

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

(212)

CWP-27018-2016

Date of Decision : January 10, 2024

Jaspal Singh**.. Petitioner****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Naveen Daryal, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Mr. Harneet Singh Oberoi, Advocate, with
Ms. Himani Jain, Advocate, for respondent No.4.**HARSIMRAN SINGH SETHI J. (ORAL)**

1. In the present writ petition, the grievance being raised by the petitioner is that the petitioner has not been given the benefit of total service which he has rendered keeping in view his date of appointment hence, the respondents are under an obligation to revise the pensionary benefits of the petitioner along with consequential benefits.

2. The facts as stated in the present petition was that the petitioner competed for the post of Assistant Agriculture Engineer keeping in view the advertisement issued by the Haryana Public Service Commission and he was selected and his name was also recommended to the Department of Agriculture Haryana on 23.10.1989 for appointment. The recommendation of the Commission in favour of the petitioner has been appended as

Annexure P-1. Though, the recommendations were made but the petitioner was not given appointment until 20.11.1995.

3. After appointment, the petitioner claimed that he be given appointment w.e.f. the date other candidates of the same selection were appointed along with seniority and other benefits. Ultimately, vide order dated 26.08.2008, the petitioner was given the benefit of seniority from the date of recommendation but without consequential benefits. The petitioner continued working with the respondents and ultimately retired on attaining the age of superannuation on 30.04.2014.

4. While computing the pensionary benefits of the petitioner, the respondents only treated the service which the petitioner has actually rendered starting from 20.11.1995 and not from the date the petitioner was given seniority in the cadre of Assistant Agriculture Engineer i.e. 23.10.1989.

5. The prayer of the petitioner is that the respondents be directed to grant the petitioner the benefit of qualifying service from 23.10.1989 till 30.04.2014 and his pensionary benefits be calculated keeping in view the said qualifying service.

6. Learned counsel for the respondents, on the other hand, submits that though the petitioner joined on the post of Assistant Agriculture Engineer on 20.11.1995 but vide order dated 26.08.2008, he was given seniority w.e.f. 23.10.1989 but as the same was without any consequential benefits, the said period cannot be taken into account for the purpose of qualifying service.

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

8. It is not disputed that the name of the petitioner was recommended by the Haryana Public Service Commission for appointment to the post of Assistant Agriculture Engineer on 23.10.1989. The petitioner was not given appointment and was ultimately given appointment on the directions of this Court hence, petitioner actually joined on 20.11.1995. Thereafter, the petitioner sought his appointment with retrospective effect along with seniority and vide order dated 26.10.2008, the petitioner was given seniority from the date of recommendation i.e. 23.10.1989.

9. The seniority of an employee is to be counted keeping in view the date of his appointment in the cadre. It cannot be said that a person is actually appointed in the cadre on 20.11.1995 but will be given seniority from 23.10.1989. It is only in case the appointment is made with retrospective effect from 23.10.1989, the seniority of the employee is to be fixed from the said date. It is a conceded fact that the respondents considered the claim of the petitioner and granted him the seniority in the cadre of Assistant Agriculture Engineer w.e.f. the date of his recommendation i.e. 23.10.1989 hence, for all intents and purposes i.e. the said date from which the petitioner is to be treated having entered the service and the qualifying service is to start from the said date.

10. The objection which is being taken by the respondents is that the seniority to the petitioner was granted from 23.10.1989 but without consequential benefits. It may be noticed that “without consequential benefits” means that no financial benefits were to be given on account of retrospective appointment but it cannot be said that the services from 23.10.1989 upto 20.11.1995 will not be taken into account for pensionary benefits.

11. Even otherwise, since the delay in appointment to the post in question was on account of the respondent-Department and not due to any act on the part of the petitioner, which fact is clear from the order passed by this Court while deciding CWP No.5988 of 1988, the petitioner cannot be made to suffer on account of any inaction on the part of the Department hence, in the present case, keeping in view the fact that the respondents themselves have granted seniority to the petitioner from the date of his recommendation i.e. 23.10.1989, the said date is to be treated as entry into service of the petitioner and the qualifying service is to be taken into account starting from 23.10.1989 onwards till the date of retirement.

12. Let the respondents rectify their mistake and grant the petitioner the benefit of qualifying service from 23.10.1989 till 30.04.2014 and release the consequential benefits including the revised pensionary benefits as well as revised pension along with arrears.

13. At this stage, learned counsel for the petitioner submits that as the petitioner had retired from service in the year 2014 and is litigating with the respondents and on the date of retirement the petitioner was entitled for the said benefit hence, the petitioner is also entitled for the benefit of interest on the arrears which are past due to the petitioner.

14. Learned counsel for the respondents submits that keeping in view the fact that the claim of the petitioner is being allowed by this Court today, the benefit of interest may kindly be declined.

15. It is a settled principle of law that in case any illegal and arbitrary act on the part of the respondents causes prejudice to an employee, the employee concerned needs to be compensated. As per the judgment of the Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, any amount for which the employee was entitled

for but has been retained and used by the Department, the Department has to give back the same along with interest. The relevant paragraph of the said judgment is as under:-

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

16. Keeping in view the above, the petitioner will also be entitled for interest @ 6% per annum on the revised pensionary benefits from the date which became due i.e. from 01.05.2014 onwards till the same is released to the petitioner.

17. The present writ petition is allowed in above terms.

January 10, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes