

2023:PHHC:118437

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

CWP-6169-2017 (O&M)
Date of Decision:- 11.9.2023

Bagga Ram

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. H.S. Saini, Advocate for the petitioner.

Mr. Aman Dhir, DAG Punjab for respondents No. 1 to 3.

Mr. Sehaj Bir Singh, Advocate for respondent No. 4.

GURVINDER SINGH GILL, J.

1. The petitioner seeks issuance of a writ in the nature of Mandamum directing the respondents to grant him benefit of full pension by considering his entire service as qualifying service, particularly in view of instructions dated 6.1.2015 (Annexure P-19).
2. The petitioner claims that he was initially appointed as Beldar on work-charge basis on 1.11.1981 in Department of Irrigation, Punjab at 'Anandpur Sahib Hydel Project', and continuously worked as such upto 30.6.1985 without any break. However, on 30.6.1985, he was discharged/retrenched from service upon completion of the Project. The Discharge Certificate (Annexure P-1) records his date of discharge as 30.6.1985 and the reason for discharge is recorded therein as retrenchment due to reduction in strength.

3. It is further the case of petitioner that after about 4 months, he was re-appointed on work-charge basis as Beldar on 27.10.1985 at 'Ranjit Sagar Dam Project' under the Department of Irrigation, Punjab where he continued without any break and his services were regularized on 13.3.1996 and he ultimately retired on 31.1.2012 on attaining the age of superannuation. The petitioner was also extended retiral benefits including pension. However, his service of about 3 years and 8 months rendered by him initially at 'Anandpur Sahib Hydel Project' from 1.11.1981 to 30.6.1985 was not considered for the purpose of giving pensionary benefits to the petitioner.
4. The petitioner served a Legal Demand Notice dated 10.8.2015 (Annexure P-11) but his claim was rejected vide order dated 29.9.2015 (Annexure P-13) on the premises that the appointment of the petitioner in 'Ranjit Sagar Dam Project' on 27.10.1985 was a fresh appointment and as such, previous service could not be counted. Another reason that was assigned for declining the claim of the petitioner was that the petitioner having been granted benefit of one increment on account of his retrenchment, he could not be granted another benefit.
5. The learned counsel for the petitioner submits that the initial service of 3 years 8 months rendered by the petitioner was rendered in the same Department and that he had been retrenched as the Project had completed and that no fault can be attributed to him and since it was barely after 4 months that he was again employed in the same very Department in another Project where he was also regularized subsequently, his past service rendered on work-charge basis has to be treated as qualifying service. The learned counsel, in order to hammer forth his aforesaid submission places reliance upon judgment dated 4.10.2016 rendered by this Court in LPA

No.1533 of 2016 - The State of Punjab and others versus Balwant Singh and others and a Full Bench of this Court in AIR 1988, Punjab & Haryana 265 - Kesar Chand versus State of Punjab and others.

6. On the other hand, the learned State counsel has submitted that the petitioner has no absolute right for consideration of his entire service as qualifying service, particularly when there is a break in between and which is prior to the petitioner having been regularized. It has further been submitted that in any case, since the petitioner had been extended the benefit of one increment on account of his retrenchment in the first spell of service, he could not stake his claim for getting other benefits in respect of the service rendered by him prior to retrenchment, which, in any case, was on work-charge basis.
7. This Court has considered rival submissions addressed before this Court.
8. As far as the period of service is concerned, there is no dispute that the petitioner had rendered service of about 3 years 8 months w.e.f. 1.11.1981 to 30.6.1985 and had been retrenched on 30.6.1985 on account of reduction of work at 'Anandpur Sahib Hydel Project'. It is also not in dispute that it is after about 4 months that he was again appointed in another Project i.e. 'Ranjit Sagar Dam Project' on 27.10.1985 where he continuously worked and was regularized in 1996 and retired in 2012. The respondents have, however, not considered the initial service of 3 years 8 months as qualifying service and have declined his claim by passing impugned order dated 29.9.2015 (Annexure P-13), which is reproduced herein-under :-

“ It is intimated that your client was initially appointed in Anandpur Sahib Hydel Project on 1-11-81 as Beldar on work charge basis and worked as such up to 30-6-85 and was discharged/retreched from service w.e.f. 30-6-85 AN. He was also paid retrenchment compensate at the time of retrenchment from Anandpur Sahib Hydel Project.

On dated 27-10-1985, your client was given fresh appointment at Ranjit Sagar Dam Project as Beldar on work charge basis and retired on 31-1-2012 after attaining the age of superannuation i.e. 60 years being a regular employee. Your client had been given the post of Beldar at Ranjit Sagar Dam Project only on the basis of past experience of other projects and accordingly he had also been compensated by granted 1 no. retrenchment increment as per letter dated 27.11.1981 by counting his past service at the other project namely Anandpur Sahib Hydel Project. Moreover, as per the offer of appointment (Colum 2) **“No liability in respect of your past service will be entertained by Thein Dam Organisation”**.

That your client has got benefit of past service rendered at Anandpur Sahib Hydel Project in the shape of 1 no. retrenchment increment till the date of his superannuation i.e. 31-1-2012 in terms of huge amount. It is worth mentioning here that even after his retirement the petitioner is getting his pension along with retrenchment benefit.

It is also admitted that the petitioner has also filed C.W.P. NO. 20940 of 2014 which is pending in this Hon'ble Court and is fixed for hearing on 04-12-2015.”

9. A perusal of the impugned order dated 29.9.2015 (Annexure P-13) would show that two reasons are assigned declining the benefits. One is that his appointment on 27.10.1985 was a fresh appointment on work-charge basis and secondly that the petitioner had been given one retrenchment increment on account of his previous service. It is apposite to bear in mind the relevant rules pertaining to qualifying service, as applicable to the petitioner. Rule 3.17-A and Rule 4.23 of the Punjab Civil Services Rules, Volume-2, is reproduced herein-under:-

3.17-A (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:—

- (i) Omitted.
- (ii) Omtted.
- (iii) Casual or daily rated service.
- (iv) Suspension adjudged as a specific penalty.

Note.—In cases where an officer dies or is permitted to retire while under suspension will not be treated as an interruption.

- (v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government where service qualifies for pension.
 - (vi) Joining time for which no allowances are admissible under rules 9.1 and 9.15 of C.S.R., Volume I, Part I.
 - (vii) If any unauthorised leave of absence occurs in continuation of authorised 17 leave of absence and if the post of the absentee has been substantively filled up, the past service of the absentee is forfeited.
 - (viii) Transfer to a non-qualifying service in an establishment not under Government control or if such transfer is not made by the competent authority and transfer to service in a grant-in-aid school. (A Government employee, who voluntarily resigns qualifying service, cannot claim the benefit under this clause.)
 - (ix) Removal from public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of the past service.
 - (x) Service rendered beyond the date of retirement on superannuation in terms of rule 3.26 of Punjab Civil Services Rules, Volume I, Part I.
- (2) An interruption in the service of a Government employee caused by wilful absence from duty or unauthorised absence without leave, shall entail forfeiture of the past service.
- (3) Wilful abstinence from performing duties by a Government employee by resort to pen down strike shall be deemed to be wilful absence from duty and shall also entail forfeiture of the past service.

Note.—In the case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, the pensionary benefits admissible for service under Central Government would be that admissible under the Government of India rules and the liability for such benefits shall be allocated in accordance with the prevalent orders.

Clarification

- (1).—Even after the introduction of rule 3.17(A) and deletion of rule 4.21 the following cases do not entail forfeiture of past service:—
- (a) authorised leave of absence;
 - (b) **abolition of post or loss of appointment owing to reduction in establishment.**

(“Post” or “appointment” means a post or appointment service in which qualifies for pension).

- (2) While counting such qualifying service for working out aggregate service, the period of break in service shall be omitted.”

“4.23. In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered under the State Government shall be treated as automatically condoned, and the pre-interruption service shall be treated as qualifying service for pension purposes, except where the interruption has been caused by resignation, dismissal or removal from service or due to participation in a strike, but the period of interruption itself shall, under no circumstances, be reckoned as qualifying service for pension purposes.”

10. The clarification to Rule 3.17-A and Rule 4.23 of the Punjab Civil Services Rules, Volume-2, as reproduced above, leave no manner of doubt that an earlier spell of service which came to an end for no fault on part of employee and where infact it was on account of reduction in establishment, as in the present case, has to be treated as qualifying service.
11. The fact that such service was on work-charge basis is rendered inconsequential by ratio of Full Bench decision of this Court rendered in Kesar Chand's case (supra).
12. A similar question came to be considered by this Court in CWP No. 79 of 2013 – Balwant Singh versus State of Punjab and others, where this Court vide its decision dated 12.5.2016 ruled in favour of employee. Para 1 of the said judgment where facts are noticed is reproduced herein-under :-

“The petitioner has been denied counting of period of service prior to the second spell as work-charged employee towards qualifying service for pension. Accordingly, his pension and its adjunct components have been calculated counting only the second limb of the work-charged service followed by regular service. The respondent – Department has disregarded the first spell of work-charged service, which was from

15.12.1955 to 26.12.1963, as per the photocopy of the discharge certificate submitted by the petitioner. This long spell of work was broken by three days before the second spell of the first spell of re-employment was continued on re-engagement till 1984. The petitioner's services were regularized on 20.01.1995."

13. This Court in Balwant Singh's case (supra) dealt with the objections raised by State and held as under in Para 6 :-

"6.The argument of Mr. Vaibhav Sharma, learned DAG, Punjab to the effect that payment of retrenchment compensation is conclusive of the fact that employment had come to an end with discharge of liability to pay money under Section 25-F of the Industrial Disputes Act, 1947 is I think too narrow and pedantic a view which does not appeal to common sense and is not the correct view to be given to the expression 'retrenchment compensation' in the Act. Retrenchment compensation is not paid to put an end to service, but to tide over financial hardship resulting from retrenchment so that an employee can look for another job in the meantime to sustain his family. More so when actions under Section 25F of the Act are subservient to rights of workmen under Sections 25G and 25 H of the Act which guarantee return to employment when work becomes available and another person is employed without offering employment to the victim of Section 25F of the Act or the principle of last come, first go. I would, therefore, like to reject the argument as one without any substantive merit raised to defeat a just claim and reduce quantum of pension. The petitioner is held entitled to counting of both periods of service [first two spells before the second spell] towards pension except the period excluded by this order entailing no more than about six months to balance the equities between the parties. However, that period would not be treated as dies non but only as a bridge crossed for legal purposes to bring home higher pension."

14. Although, the state preferred LPA i.e. LPA No. 1533-2016 against aforesaid judgment dated 12.5.2016 but the said LPA was dismissed on 4.10.2016.

15. In the present case, the break of four months between the two spells of services cannot be attributed to any fault on part of the petitioner and came to be there on account of the petitioner having been retrenched as the 'Anandpur Sahib Hydel Project' was completed and the work at the site was reduced. Having regard to provisions of Rules 3.17-A and Rule 4.23 of the Punjab Civil Services Rules, Volume-2 and bearing in mind the ratio of above referred judgments, this Court is of the opinion that the petitioner cannot be deprived of the benefits of the first spell of service of 3 years and 8 months towards qualifying service. As such, the petition is hereby accepted and it is ordered that the period of 3 years and 8 months i.e. w.e.f. 1.11.1981 to 30.6.1985 which the petitioner has rendered on work-charge basis, before being retrenched, be also treated as qualifying service for the period of working out pension and the period of about 4 months between the two spells of service be treated as a notional break.
16. The respondents are directed to do the needful for revising the pension of the petitioner accordingly. The financial benefits, as may be flowing from such revision including arrears, be paid to the petitioner within 4 months from today alongwith interest @ 5%. However, in case the needful is not done within 4 months, the arrears shall be paid to the petitioner with interest @ 10% instead of 5%.
17. The petition stands accepted accordingly.

11.9.2023

kamal

**(Gurvinder Singh Gill)
Judge**Whether speaking /reasoned
Whether ReportableYes / No
Yes / No