223 (2 Cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11426-2015 (O&M)
Date of Decision: 05.07.2023

SAJJAN SINGH ....*Petitioner*

V/s.

STATE OF PUNJAB AND OTHERS .....*Respondents*

CWP-3565-2016 (O&M)

NACHHATTAR SINGH ....*Petitioner*

V/s.

STATE OF PUNJAB AND OTHERS .....*Respondents*

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Yagyadeep, Advocate,
for Mr. Sanjeev Sharma, Advocate
for the petitioner(s) in both the petitions.

Mr. Vishnav Gandhi, Deputy Advocate General, Punjab.

***

SANJEEV PRAKASH SHARMA, J. (Oral)

These two Writ Petitions are being decided by a common order as similar questions of law and facts arise therein but for the sake of convenience, the facts are being referred from CWP-11426-2015.

CWP-11426-2015 (O&M)

This Writ Petition has been preferred by the petitioner for issuance of a Writ in the nature of *mandamus* directing the respondents for counting of the service rendered by him with respondent No.3 w.e.f. 21.10.1975 to 07.05.1997

The respondents have treated the said period of service rendered by the petitioner as non-pensionable service as he was working in the Punjab

Poultry Development Corporation and was a CPF contributory. Since the said Corporation became sick, the employees of the said Corporation were taken over and adjusted in the other Departments. The petitioner have joined the Animal Husbandry Department without any break in service in the new Department but the petitioner has been granted pension for the period w.e.f. 07.05.1997 till he retired from service in the year 2013.

Learned counsel for the petitioner submits that the earlier period of service rendered by the petitioner should also be counted for pension and other pensionary benefits as he is ready to deposit the amount received by way of gratuity for the said period as well as the CPF amount. He submits that a circular was issued by the State Government on 18.04.2016 whereby the State Government took up a policy decision to allow those CPF contributories to switch over to pensionable scheme provided they deposit the amount received towards CPF and gratuity.

The respondents thereafter issued another circular on 13.10.2016 wherein the concerned employees were allowed to deposit the amount received by way of leave encashment as well as gratuity on simple interest @12% per annum. However, the petitioner was not able to give any such option since he attained superannuation in the years 2013 i.e. before the issuance of the said circular. Learned counsel for the petitioner submits that the tenor of the circulars is retrospective and therefore, the benefit as is available under the said circulars should be made applicable to him.

On the other hand, learned State counsel submits that as the petitioner stood already retired, he cannot be now included in the pension scheme for the period prior to 07.05.1997 the date when he joined the new department.

I have considered the submissions of the learned counsel for the parties and perused the material on record.

It would be apposite to quote the circular dated 18.04.2016 which is as under:-

> *"I am directed to invite a reference to instructions issued by the Government of Punjab, Department of Finance vide letter no.4/90/2010-1FPPC/1223 dated 16.9.2013 on the subject cited above wherein it was clarified that those employees of Government of Punjab who have served under PSU's their previous service rendered in the PSU's is not countable for the purpose of Pension/Pensionary, benefits payable by the Government are hereby withdrawn.*
>
> *2. In view of above, those employees of Government of Punjab who have served under State Autonomous Bodies/Boards and Corporations, their previous service, rendered in such state Autonomous Bodies/Boards and Corporations, shall be counted for the purpose of Pension/Pensionary benefits as a special one time measure wherever any such employee is found entitled for the said benefit, the competent Authority shall intimate such employee the amount of the employer's share of the Provident Fund/ Contributory Provident Fund along with 12% per annum interest as per direction in CWP No.9251 of 2002-S.C Chadha vs State of Punjab and other and the same will be deposited by such an employee in Treasury within 30 days from the date of receipt of intimation from the Competent Authority. The Competent authority shall grant the pensionary benefits to such employee only after this amount is deposited by him. Accordingly, it may be ensured such cases are decided as per these instructions at the level of Administrative Department.*
>
> *3. It has further been decided that in future, no employee of State Autonomous Bodies/Boards and Corporations shall be appointed/absorbed in Government of Punjab except in the cases which are covered under the policy instruction issued by the Directorate of Public Enterprises and Disinvestment, Department of Finance vide letter no. 1/151/07/11-FD(Dis)S.O 2/5359-5406 dated 2.8.2011 (copy enclosed)."*

It is apparent that the said circular would apply to all the employees who have served with the Autonomous Bodies / Boards / Corporations prior to the issuance of the circular. It does not, in any manner, discriminate between those who have already attained superannuation or those who may attain superannuation thereafter. While granting pension and pensionary benefits, it is settled law that no discrimination can be made between the similarly situated persons as held in the case of *D.S. Nakara & Others* ***Vs*** *Union of India*; *1983 AIR 130.*

Keeping in view the aforesaid, the petitioner, who attained the age of superannuation in the year 2013, cannot be denied the one time benefit of depositing the amount towards CPF and leave encashment received by him for the period of service rendered from 21.10.1975 to 07.05.1997 and the other benefits which they had opted. If he is ready and willing to deposit the same within a period of three months, along with interest @12% as envisaged in the aforesaid circular, the respondents ought to treat the said period and count towards his pension and other pensionary benefits.

Accordingly, the Writ Petition is allowed and upon depositing of the amount towards CPF and leave encashment along with interest as mentioned in the aforesaid circular dated 18.04.2016 by the petitioner, exercise shall be carried out by the respondents and the pension and other pensionary benefits of the petitioner shall be revised accordingly and released to him within a period of two months thereafter.

CWP-3565-2016 (O&M)

This petition has been preferred by the petitioner for issuance of a Writ in the nature of *mandamus* directing the respondents for counting of the service rendered by him with respondent No.3 w.e.f. 20.01.1981 to 12.02.1998 for the purpose of pensionary benefits.

The law as laid down in ***CWP-11426-2015*** decided hereinabove, would apply *mutatis mutandis* to this case and accordingly this Writ Petition is also allowed. The authorities shall accordingly calculate the amount which is required to be deposited by the petitioner towards CPF and leave encashment along with interest as mentioned in the aforesaid circular dated 18.04.2016 and upon depositing of the said amount by the petitioner, exercise shall be carried out by the respondents and the pension and other pensionary benefits of the petitioner shall be revised accordingly and released to him within a period of two months thereafter.

Photocopy of this order be placed on the file of the connected case.

July 5, 2023 **[SANJEEV PRAKASH SHARMA]**
Ess Kay **JUDGE**

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No