

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

208

CWP-5223-2014

Date of Decision :10.03.2022

Amrik Lal Chawla

..Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Singh, Advocate and Mr. A.S. Pannu, Advocate
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. Sudhir Nar, Senior Panel Counsel
for respondent No.3-UOI.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed for quashing of order dated 29.05.2012 (Annexure P/6) passed by respondent No.2, by which the service, which the petitioner had rendered with Army (GREF) from 04.03.1971 to 15.10.1973, has been declined to be treated as qualifying service for computing his pensionary benefits.

Learned counsel for the petitioner argues that in the present case, prior to joining the service of respondent-State of Punjab, the petitioner had joined Army (GREF) on 04.03.1971 and had continued working there till 15.10.1973 after which, the petitioner was discharged on his own request and for substantiating the said fact, learned counsel for the petitioner has placed reliance on Annexure P/7, which is a discharge order dated 17.10.1973 issued to the petitioner by Army (GREF). Learned

counsel for the petitioner submits that while the petitioner was working in Army (GREF), Department of Irrigation, Punjab had advertised post of the Assistant Engineer, for which post the petitioner competed and was appointed on 04.10.1973 and keeping in view the same, the petitioner joined the said service after being discharged from Army (GREF). Learned counsel for the petitioner further submits that the petitioner continued working with the department of Irrigation, Punjab as Superintending Engineer till he attained the age of superannuation and retired on 31.08.2005. As the petitioner was not given benefit of service, which he had rendered with Army (GREF) from 04.03.1971 till 15.10.1973, the petitioner approached the respondent-Corporation with the prayer that the said period also needs to be taken into consideration for computing his pensionary benefits as the same is covered under Rule 3.17 of the Punjab Civil Services Rules, which deals with computation of qualifying service for computing pensionary benefits. The said prayer of the petitioner was rejected by the respondent-Corporation by impugned order dated 29.05.2013 (Annexure P/6), which impugned order is under challenge before this Court in the present writ petition.

Learned counsel for the petitioner argues that claim of the petitioner has wrongly been rejected by the respondent-department and the same is not only contrary to the rules governing the service as well as from the aspect of computation of qualifying service but, is also discriminatory for the reason that there were other employees of another department of Govt. of Punjab, who had also served in Army (GREF), who have been extended the benefit of said service as qualifying service while computing their pensionary benefits and the orders of the authority concerned in

respect of said employees have been appended as Annexure P/8 to P/10 with the present petition and, therefore, the petitioner, who is similarly situated to the said employees, is also entitled for counting his service, which he had rendered with Army (GREF) from 04.03.1971 till 15.10.1973 as qualifying service for computing his pensionary benefits and respondents are liable to recalculate the pensionary benefits of the petitioner and release the same alongwith interest.

Learned State counsel submits that the claim of the petitioner with regard to counting of service, which he had rendered in Army (GREF) from 04.03.1971 till 15.10.1973 as qualifying service so as to compute his pensionary benefits is totally misplaced. Learned State counsel submits that as the petitioner was a fresh appointee on the post of Assistant Engineer with the department of Irrigation, Punjab, in 1973, service rendered by him prior to the said date is of no consequence as the department of Irrigation is not bound to take the same into account as qualifying service for computing his pensionary benefits. Learned State counsel further submits that the petitioner was not discharged by the Army (GREF) but the discharge was only on the request of the petitioner, which makes him ineligible for the grant of benefit as being claimed by him.

Learned counsel appearing on behalf of respondent No.3-UIO submits that though, the petitioner has attached the discharged order with the present petition but, as of now as per his instructions the old record has already been weeded out and the period of service rendered by the petitioner with the Army(GREF) cannot be certified at this stage.

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

The petitioner in the present petition is claiming parity with the other similarly situated employees of the Government of Punjab, who had also served in Army (GREF) and have been extended the benefit of service rendered by them with Army (GREF) to be treated as qualifying service towards the computation of pensionary benefits. Relevant order passed by one department of the Govt. of Punjab in case of one Tirath Singh is as under:-

“In view of Notification issued by Finance Deptt. Punjab, amending Rule 4.4C(i) of Punjab Civil Services Rules Part II vo/I and Rule 3.17 of Punjab Civil Services Rules Part-2, the service done in General Reserve engineer Force (GREF) by Sh Tirath Singh Executive Engineer, Public Health shall be counted in Public Health Deptt after his appointment in P.S.E. Class II towards Pay Fixation, Annual Increment and Pension.”

A similar order was passed by State of Punjab in case of one R.N. Sharma, Junior Engineer, which is as under:-

“In view of Notification No.8263-(1) FR-67/26008 dt.14-12-67 issued by Finance Deptt. Punjab, amending Rule 4.4C(i) of Punjab Civil Services Rules Part I and Rule 3.17 of Punjab Civil Services Rules vo/I. Part-2, the service done by Sh R.N. Sharma, Junior Engineer from 11-10-66 to 12-05-72 in General Reserve Engineer Force (GREF) shall be counted in Public Health Deptt after his appointment in Junior Engineer towards Pay Fixation, Annual Increment.”

Not only this, these orders have already been implemented by the Government of Punjab and the employees were granted the consequential benefits. Copy of the order dated 04.07.1996 Annexure P/10 shows that Tirath Singh has been given benefit of service rendered in Army (GREF) even while fixing his pay and initial increment. Similar is the case with regard to fixation of pension of one G.S. Sahota, copy of which has

been appended as Annexure [P/11](#).

