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

CWP-24157-2014 (O&M)
Date of Decision : 22-10-2024

OM PARKASH **........Petitioner**

VERSUS

STATE OF PUNJAB AND ORS. **........Respondent(s)**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vivek Sharma, Advocate for the petitioner.

Mr. Charanpreet Singh, AAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

CM-16300 of 2016

This is an application for impleadment of Punjab State Tubewell Corporation Ltd. (now Punjab Water Resources Management and Development Nigam) as respondent No.5 in the present petition.

Keeping in view of the contents mentioned in the application, the same is allowed.

Registry is directed to implead Punjab State Tubewell Corporation Ltd. (now Punjab Water Resources Management and Development Nigam) as respondent No.5 by making necessary corrections in the memo of parties.

CWP-24157-2014

In the present petition, the grievance of the petitioner is that the petitioner was initially working with the Punjab State Tubewell Corporation Ltd. on which post he was appointed in February, 1980. While working in the said department, the petitioner applied and competed for the post of S.S Master in pursuance to an advertisement issued in the year 1996. On 10.04.1997, the Punjab State Tubewell Corporation Ltd. issued "No Objection Certificate" to the petitioner and he submitted the same alongwith a technical resignation in the new Department and the petitioner joined the post of S.S Master against which he was selected. The petitioner continued working on the said post and ultimately retired from service on attaining the age of superannuation on 31.03.2012.

The grievance of the petitioner is that while calculating the pensionary benefits of the petitioner, only the service which the petitioner has rendered in the department of Education starting from July 1997 has been taken into account and the service which the petitioner has rendered with the Punjab State Tubewell Corporation Ltd. starting from 24.02.1980 to 15.12.1998 has not been taken into account while computing the qualifying service for the payment of pensionary benefits which is causing prejudice to the petitioner.

Upon notice of motion the respondents have filed the reply wherein it has been mentioned that the petitioner was selected afresh in the Department of Education hence, the service rendered by the petitioner in the Education Department can only be taken into account for determining the qualifying service and the service which the petitioner has rendered with the Punjab State Tubewell Corporation Ltd. came to end when the petitioner submitted the resignation hence, the services rendered by the petitioner in the Punjab State Tubewell Corporation Ltd. cannot be taken into account for any purposes.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

It is an admitted fact that while working in the Punjab State Tubewell Corporation Ltd., the petitioner applied for the post of S.S Master through proper channel. The petitioner competed for the post and got selected after which, the Punjab State Tubewell Corporation Ltd. granted the petitioner the "No Objection Certificate" to join the new selected post and after submitting a technical resignation along with the "No Objection Certificate", the petitioner joined the post of S.S Master in the new department.

Now, the question which arises is whether, keeping in view the Punjab Civil Services Rules, the benefits of service rendered by the petitioner with the Punjab State Tubewell Corporation Ltd., which is also a State-owned corporation, can be taken into account for computing the qualifying service while calculating the pensionary benefits of the petitioner.

For better understanding, the relevant Rule 3.17(A)(1)(v) of the Punjab Civil Services Rules V.II, is reproduced as under:-

> "*3.17-A(1) Subject to the provision of the Rule 4.23 and other rule and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service -*
>
> *(1) Service rendered establishment in work-charged.*
>
> *(ii) Service paid form contingencies.*
>
> *Provided that after the Ist January, 1973 half of the service paid form contingencies will be allowed to court towards pension at the time of absorption in regular employment subject to the following conditions:-*

(a) Service paid form contingencies should have been in a job involving whole-time employment (and not part-time or for a portion of the day).

(b) Service paid from contingencies should have in a job for which regular post could have been sanctioned e.g. malis, chowkidars, khalasis, etc.

(c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being perform by staff in regular establishment.

(d) The service paid form contingencies should have been continuous and followed by absorption in regular employment without a break

(iii) Casual or daily rated service

(iv) Suspension adjusting as a specific penalty Note -In case 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.

(viii) If any unauthorized leave of absence occurs in continuation of authorised leave of absence and if the post ofthe absentee has been substantively filled up, the past service in a grant-in-aid school.

(xi) Removal form public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of past service.

(2) An interruption in the service of a Government employee caused by willful absence form duty or unathorised absence without leave, shall entail forfeiture of the past service.

(3) Willful abstinence form performing duties by a Government employee by resort to pen down strike shall be deemed to be willful absence form duty and shall forfeiture of the past service; Note. In the case of a Central Government employee who is permanently transferred to the Punjab Government and become 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 benefit shall be allocated in accordance with the prevalent orders. "

Keeping in view the said Rule, the service rendered by the petitioner with the Punjab State Tubewell Corporation Ltd., has to be treated as a qualifying service for computing the pensionary benefits.

Learned counsel for the respondent has not been able to show any Rule to support their arguments that the said service is to be excluded from the zone of qualifying service.

The only argument which has been raised by the learned counsel for the respondent is that the petitioner had submitted a resignation from the Punjab State Tubewell Corporation Ltd. hence, the service rendered by the petitioner in the said department cannot be taken into account while computing the qualifying service.

It may be noticed that "No Objection Certificate" was given by the Punjab State Tubewell Corporation Ltd. to the petitioner to join the new post as S.S Master in the Education Department hence, the said resignation has to be treated as a technical resignation, which cannot create an embargo so as to wash out the service rendered by the petitioner in the Punjab State Tubewell Corporation Ltd. A technical resignation does not take away the right of an employee to count the service rendered in the previous department towards a qualifying service upon retirement.

Even otherwise, the claim of the petitioner is covered keeping in the judgment of this Court in CWP NO.14148 of 2011 titled ***"Satinder Pal Singh Vs. State of Punjab and ors.",*** decided on 02.05.2013 wherein Instructions dated 14.05.1986 issued by the Punjab Government were referred to, along with Rule 3.17-A(1)(v) Vol.II and Rule 7.5(1) ad (2), Vol.1 of the Punjab Civil Service Rules and the benefit of past service in another organisation was ordered to be taken into account for the purpose of granting the retiral benefits.

Learned counsel for the respondents has not been able to rebut the same.

Keeping in view of above, the claim of the petitioner for taking into consideration the service rendered by him in the Punjab State Tubewell Corporation Ltd. as a qualifying service for computing his pensionary benefits is allowed.

The respondents are directed to re-calculate the entitlement of the pensionary benefits of the petitioner and grant him the benefits of revised pensionary benefits along with arrears.

Let this order be complied with within a period of 8 weeks from the receipt of copy of this order.

Present petition is allowed.

Pending application, if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

22-10-2024
Sapna Goyal

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO