarding counting of service for the purpose of pension of the employees of the State Government and State Government Autonomous Bodies seeking absorption in Central Government/Central Autonomous Bodies and vice versa. The relevant extract of the same is reproduced as hereunder:-

“Where an employee born on pensionable establishment is allowed to be absorbed in such an organization, the service rendered by him/her 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 allowed 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 lump sum as a one time payment the prorata, pension/ service gratuity and death cum retirement gratuity for the service up to the date of absorption in autonomous bodies/ Government as the case may be. Prorata pension will be determined with reference to the commutation table in chapter XI of the Punjab Civil Services Rules, Volume II as amended from time to time.”

A reading of the above shows that it is the responsibility of the department, where an employee had served earlier, to calculate the pension, gratuity and other service benefits of the employee on a pro-rata basis and after calculating, to pay the same in lump-sum to the successor department in order to enable it to make payment to the employee concerned by including the previous period of service rendered by the employee. In light of the above clear cut instruction, it does not behove the respondents No.1 and 2 to say that they are not liable to pay any pension to the petitioner. Since the petitioner had spent more than 16 years' service from 21.01.1981 to 15.09.1997 with respondents No.1 and 2, they cannot escape their liability to pay the proportionate contribution for the service rendered by the petitioner for the said period. By taking a stand that it is for respondents

payment of retiral dues for which respondents No.1 and 2 are liable to compensate the petitioner.

Accordingly, a direction is issued to respondents No.1 and 2 to calculate and deposit the pro-rata pension, leave encashment etc. for the service rendered by the petitioner from 21.08.1981 to 15.09.1997 with respondents No.3 and 4 within a period of four weeks from the date of receipt of certified copy of this order. A further direction is issued to respondents No.3 and 4 that within a period of four weeks thereafter, they will include the said period towards the period of service rendered by the petitioner, recalculate and pay him the arrears of pension and other retiral benefits as admissible under the Rules. Respondents No.1 and 2 are directed to pay interest @ 6% per annum on the amount so calculated, from 30.06.2018, i.e. the date of retirement of the petitioner, till the date of deposit with respondents No.3 and 4. The interest will be paid by respondents No.1 and 2 directly to the petitioner within a period of four weeks from the date of receipt of certified copy of the order.

With these directions, the writ petition stands disposed of.

(SUVIR SEHGAL)
JUDGE

14.02.2020

komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No