

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

CWP-5644-2013 (O&M)
Date of decision: July 05, 2022

Pritam Chand

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Kshitij Sharma, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

Mr. Padamkant Dwivedi, Advocate for respondent No.3.

ARUN MONGA, J. (ORAL)

Petitioner is before this Court seeking quashing of an order dated 09.02.2012 as well as another office order dated 28.03.2012 (Annexure P-10 Collectively) rejecting his claim as per legal notice dated 06/13.09.2010 (Annexure P-9) and declining him benefit of pension, as admissible, upon his retirement. Reliance is placed on Rule 13.32 of the Haryana Civil Services (Pension) Rules, 2016.

2. The genesis of the controversy herein arises out of the petitioner having initially rendered his service with respondent No.3-Haryana Urban Development Authority (HUDA) and subsequently having joined services of the State Government (Haryana) upon his selection as an Assistant Engineer (Civil), PWD.

3. Succinct factual background first. The petitioner was admittedly working as Junior Engineer with HUDA from 19.11.1982 to 2006/2007. As per

affidavit dated 24.04.2017, during this period, the petitioner was a subscriber to the General Provident Fund, maintained by the HUDA under the provisions of the Haryana Urban Development Authority Employees Provident Fund Rules, 2001. Prior to 20.11.2001, there was no provision for pension in HUDA, but then Government of Haryana issued a notification dated 20.11.2001 and basis thereupon, HUDA issued instructions dated 28.12.2001 to provide for pension regulations. An option was given to existing employees as well. Petitioner also gave his option in terms of the said instructions. Petitioner was found to be eligible for proportionate pension as well. In fact, the HUDA admits that it would still be paying pension to the petitioner for service rendered with it. Petitioner applied for the post of Assistant Engineer (Civil), with the Public Works Department (B&R) and got appointed/ selected as well. Petitioner joined after proper approval from HUDA and submitted his joining on 24.12.2007. Petitioner requested for grant of pension by the State of Haryana, after including/ counting his service rendered by the petitioner in HUDA. Petitioner joined the services of Government of Haryana through proper channel and in similar circumstances, the services of Sh. V.K. Kamboj have been counted.

4. Per contra, in the written statement dated 18.09.2013 of the State, defense taken is that as per Rule 11.3 of the CSR volume I, Part I, persons transferred to Government from local fund, will be treated as first post under Government. Because the provisions of Rule 11, note 2 of the CSR do not apply to the case, hence the same cannot help the petitioner. The reliance of the petitioner on 4.19 (b), 4.23 and 13.32 of the Rules of 2016 is thus, not sustainable. HUDA is not a Department of the State Government. Case of Sh. V.K. Kamboj is a special case. In the written statement dated 30.06.2014 of HUDA, it is submitted that no relief has been sought against HUDA and hence,

petition ought to be dismissed *qua* HUDA. Rule 4.19 does not apply because the petitioner never resigned from HUDA. Rule 4.23 does not apply because it says two spells with the State Government, but in the present case, there is only one spell i.e. with the Government. Rule 13.32 also does not apply because the petitioner was a subscriber to GPF maintained by HUDA under the HUDA Employees Provident Fund 2001. HUDA is not a Department of the Government of Haryana. It is also not falling under the definition of statutory body/ autonomous body, which must be wholly or substantially financed from the cess or grant by the Central/ State Government. HUDA is not financed in this manner. In the affidavit dated 27.09.2018, it is stated that case of Sh. V.K. Kamboj was a special case, but without the approval of the Finance Department.

5. Learned counsel for the petitioner would argue that if the HUDA had no connection with the State at all and it was not even a Department of the State, then why did the HUDA Pension Regulations 2001 come into being the previous approval of the State Government. The introduction of HUDA itself was a result and outcome of conversion of the Urban Estate Department. This is stated by the HUDA itself on its website. Moreover, the petitioner was/ is admittedly entitled to pension for the services rendered by the petitioner in HUDA and this too is possible because of the letter dated 28.12.2001 (Annexure A-2). The respondents merely adopting a hyper technical approach to deny the benefit of past service to the petitioner, while granting him pension. At the same time, even HUDA never paid any pension to the petitioner on the ground that he has not superannuated. This is also stated in the affidavit dated 24.04.2017. The petitioner superannuated (voluntary retirement) on 15.03.2018, but till date he has not been paid pension either by the State or the HUDA. Moreover, there are case laws, wherein the services rendered by the petitioners therein be in the

State or in a corporation have been counted, for grant of pension. Even in another service law related issue, it is clear that the Haryana Staff Selection Commission is advertising and filling up the post of JE (Civil) in HUDA, as if the HUDA is a Department of the State. Reliance has been placed on a decision rendered in **Popatrao Vyankatrao Patil V. State of Maharashtra and others**, reported in **2020 19 SCC 241**.

6. I have heard learned counsel for the parties and perused the record.
7. In course of an earlier hearing, learned Brother Rajiv Narain Raina, J. (as he was then in this court), passed the following order dated 16.01.2019: -

“Financial Commissioner and Principal Secretary to Government of Haryana, Department of Finance is directed to file his personal affidavit explaining the contents of the affidavit of Rakesh Manocha, Engineer-in-Chief, Public Works (Building and Roads Department, Haryana) with special reference to paragraphs No. 8 & 9. He must clearly express his views on the subject of discrimination raised by the petitioner citing other than the case of Kamboj other cases, photocopies of which orders have been handed over to learned State Counsel. She may remit them to the Financial Commissioner to express his views on those cases as well.

He would also express his opinion on Rule 4.19 of the Punjab Civil Services Rules Vol-I Part-I by outlining the financial status of HUDA in its relation to the State of Haryana including funding details in the affidavit. He would also disclose what is meant by 'Cess' in the rule.

List on 20.02.2019.”

8. *Apropos*, an affidavit dated 16.05.2019 of Sh. T.V. S.N. Prasad, Additional Chief Secretary to Govt. Haryana, Finance Department has been filed wherein following unequivocal stand as been taken:-

“9. That Sh. Vinod Kumar Kamboj, rendered his services as Junior Engineer from 16.12.1985 to 02.09.1996 in HSVP, but HSVP is not financed wholly or substantially from the cess or Central/ State Government grants and thus is not covered under the definition as reproduced in Para 8 above. No grant is provided to HSVP by the State Government to meet its administrative expenditure. Therefore, the Administrative Department (Irrigation) has already been advised to revisit the matter and take corrective measures in the case of Sh. Vinod Kumar Kamboj.

10. *That the cases of employees other than the case of Sh. Vinod Kumar Kamboj, as have been remitted by the Learned State Counsel as per order of the Hon'ble Court, have been examined and details of their past services rendered in various government departments are enclosed in Annexure R-3. The cases of all these employees (other than the case of Sh. Vinod Kumar Kamboj) are clearly distinguishable from the case of the petitioner as they have rendered their past services in various government departments, whereas, Sh. Pritam Chand, the petitioner in the present writ petition has rendered his previous services in HSVP, which is an autonomous body that is not covered by the definition reproduced in para 7 above. The cases of other employees, who have rendered their past services in various government departments are regulated by Rule 3.12 read with Rule 3.17 of the Punjab Civil Services Rules Volume-II.*
11. *That the petitioner Sh. Pritam Chand was an employee of HSVP, and the pay of employees of HSVP is not drawn from the consolidated fund of the State of Haryana and therefore, the provisions of the Punjab Civil Services Rules Volume-II are not applicable to the case of the petitioner. The benefit of past service rendered by the petitioner in HSVP, could only be granted to him if his case is covered in the definition of the Office Memorandum No.1/2(4)96-2FRII dated 07.01.2002 as reproduced in para 7 of this affidavit. The HSVP is an autonomous body and is governed by the Haryana Shehri Vikas Pradhikaran Act, 1977. It functions strictly in accordance with the rules and regulations framed thereunder to achieve its objects. There is no direct control of the State Government in its functioning except the limited requirements as provided in the Rules and Regulations. Act per Section 3(2) of the Haryana Shehri Vikas Pradhikaran Act, 1977, HSVP is a body corporate as well as Local Authority having perpetual succession and a common seal with powers to acquire, hold and dispose of property, both movable and immovable. Therefore, HSVP is an autonomous body and not a Department of the Government of Haryana. HSVP is not financed from any Cess or Central/ State Government grant and no grant is provided to HSVP by the State Government to meet its administrative expenditure.”*

9. Besides above, following supporting stand has been taken by respondent No.3-HUDA in an affidavit dated 19.04.2017:-

- “9. *That the present petitioner was offered the appointment as Junior Engineer in HUDA vide memo dated 04.11.1982. The petitioner was working as Junior Engineer in HUDA in the year 2001 when the aforesaid pension regulations came to be adopted in HUDA. The matter has been examined in the office and it has been found that the petitioner has given his*

option, opting for the pension as per instructions dated 28.12.2001. A copy of the option given by the petitioner is attached herewith as Annexure A-3.

- 10. That, therefore, the petitioner has now been found to be entitled to proportionate pension for the period when he remained in HUDA from 19.11.1982 till 24.12.2007 when the petitioner was relieved from HUDA on his joining the Public Works Department in pursuance to his appointment in said department on 12.12.2007.*
- 11. That it is further submitted that the petitioner is not a retired employee but was in active service, both at the time, when the present writ petition was filed and even at present also, as per the official record maintained in office of the deponent. Therefore, the pension for the period mentioned in para 9 as above can be considered for sanction only when the petitioner gets retired on superannuation from office of the respondent No.2 and he completes the formalities as per rules/ instructions of HUDA.”*

10. A collective reading of the above two affidavits leaves no room for ambiguity. In fact, I am of the view that administrative authorities have to *inter se* deal with the matter and accord benefit of pension to the petitioner once HUDA had, in no uncertain terms, stated that as and when the petitioner retires from the service, his case would be considered for grant of sanction after completion of all the formalities as per the applicable Rules. More particularly, when another similarly situated employee, namely Sh. Vinod Kumar Kamboj, Executive Engineer of HUDA who too had joined the State Government service was accorded the approval of counting of his past service in HUDA for the purposes of calculating his retirement/ pensionary benefits as is borne out from the administrative order dated 30.06.2009 (Annexure P-13). No doubt in the said administrative orders, it has been stated that case of Sh. Vinod Kumar Kamboj will not be taken as precedent for any other case, one doesn't know from where this caveat arises from. It is not backed with any such statutory provision and/or applicable service Rules which denies an employee the benefit of counting of his past service in HUDA when without any break, he is selected

subsequently by the State Government. In fact such a prohibition or treatment meted out to the petitioners *vis-à-vis* the case of Sh. Vinod Kumar Kamboj is self-contradictory inasmuch as completely dilatory stand has been taken by the Secretary in the affidavit filed.

11. Respondents having not done so, the petitioner has been unnecessarily compelled to file instant writ proceedings.

12. In the premise, I see no reason as to why the present writ petition be not accepted. Petition is thus, allowed. Accordingly, respondents are directed to grant retirement/ pensionary benefits to the petitioner w.e.f. the date he has retired by doing the necessary calculations and pay the dues along with interest at the rate of 6% per annum w.e.f. the date of entitlement till actual realization. Liability for payment shall be borne proportionately by the State Government and HUDA in accordance with the length of service rendered with the respective entities.

(ARUN MONGA)
JUDGE

July 05, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No