



CWP-25025-2018 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.25025 of 2018 (O&M)

Date of Decision: 20.09.2024.

Avtar Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. P.S. Khurana, Advocate,
for the petitioner.

Mr. S.S. Hira, DAG, Punjab.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed, under Article 226 of the Constitution, *inter alia*, with the following prayer:-

- i. for quashing the impugned letter bearing No. WSS/E1(3)18/7274 dated 20.03.2018 (P-1) whereby benefit of three increments for the services rendered by petitioner in the previous i.e., Department of water Supply & Sewerage Board (for short "Board") on the post of Junior Engineer (Civil) from 1987 to 1990 was withdrawn;
 - ii. directing the respondents to compute the pension & pensionary benefits on the basis of last pay drawn, without adhering to the impugned order (P-1).
2. Facts are not in dispute.
 3. Petitioner was appointed as Tracer in the Board on 28.05.1979. He was promoted as Junior Engineer (Civil) on 16.01.1987.
 - 3.1 The respondents invited applications for the post(s) of Junior



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Engineer (Civil) in the year 1988. Petitioner applied for the same through proper channel and his application was duly forwarded by Managing Director, Board to the Chairman, Departmental Selection Committee, PWD (Public Health Branch), Patiala vide letter dated 11.08.1988 (P-3).

3.2 Petitioner was selected and appointed as Junior Engineer (Civil) in the respondent-department vide appointment letter dated 06.02.1990 (P-4). Petitioner made a request (P-5) to the Board for relieving him and the same was accepted on 20.02.1990. Thereafter, he joined the respondent-department on 21.02.1990.

3.3 On 06.06.2002, petitioner submitted an application (P-6) for grant of benefits of previous service rendered from 16.01.1987 to 20.02.1990 with the previous department i.e. the Board. Consequently, vide order dated 26.02.2003 (P-7) passed by respondent No.2, he was given the desired relief. As a result, his pay was revised vide pay fixation order dated 17.03.2003 (P-8). Ultimately, on 30.11.2017, petitioner superannuated from the post of Sub-Divisional Engineer at Sub Division No.2, office of Executive Engineer, Water Supply and Sanitation Division, Anandpur Sahib. Vide letter dated 07.02.2018 (P-11) issued by respondent No.2, provisional pension of petitioner to the tune of Rs.19,583/- was sanctioned w.e.f. 01.12.2017.

3.4 Later on, vide impugned letter dated 20.03.2018 (P-1), passed by respondent No.4, benefit of past service rendered by petitioner with the Board, was withdrawn. His pay was revised and recovery of Rs.6,70,549/- is sought to be effected from him.

3.5 In view of the pay revision, pensionary benefits have not been released in favour of the petitioner. Thereafter, he was compelled to give an undertaking (P-13) for recovery of Rs.6,70,549/- from his gratuity.



CONTENTIONS

4. ON BEHALF OF PETITIONER

4.1 Learned counsel contends that impugned action of respondent No.4 in ordering revision of pay and recovery of Rs.6,70,549/- is patently illegal, arbitrary and liable to be set aside.

4.2 Also contends that respondent No.4 has no authority in law to pass the impugned order which is based on flimsy ground that "*petitioner had resigned from the previous department*".

4.3 Further contends that petitioner did not commit any misrepresentation or fraud when his pay was re-fixed. The undertaking now taken from him on 08.05.2018 has no bearing on his rights as the same has been taken under duress.

4.4 Still further contends that as per the provisions of Rule 4.4(B) of Vol. I and Rule 3.17 of Vol.II of the Punjab Civil Services Rules and notification No. 6/75/95-PP.11/10993 dated 15.11.2000, issued by Department of Finance, petitioner is entitled for the benefit of past service rendered with the Board.

53. ON BEHALF OF THE RESPONDENTS

5.1 *Per contra*, learned State counsel while opposing the prayer of petitioner submits that petitioner joined the respondent-department after submitting resignation from the previous service on 06.02.1990.

5.2 Also submits that as per rule 4.23 of Punjab Civil Service Rules, Vol. II, previous service cannot be calculated for pension, if the employee had resigned from his previous post.

5.3 Also submits that, *vide* undertaking dated 08.05.2018 (P-13), petitioner had admitted that the excess amount of Rs.6,70,549/- can be



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recovered from his gratuity; thus, he cannot raise any grievance regarding the same.

6. Heard learned counsel for the parties and perused the paper book.

7. From the paper-book, it transpires that initially, petitioner joined the Board as Tracer. Later on, he was promoted as Junior Engineer (Civil). In pursuance of his appointment in the respondent-department, he joined his duties as Junior Engineer (Civil). His pay was fixed vide order dated 26.02.2003.

8. It is noteworthy that petitioner submitted an application for grant of benefits from the previous service w.e.f 16.01.1987 to 20.02.1990 rendered with the Board on the post of Junior Engineer (Civil) through proper channel. The same was accepted by respondent No.2 whereby petitioner was granted the benefit of service on 26.02.2003 (P-7).

9. Also discernible that all of a sudden, vide Memo. No. WSS/E1(3)18/7277 dated 20.03.2018 (P-1), passed by respondent No.1 on their own, whereby aforesaid benefit of past service rendered by petitioner has been ordered to be withdrawn resulting in re-fixation w.e.f. 21.02.1990 to 30.11.2017 & consequence of Rs.6,70,549/- has been ordered. For reference Memo. dated 20.03.2018 is extracted here-in-below:-

“With regard to the subject cited matter, the pension case received alongwith the service book vide the letter under reference is sent back in original. It is informed in this regard that upon a careful perusal of page 33 of the service book Volume 3 of Sh. Avtar Singh, Sub Divisional Engineer (Retd.), it has come to the notice of this office that the pay of this officer has been fixed by giving the benefit of his service at Sewerage Board by giving reference of Punjab Government Finance Department Letter No.:



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6/75/95-PP/11/10993 dated 15.11.2000. It is also clarified here that as per the above letter of the Finance Department, pay of that employee/officer is to be fixed by giving benefit of service rendered at Punjab Government Board/Corporation who had applied for job in some other department through proper channel from the parent department. As per the Page 27 of the Service Book Volume 1, Sh. Avtar Singh, Sub Divisional Engineer had resigned from the Sewerage Board and as per the letter No. 22855 dated 7.6.1991, his resignation has been duly approved by the Board from 20.2.1990. So, as per the letter of Punjab Government Finance Department, the pay of this officer is not to be fixed by giving the benefit of service rendered at Sewerage Board. Therefore, revised pay of this officer may be fixed. Necessary amendment may be made in the pension papers as per the revised pay. Revised LPC Calculation Sheet and No Due Certificate may be prepared from beginning and two copies be sent. Two copies of the statement of recovery to be made from this officer may also be sent along with the pension case and the method of recovery may also be specified.

It is requested that after taking necessary action, the complete pension case may be prepared and two copies may kindly be sent to this office at the earliest so that necessary further action could be taken.

Records reveal that no opportunity of hearing was afforded to petitioner before passing the impugned order; rather the same has been passed at his back. Thus, in such a scenario, there is no hesitation to observe that the principle of *Audi alteram partem* (let the other side be heard) has been given a complete go-bye.

10. In view of the above, this Court is of the opinion that petitioner must have been given an opportunity to defend himself; but that is missing in this case. Even the administrative difficulty while depriving a person from an



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opportunity of hearing, cannot be accepted as a valid ground in such like cases.

11. In view of the above discussion, there is no option, except to allow the petition.

12. Consequently, present petition is allowed; impugned order dated 20.03.2018 (P-1) is hereby quashed and set-aside. Petitioner be paid the entire benefits, except the disputed amount (Rs.6,70,549/-). However, competent authority would be at liberty to pass a fresh order regarding the amount in question (Rs.6,70,549/-), in accordance with law, after affording an opportunity of hearing to the petitioner.

Pending application(s), if any, shall also stand disposed off.

20.09.2024
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No