

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

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CWP-4166-2016

Date of Decision :20.09.2022

Balwant Raj**...Petitioner**

Versus

Uttari Haryana Bijli Vitran Nigam Limited**...Respondent****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Pardeep Kumar Rapria, Advocate for the petitioner.

Ms. Tanya Kaushik, Advocate for Mr. C.S. Bakhshi, Advocate
for the respondent-Nigam.

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Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the grievance of the petitioner is that the services, which the petitioner had rendered with the department of Agriculture, Haryana as Technical Assistant (Design) prior to the joining of respondent-Nigam, has not been taken into account as qualifying service for computing his pensionary benefits.

As per the averments made in the present writ petition, the petitioner worked in the office of Hydrologist Ground Water Cell, Department of Agriculture, Haryana from 17.09.1982 to 08.01.1985 and, thereafter, he was selected as Ground Technical Assistant in the erstwhile office of Haryana Electricity Board in the year 1985 which was later on named as Uttar Haryana Bijli Vitran Nigam and, ultimately, retired from service on attaining the age of superannuation while working on the post of

Assistant Executive Engineer on 30.06.2002. The grievance of the petitioner is that the services, which the petitioner had rendered with the office of Hydrologist Ground Water Cell, Department of Agriculture, Haryana from 17.09.1982 to 08.01.1985 as Technical Assistant (Design) has not been taken into account as qualifying service for computing his pensionary benefits, which act of the respondent is contrary to the Instruction issued by the Government of Haryana dated 22.08.1988 on the said aspect relating to the previous service. As the respondent-Nigam has not granted the said benefit to the petitioner, the petitioner has filed the present writ petition seeking the said benefit.

After notice of motion, respondent-Nigam has filed reply, wherein, respondent-Nigam has taken certain objections in regards to the prayer of the petitioner. First objection taken by the respondent is that as the petitioner has already retired on 30.06.2003 and the present petition has been filed in the year 2016 i.e. after 13 years of his retirement, the prayer of the petitioner be declined on the ground of delay itself. Second objection of the respondent is that there is no record as to whether petitioner had worked with the Department of Agriculture, Haryana as Technical Assistant (Design) as no such record was received by the respondent-Nigam from the Department of Agriculture, Haryana so as to extend the benefit, which is being claimed by the petitioner. Third objection of the respondent is that the claim of the petitioner for counting his past service as qualifying service for computing his pensionary benefits is not covered by the Instruction dated 27.08.1988 issued by the Government of Haryana.

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

For the grant of benefit as being claimed by the petitioner in the present petition, it is to be ascertained whether the petitioner worked with the Department of Agriculture, Haryana or not as the same is being disputed by the respondent-Nigam. A bare perusal of letter dated 24.02.2015 (Annexure P/7) would show that the Department of Agriculture, Haryana has conceded the fact that the petitioner was appointed in their department on 17.09.1982 as Technical Assistant (Design) in a particular pay scale and continued working as such upto the year 1985, when he resigned from the service of the said office. The said annexure is not being disputed by the respondent in their reply, meaning thereby, reply given by the office of Department of Agriculture Haryana to the office of Director General Agriculture cannot be disputed by the respondent so as to decline the petitioner the grant of benefit as claimed by him.

Second objection, which is being raised by the respondent that as the petitioner has approached this Court after the period of 13 years of his retirement, his prayer may be declined on the ground of delay itself. It is a settled principle of law that the grant of pension to an employee/retiree less than the entitlement is a continuing wrong and the continuing wrong once established, relief relating to the grant of entitled pension cannot be declined on the ground of delay.

In the present case, it has already come on record that the petitioner had worked with the department of Agriculture, Haryana from the year 1982 till 1985. That being so, the petitioner should have been given the benefit of the said service especially, being a retired officer from the Indian Air Force, who has served the Nation. As per the settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.4100-**

2022 titled as **Shri M.L. Patil (Dead) through LR's vs. The State of Goa and another**, once an employee is held entitled for a particular amount of pension, arrears of pension cannot be declined on the ground of delay.

Relevant paragraph of the judgment is as under:-

“3. Having heard Shri Rahul Gupta, learned counsel appearing on behalf of the appellant and Shri Ravindra Lokhande, learned counsel appearing on behalf of the respondent - State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void, we are of the view that the High Court has erred in observing that the appellant will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1st January, 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1st January, 2020. Under the circumstances, the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent.”

The third objection which has been raised by the respondent is that the claim of the petitioner for counting his past service as qualifying service for computing his pensionary benefits is not covered by the Instructions dated 27.08.1988 issued by the Government of Haryana. In the case, where post/service is pensionable in the new organization, Clause (A) of the said Instructions dated 22.08.1988, copy of which is appended with the reply of the respondent as Annexure R-2, is applicable. Same is reproduced as under for read reference:-

“(A) 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 renders 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 temporary employees.

The Government/ Autonomous Bodies will discharge their pension liability by paying in lump-sum as a onetime payment the prorated pension/service gratuity/terminal gratuity and death-cum-retirement gratuity for the service upto the date of absorption in autonomous bodies/Government, as the case may be, prorated pension will be determined with reference to the commutation table in chapter 11 of the Punjab Civil Service Rules, Vol-II as amended from time to time.

(ii) An employee with Contributory Provident

Fund benefits on his/her permanent absorption in the new organization against a pensionable post/service will have the option either to receive Contributory Provident Fund benefits which have accrued to him from the old organization or choose to count service rendered in the old organization as qualifying service for pension in the new organization by forgoing employer's share of the Contributory Provident Fund with interest from the old organization which will be paid to the latter by the former organization. The option shall be exercised within one year from the date of absorption. If no option is exercised within the stipulated period, the employee shall be deemed to have opted to receive Contributory Provident Fund Benefits. The option once exercised shall be final.”

A bare perusal of the above would show that once an employee has been absorbed/appointed on a pensionable post, the earlier service whether temporary or permanent, is irrelevant. An employee will get the benefit of earlier service in case employee is absorbed in a new pensionable organization.

In the present case, the petitioner was appointed on regular post in the year 1985. That being so, claim of the petitioner is covered under Clause (A) of the policy dated 22.08.1988. Hence, the prayer of the petitioner for computing the service rendered by him in the office of Hydrologist Ground Water Cell, Department of Agriculture, Haryana from 17.09.1982 to 08.01.1985 as Technical Assistant (Design) as qualifying service for computing his pensionary benefit is allowed.

With regard to the arrears, learned counsel for the petitioner himself restricted the claim of the petitioner for a period of 03 years and 02

months prior to the date of filing of the present writ petition. Hence, arrears of the revised pension which will be admissible to the petitioner, be given to him from 01.01.2013 onwards only.

Let pensionary benefits of the petitioner be recalculated by the respondent-Nigam and the same be released to the petitioner within a period of two months from the date of receipt of copy of this order.

The writ petition stands allowed in above terms.

September 20, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No