The orders which have been reproduced hereinbefore shows that all along the stand of the respondent-State is that who so ever has rendered service with GREF, the same is to be counted not only for the purpose of pension but for other benefits as well. In the present case, the only claim being raised by the petitioner is that the service rendered by him with GREF from 04.03.1971 till 15.10.1973 be treated as qualifying service for computing his pensionary benefits. Nothing has come on record to show that benefits extended to similarly situated employees were not permissible or was contrary to the rules governing the service of the petitioner so that the said benefit could be denied to the petitioner. Once, the benefits as being claimed by the petitioner has already been extended to the similarly situated employees, declining the same to the petitioner is totally arbitrary and illegal and amounts to discrimination.

Further, there is an agreement between Central Government and State Government for extending concession of counting of service rendered with one another for the purpose of qualifying service for computing the pensionary benefits. Relevant part of the Instructions of Department of Finance, Government of Punjab issued viz. Office order No. 17/2/80-IFP-III/9485, dated 14th May, 1986 in this regard is as under:-

“No. 17/2/80-IFP-III/9485
GOVERNMENT OF PUNJAB
DEPARTMENT OF FINANCE
(FINANCE PERSONNEL III BRANCH)
Dated, Chandigarh the 14th May, 1986

To

*All Heads of Departments,
Registrar, High Court of Punjab and Haryana,
Commissioners of Divisions,
District and Session Judges; and
Deputy Commissioners in the State.*

Subject: Counting of service for 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.

Sir/Madam,

I am directed to refer to the subject cited above and to state that the Government of Punjab has been considering in consultation with the Government of India, the question of counting of service, rendered by the State Government employees under the State Government before their absorption in the Central Autonomous Bodies and the service rendered by the employees of the State Autonomous Bodies under the State Autonomous Bodies before their absorption in the Central Government/Central Autonomous Bodies, for pensionary benefits and vice-versa. The matter has been considered carefully and the Governor of Punjab is pleased to decide that the cases of State Government employees going over to Central Autonomous Bodies and that of the employees of the State Autonomous Bodies moving to Central Government/Central Autonomous Bodies or vice-versa may be regulated as follows:

(A) In case post/service is pensionable in the new organization

- (i) In case post/service is pensionable in the new organization*
Where an employee borne 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 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 a temporary employee.

XX XX XX XX"

A bare perusal of the above would show that the State Government has already agreed to grant the benefit of service rendered by an employee with the Central Government. That being so, service rendered by the petitioner with Army (GREF) from 04.03.1971 till 15.10.1973

cannot be ignored. It is a conceded position that keeping in view the said instructions, large number of employees have already been extended the said benefit, hence, denying the same to the petitioner will amount to discrimination.

As far as the objection of the learned counsel for UOI that the petitioner was a fresh appointee with the Punjab Government and, therefore, cannot be granted the said benefit, cannot come to their rescue for the reason that petitioner had applied for the said post while in service with Army (GREF) and it is not the case that petitioner had not served immediately after getting relieved from GREF. Nothing has come on record that the petitioner without seeking permission of the authorities concerned applied for the post which was advertised by the State of Punjab, on which post, he was appointed. That being so, merely that the appointment is a fresh appointment will not disentitle the petitioner for the reason that service which the employee rendered with the Central Government is to be taken into account and there is no condition that appointment with the State of Punjab should not be fresh appointment or should be by way of transfer as there is no gap between the two services rendered by the petitioner.

Keeping in view the above, claim of the petitioner for counting his service, which he had rendered with Army (GREF) from 04.03.1971 till 15.10.1973 as qualifying service for computing his pensionary benefits is allowed.

At this stage, learned State counsel submits that for the purpose of counting the service rendered by the petitioner with Army (GREF) from 04.03.1971 till 15.10.1973, proportionate contribution is to be sent by

counsel for the respondent-State submits that burden of the said contribution cannot be put on State of Punjab.

Learned counsel for respondent No.3-UIO submits that keeping in view the statement already made by him that though, the petitioner attached the discharged order with the present petition but, as the old record has already been weeded out, they are not in a position to pay the proportionate contribution for the service rendered by the petitioner with GREF.

Faced with this situation, learned counsel for the petitioner submits that as the Army (GREF) is showing their inability, whatever amount as proportionate contribution is to be demanded by the State of Punjab from Army (GREF), the petitioner will pay the same out of his own pocket so that there will be no grievance with the State of Punjab as raised hereinbefore. Learned counsel for the petitioner submits that the petitioner will be informed about the proportionate amount to be deposited by him in this regard and the petitioner will undertake to deposit the same within a time frame proposed by the State of Punjab.

Keeping in view the stand taken by the learned counsel for the petitioner, the grievance raised by the State of Punjab stands satisfied.

That being so, there is no hindrance for the grant of benefit of service rendered by the petitioner with Army (GREF) from 04.03.1971 till 15.10.1973 as qualifying service for computing his pensionary benefits.

Respondent-State is directed that pensionary benefits of the petitioner be computed again within a period of two months from the date of receipt of copy of this order.

With regard to the arrears of payment, it may be noted here that

the petitioner retired from service in the year 2005 and the present petition has been filed by him in 2014 i.e. after period of approximately 09 years. No explanation has come on record to give reason as to why the petitioner has approached this Court seeking the relief after a period of nine years. That being so, the said act of the petitioner disentitles him for the grant of arrears for the said period. The respondents will compute the pensionary benefits taking into account the service rendered by the petitioner with Army (GREF) from 04.03.1971 till 15.10.1973 but, the actual arrears will be paid starting from the date, the petitioner approached this Court i.e. on 01.04.2014.

Present petition is allowed in above terms.

March 10, 2022

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No