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

**CWP No. 18791 of 2018
Date of Decision: 15.02.2023**

Ram Kishan

.....Petitioner

Vs

Haryana Power Generation Corporation Limited

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. D.S. Patwalia, Sr. Advocate with
Ms.Sehar Navjeet Singh Sandhu, Advocate
for the petitioner.

Ms. Aditi Sharma, Advocate for
Mr. C.S. Bakhshi, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

The petitioner has preferred this writ petition for the issuance of an appropriate writ, order or direction, including a writ in the nature of Certiorari quashing the order dated 05.07.2018 (Annexure P-13) passed by the respondent withdrawing its earlier order dated 24.06.2013 and disallowing the computation of previous service of the petitioner towards retiral benefits in HPGCL.

The petitioner was initially appointed as Assistant Lineman in the erstwhile Haryana State Electricity Board

(hereinafter referred to as "HSEB") on 05.02.1982, thereafter, he was promoted to the post of Lineman on 08.09.1986. In the year 1998, Haryana State Electricity Board was bifurcated into two parts, namely, Haryana Power Generation Corporation Limited (hereinafter referred to as "HPGCL") and Dakshin Haryana Bijli Vitran Nigam (hereinafter referred to "DHBVN"). No option was taken at the time of allocating DHBVN to the petitioner. The petitioner was transferred to Dakshin Haryana Bijli Vitran Nigam and he continued to work in the said Nigam till the date of which he acquired the post of Junior Engineer in DHBVN on 28.05.2003. It is relevant to mention here that the service rendered by the petitioner in the erstwhile Haryana Electricity Board was counted towards qualifying service for the purposes of granting various benefits to the petitioner under the Rules. On 19.01.2004, the Haryana Public Service Commission issued an advertisement for filling up vacancies including the posts of Assistant Engineer (Mechanical) in HPGCL. The petitioner applied for the said post in terms of advertisement through proper channel and was ultimately appointed as Assistant Engineer in HPGCL on 12.08.2004. After joining the post of Assistant Engineer in HPGCL, the petitioner made a representation to the respondent HPGCL on 19.05.2006 for counting past service rendered in HSEB and DHBVN from

05.02.1982 to 19.08.2004 towards pension and other service benefits as he has joined HPGCL from DHBVN without any break in service. HPGCL as well as DHBVN were the two components of original Organization/Board i.e. Haryana State Electricity Board. In the interregnum period, the petitioner was further promoted to the post of Assistant Executive Engineer vide order dated 24.08.2007. After appointment of the petitioner in HPGCL, the record of past service and pension contribution including leave salary liabilities were transferred to Transferee Department i.e. HPGCL. Letters dated 22.08.2012, 22.02.2012 and 11.01.2013 were issued to this effect.

On receipt of relevant record from DHBVN, the benefits arising out of past service were granted to the petitioner by the respondent vide order dated 24.06.2013. Thereafter, petitioner retired from service w.e.f. 31.08.2016 on attaining the age of superannuation. Thereafter, all the benefits so granted to the petitioner vide order dated 24.06.2013 were released in favour of the petitioner vide order dated 23.08.2016. After retirement of the petitioner when nothing was due towards him, the respondent issued a show cause notice dated 20.03.2017 for withdrawal of benefits of past service rendered by the petitioner in DHBVN Haryana. On receipt of the show cause

notice, the petitioner had filed a detailed reply on 11.04.2017 in support of his contention that the benefits were rightly granted to the petitioner. The respondent ultimately passed an order dated 05.07.2018, thereby, withdrawing the benefits of past service from 05.02.1982 to 19.08.2004 being impermissible under the Rules. While passing the aforesaid order, reference was made to the instructions dated 07.01.2002.

Bare reading of the aforesaid instructions would show that HPGCL being a company registered under the Companies Act does not fall within the definition of State Autonomous Body, therefore, the service rendered by the petitioner in Irrigation Department, Haryana can be of no assistance to the petitioner for counting his past service towards fixation/pensionary benefits in HPGCL. It appears that the stand taken in the impugned order is factually wrong. The petitioner had never served in Irrigation Department. The stand of the respondent is that HPGCL being a company registered under the Companies Act does not fall under the definition of State Autonomous Body then in such eventuality how the instructions dated 07.01.2002 is made applicable is a far fetched phenomena. Even in the written statement filed by the respondent, a specific stand has been taken in Para No.1 of the preliminary objections that

HPGCL is a company registered under the Companies Act, so employees of HPGCL are not governed by instructions dated

07.01.2002. If this is the stand of the respondent in the written statement then how these instructions dated 07.01.2002 have been made applicable is beyond the comprehension of the Court. Further, in the written statement, reference has been made to CWP No.16476 of 2015 titled Jaswant Saini Vs. UHBVNL and others. The aforesaid case was decided in view of facts and circumstances of that case as the petitioner therein i.e. Jaswant Saini got the benefit of past service in his previous department and thereafter, he was shifted to HPGCL, therefore, in the Transferee Department, he was not entitled to the past service. The reference to the aforesaid case in the written statement in my considered opinion is misconceived.

Learned counsel for the petitioner has made reference to Rule 15(B) of the Haryana Civil Services (Pension) Rules 2016, which entitles the employees of pensionable organizations of State of Haryana to get the benefit of past service towards their pensionary benefits. According to Rule 15(B), permissible benefits of qualifying past service, received, if any, from the previous organization shall have to be deposited in the consolidated fund of Haryana with interest, at the rate applicable to General Provident Fund. The application has to be submitted through proper channel in case of subsequent appointment with reference to the aforesaid Rule.

Learned counsel for the petitioner further submits that due compliance of the aforesaid Rule was made by the petitioner when he was appointed in HPGCL, the benefit was granted to the petitioner on receipt of record from DHBVN vide order dated 24.06.2013. There is no allegation of fraud, misrepresentation or connivance alleged against the petitioner that the aforesaid benefit was wrongly granted to the petitioner. At the time of granting the said benefit no undertaking was given by the petitioner at any point of time and after grant of the aforesaid benefit, the same was implemented and released to the petitioner on 23.08.2016. Benefits once granted and released without there being any allegation of fraud or misrepresentation cannot be realized particularly after retirement of the employee in view of law laid down in ***State of Punjab Vs. Rafiq Masih, 2015(4) SCC 334.***

In the light of the aforesaid fact, I am of the view that the impugned action of the respondent in withdrawing the benefit of past service granted and released to the petitioner on 24.06.2013 and 23.08.2016 is not legally sustainable for the reasons recorded hereinabove. I deem it appropriate to quash the order dated 05.07.2018 passed by the respondent.

Notice of motion was issued on 02.08.2018 and thereafter vide order dated 31.10.2018 recovery was ordered to be stayed. If some amount has already been recovered from the petitioner, the same be reimbursed to the petitioner within a period of three months from the date of receipt of certified copy of this order. If amount is not reimbursed to the petitioner within time prescribed, the petitioner shall be entitled to interest @ 6% per annum towards the delayed payment.

15th February, 2023
sapna

(RAJ MOHAN SINGH)
JUDGE

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