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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-6698-2016
Date of Decision: 20.04.2022

Balwan Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Dr. Naresh Kaushik, Advocate,
for the petitioner.

Mr. Raman Kumar Sharma, Additional A.G., Haryana.

Mr. Prateek Mahajan, Advocate,
for respondents No.2 and 3.

Mr. Rajesh Hooda, Advocate,
for respondent No.4.

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HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed with a prayer that the respondents be directed to count the service which the petitioner rendered, w.e.f. 13.10.1976 to 29.09.1989, with the M/s Haryana Tanneries Limited, as a qualifying service for computing his pensionary benefits, after being retired from the service of the Haryana State Agricultural Marketing Board.

Learned counsel for the petitioner argues that the petitioner was initially appointed as a Peon on 13.10.1976 with the M/s Haryana Tanneries Limited, which was a State owned organization but later on was closed. The petitioner's services were retrenched after he was declared surplus in March, 1985, and thereafter M/s Haryana Tanneries Limited was closed. The staff which was declared surplus, was absorbed in the other organizations and consequently, the petitioner was absorbed in the Haryana State Agricultural Marketing Board as a Peon and the petitioner continuously worked with the said respondent-Board till he attained the age of retirement, i.e. on 31.12.2010.

Learned counsel for the petitioner submits that upon retirement of the petitioner, he was only paid the benefits in respect of the service which he had rendered with the Haryana State Agricultural Marketing Board and the earlier services rendered by him with the M/s Haryana Tanneries Limited were not taken into account for computing his pensionary benefits, though as per his knowledge, the State of Haryana had issued a Memorandum on 07.01.2002 (Annexure P-3), according to which, the employees who were earlier working in an establishment which later on was closed and thereafter, retrenched employees were absorbed in the other organizations on a pensionable post, their earlier services is also to be taken into account for calculating their pensionary benefits.

Learned counsel for the petitioner further submits that apart from the instructions dated 07.01.2002, Division Bench of this Court while passing order in **CWP-9469-1988**, titled as ***"Haryana Tanneries Employees Union (Regd.) Jind, Haryana Vs. State of Haryana and another"***, decided on 01.12.1988, held that whenever the retrenched employees of the M/s Haryana Tanneries Limited will be absorbed, the services rendered by them with the M/s Haryana Tannneries Limited will be entitled for taking into account for computing their pensionary benefits, in case they are appointed on pensionable post, and on the basis of the said order, a similarly situated employee, namely Ram Chander, has already been extended the said benefit by a Co-ordinate Bench of this Court while passing order in **CWP-3885-2011**, titled as ***"Ram Chander Vs. State of Haryana and others"***, decided on 25.09.2013.

After notice of motion, the respondents have filed the reply, wherein it has been stated that the petitioner is relying upon the instructions dated 07.01.2002 (Annexure P-3), but as the petitioner failed to give the option in pursuance of the said instructions within the stipulated time frame, therefore, he cannot file the present petition after his retirement to seek benefits under the said instructions dated 07.01.2002.

Learned counsel for the respondents submits that though the order passed by the Division Bench of this Court in **Haryana Tanneries Employees Union's case** (supra) is clear, but once the petitioner failed to deposit the benefit which he had taken at the time of his retrenchment, he is estopped from claiming the relief as being claimed in the present petition, especially when the aforesaid order by the Division Bench of this Court was passed prior to his joining with the respondent-Board.

Learned counsel for the petitioner further submits that the petitioner never knew about the instructions dated 07.01.2002 (Annexure P-3) as the same were never brought to his notice and even as of now, the petitioner is ready to deposit the required benefits, which he had got at the time of his retrenchment, i.e. the EPF amount along with the interest.

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

It is a conceded position that the petitioner had worked for a period, w.e.f. 13.10.1976 to 29.09.1989, with the M/s Haryana Tanneries Limited, which was owned by the Government of Haryana, and after the petitioner being declared surplus, he was absorbed by the respondent-Board and he continuously worked there till he attained the age of retirement, i.e. till 31.12.2010. Prior to the joining of the petitioner with the respondent-Board, the Division Bench while passing order in **Haryana Tanneries Employees Union's case** (supra) had already allowed the benefit of the services rendered by the employees with the M/s Haryana Tanneries Limited to be taken into account, in case they are subsequently absorbed on a pensionable post. That being so, the petitioner is covered by the said decision of the Division Bench passed in **Haryana Tanneries Employees Union's case** (supra) and once the order is already there in favour of the petitioner, he is entitled for counting of his service rendered with the M/s Haryana Tanneries Limited as a qualifying service for computing his pensionary benefits after he retired from the respondent-Board.

Apart from this, a similarly situated employee Ram Chander has already been allowed the same benefit by a co-ordinate Bench while passing order in CWP-3885-2011, a copy of which has been attached with the present petition as Annexure P-6. Nothing has been pointed out by learned counsel for the respondents that as to how the case of the petitioner is distinguishable than the case of said Ram Chander. That being so, on this account also, the petitioner is entitled to succeed in the present petition.

Even otherwise, the instructions issued by the Government of Haryana dated 07.01.2002 (Annexure P-3), grants the petitioner the benefit, as being claimed by him in the present petition, which fact is also conceded by the respondents, but the only objection raised by them is that the petitioner failed to opt for the said instructions dated 07.01.2002 within the stipulated time frame. In order to appreciate the said objection, the contents of the Memorandum dated 07.01.2002 (Annexure P-3) is to be seen. At the end of the said Memorandum, following has been mentioned:-

> *"The contents of this Office Memorandum may please be brought to the notice of all concerned."*

Nothing has been produced by the respondents before this Court stating that at any given point of time, the said Memorandum dated 07.01.2002, was brought to the notice of the petitioner, who was working on a Class IV post. That being so, the benefit of the aforesaid line of the Memorandum dated 07.01.2002 is to be granted in favour of the petitioner rather than the respondents.

Further, learned counsel for the petitioner has undertaken before this Court that the amount of CPF/EPF, as was extended to the petitioner at the time of his retrenchment, will be refunded by him along with the interest till the date of refund of the same. It is further submitted by learned counsel for the petitioner that the amount, which the petitioner needs to deposit under this clause, be informed to him and the petitioner will deposit the same within a period of four weeks of the said information being received by him.

Keeping in view the above, let the calculation of the amount, which the petitioner needs to deposit with the respondent-Board, be informed to him within a period of four weeks from the date of receipt of the copy of this order and in case the petitioner deposits the said amount within a period of next four weeks, appropriate action be taken for including the service rendered by the petitioner with the M/s Haryana Tanneries Limited as a qualifying service for re-computing his pensionary benefits and the pension/pensionary benefits of the petitioner be re-calculated accordingly. The arrears, for which the petitioner becomes entitled for upon the said re-calculation, be also given to him within a period of six weeks after the petitioner deposits the amount as asked for by the respondent-Board.

Learned counsel for the petitioner had earlier undertaken before this Court that in case the relief, as being claimed by the petitioner in the present petition, is allowed, the arrears, for which the petitioner will become entitled for, be restricted to a period of 38 months prior to the filing of the present petition. In this regard, learned counsel for the petitioner submits that the petitioner is not claiming the arrears beyond 38 months of filing of the present petition. That being so, the arrears for which the petitioner becomes entitled for, keeping in view this order, be restricted to 38 months prior to the filing of the present petition, i.e. March, 2016, and the same be released to him as ordered hereinbefore.

Allowed in the above terms.

20.04.2022 **(HARSIMRAN SINGH SETHI)**
Apurva **JUDGE**

1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes