

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-7938-2018

Reserved on : 09.04.2024
Pronounced on : 16.04.2024

Naranjan Singh

.....Petitioner

Versus

Pepsu Road Transport Corporation, Nabha Road, PatialaRespondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Vikas Chatrath, Advocate with
Mr. Dharamvir Singh and Mr. Abhishek Singla,
Advocates for the petitioner.

Mr. Anil Kumar Sharma, Advocate
for the respondent.

NAMIT KUMAR, J.

1. The petitioner has filed the present writ petition under Articles 226 and 227 of the Constitution of India seeking a writ of mandamus directing the respondent-Corporation to count the period from 08.03.1976 to 08.02.1980 as a qualifying service for the purpose of revised pay and pensionary benefits, along with interest @ 18% per annum and further seeking a writ of certiorari for quashing the impugned order dated 19.07.2017 (Annexure P-8).

2. The brief facts, as have been pleaded in the present petition, are that the petitioner had joined the service of respondent-Pepsu Road Transport Corporation, Nabha Road, Patiala as conductor on 01.09.1973. His services were terminated on 03.05.1976 and against the said termination, he had filed an appeal before the Chairman of the respondent-Corporation, which was dismissed on 09.08.1977, however,

later on again the petitioner approached the Chairman of the respondent-Corporation by filing an application and the same was accepted and vide order dated 08.02.1980 (Annexure P-1), he was reinstated in service with immediate effect with clear understanding that he will not be given any wages for the period he remained out of service and he would remain on probation for a period of one year and his work and conduct would be watched by the Depot Manager, Sangrur and in case he is found guilty of any further mis-conduct, his service will be terminated without any notice. The petitioner retired from service, on attaining the age of superannuation, on 30.04.2010 and since he was not released his pensionary benefits, therefore, he submitted representation dated 16.05.2011 (Annexure P-3) to the respondent-Corporation. The case of the petitioner is that he has been granted pension w.e.f. 08.02.1980 by excluding the period from 03.05.1976 to 08.02.1980. The petitioner had approached this Court by way of filing CWP No.17362 of 2011 and COCP No.1306 of 2013 along with application bearing No.CM-4270-CWP-2015 and in terms of the liberty granted vide order dated 21.07.2016 passed in COCP No.1306 of 2013, the petitioner submitted another representation dated 16.08.2016 (Annexure P-7) claiming the benefit of revised pension. Thereafter, the respondent-Corporation passed the order dated 19.07.2017 (Annexure P-8) denying the benefit of service from 03.05.1976 to 08.02.1980 for pensionary benefits. Hence this petition.

3. On issuance of notice of motion, short reply by way of affidavit of Smt. Poonamdip Kaur, IAS, Managing Director, Pepsu Road

Transport Corporation, Nabha Road, Patiala, has been filed, wherein it has been stated as under :-

“xx xx xx xx xx

3. *That the prayer in the writ petition is for issuance of directions to the respondent to count the period of 08.03.1976 to 08.02.1980 for the purpose of revised pay and pensionary benefits. It has also been prayed for quashing of the order dated 19.07.2017 (Annexure P-8) being contrary to the order dated 08.02.1980 (Annexure P-1) and thereafter to grant necessary consequential benefits of revised pay, pension and pensionary benefits.*

4. *That at the very outset, it is humbly submitted that the pensionary benefits of the petitioner have been re-calculated from the date of his joining the Corporation that is w.e.f. 01.09.1973 instead of the date of contribution of funds. It is further clarified that even the arrears as per entitlement arising thereof on account of revised pension/gratuity has been released as per order dated 28.03.2013.*

5. *That so far as the other grievance of the petitioner is concerned with regard to grant of notional annual increments on account of his reinstatement is concerned, it is submitted that the petitioner is not entitled for the same in view of Rule 4.23 of the Punjab Civil Service Rules, Volume-II, Chapter IV. The Rule 4.23 of the same reads as under :*

"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 shall be treated as qualifying service for pension purposes, except

where the interruption has been caused by resignation, dismissal or removal from service due to participation in a strike, but the period of interruption itself shall, under no circumstances, be reckoned as qualifying service for pension purposes."

So, in view of the rule position state above, the petitioner is not entitled for notional increments for the period when he remained out of service and will not be deemed to be in service for all intents and purposes. The Punjab Civil Service Rules are applicable to the case of the petitioner in view of the order dated 20.07.2005. The photocopy of the order dated 20.07.2005 is attached herewith as as Annexure R-1

xx xx xx xx xx”

4. Learned counsel for the petitioner submits that since the petitioner has been reinstated in service vide order dated 08.02.1980, therefore, the period from 03.05.1976 to 08.02.1980 is liable to be counted as qualifying service for pensionary benefits and the action of the respondent-Corporation in rejecting the said claim is totally illegal and arbitrary. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgments passed by Hon’ble Supreme Court in ***Director General, I.C.M.R. Vs. D.K. Jain and another : 2007(2) S.C.T. 682; Gurpreet Singh Vs. State of Punjab and others :2003(2) S.C.T. 226*** and the judgment passed by this Court in ***CWP No.2656 of 2012 titled as ‘Harjit Singh Vs. State of Punjab and others’ decided on 11.07.2014.***

5. On the other hand, learned counsel for the respondents, while relying upon the provisions of Rule 4.23 of the Punjab Civil

Service Rules, Volume-II, Chapter IV, submits that since the petitioner is not entitled for the grant of notional annual increments as there is an interruption between two spells of service, therefore, the said period cannot be counted as qualifying service.

6. During the course of hearing, learned counsel for the petitioner restricts his claim only for treating the period from 03.05.1976 to 08.02.1980 as qualifying service for the purpose of pensionary benefits and forego his claim for grant of notional increments.

7. I have heard learned counsel for the parties and perused the relevant documents with their able assistance.

8. Admittedly, the petitioner has been ordered to be reinstated in service with immediate effect vide order dated 08.02.1980, which reads as under :-

“Consequent upon the acceptance of appeal by the Chairman, Sh. Naranjan Singh, Ex. Cond. No. S-74-a, of Sangrur Depot is hereby re-instated in service with immediate effect. With clear understanding that he will not be given any wages for the period, he remaining out of service. He will remain on probation for a period of one year and his work and conduct would be watched by the Depot Manager, Sangrur. In case he is found guilty of any further misconduct, his service will be terminated without any notice.”

9. This above-said order appears to be contradictory in nature as in the first part of the order, it has been stated that the petitioner is hereby reinstated in service with immediate effect and in the second part of the order, it has been stated that he will be on probation for a period

of one year. However, the order does not say that it is a fresh appointment. The literal meaning of reinstatement in service is putting back the employee in service. In other words the meaning of the reinstatement is granting status quo ante when the service of the petitioner were terminated. The Hon'ble Supreme Court had an occasion to interpret the meaning of reinstatement in **Director General, I.C.M.R.'s case (supra)**, wherein it has been held as under :-

“9. In a case of this nature, in our opinion, the question as to whether respondent No. 1 continued to be in service despite temporary break during the said period, will have to be determined having regard to the fact situation involved herein. The services of Respondent No. 1 although were terminated on 11/4/1974, he immediately questioned the legality and validity thereof by filing a writ petition. The Director of the appellant organisation himself made an offer that respondent No. 1 would be reinstated in service subject to the terms and conditions mentioned in his letter dated 29.4.1983, as noticed hereinbefore. It was that offer of the appellant which was unconditionally accepted by the respondent. Not only this, certain other observations had also been made by the High Court while passing the order dated 27.4.1983. The High Court directed that he be reinstated in service.

The expression 'reinstatement' has been defined in 'Advanced Law Lexicon' by P. Ramanatha Aiyar, (at page 4030) to mean:

"Reinstatement" means that a man is put back in his job. Reinstatement can only arise if a man is dismissed or removed from service or if otherwise his service has been terminated and he is brought back to service. Hemanta Kumar Bhattacharjee v.

Union of India, AIR 1958 Calcutta 239, 241
[Constitution of India, Article 311].

Therein it is further stated:

*"The word 'reinstatement' in the context of Rule 16.5 of the Punjab Police Rules can refer only to the resumption of service for the purpose of grant of increments. The said rule has no bearing on qualifying service for compulsory premature retirement. **Chamba Singh v. State of Punjab, 1997 (2) SCT 631 (SC), AIR 1997 SC 2455** (Service Laws)."*

It is also significant to note that the appellant in terms of its letter dated 21.4.1983, also assured Respondent No. 1 to consider his request, if any, for payment of back-wages. As indicated hereinbefore, even he had been considered to be a permanent employee of the appellant with effect from 21.3.1978.

Having regard to the conduct of the parties which, in our opinion, is significant, for the purpose of determining the issue involved, we have no doubt in our mind that for all intent and purport. Respondent No. 1 has to be treated to be continuing in service despite small disruption during the aforementioned period. The very fact that the offer made in favour of the respondent by the appellant was for reinstatement in service, it is beyond any cavil of doubt the same would amount to continuity of his service. Moreover, the respondent has been given his due seniority from the date of his initial appointment. Had it been a case of fresh appointment, as sought to be argued by Mr. Raju Ramachandran, learned senior counsel appearing on behalf of the appellant, the question of respondent No. 1's getting his seniority from the date of his original appointment would not have arisen."

10. To the same effect is the judgment of Hon'ble Supreme Court in ***Gurpreet Singh's case (supra)***, wherein it has been held as under :-

“3. Having heard the learned counsel for the parties and on examining the materials on record, we fail to understand how the continuity of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment, but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff will not get continuity of service cannot be sustained and we set aside that part of the impugned order. So far as the arrears of salary is concerned, we see no infirmity with the direction which was given by the lower appellate court taking into account the facts and circumstances including the fact that the suit was filed after a considerable length of time. That part of the decree denying the arrears of salary stands affirmed and this appeal stands allowed in part to the extent indicated above.”

11. The above-said judgments have been followed by a Coordinate Bench of this Court in ***Harjit Singh's case (supra)***, wherein it has been held as under :-

“Reinstatement would mean granting status quo ante when the service of the petitioner was terminated. Once the Hon'ble Supreme Court did not grant the benefit of back wages to the petitioner, he is rightly not claiming the same. However, this claim of the petitioner has been found to be just and equitable that he was entitled at least for counting of his service for the purpose of qualifying service for pension. Undisputedly, the said period was 4

years 7 months and 90 days, as pointed out in the impugned order itself and respondent department altogether ignored this material aspect of the matter, while passing the impugned order because of which the same cannot be sustained.

xx xx xx xx xx

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned order passed by the respondent department is patently illegal and the same is declared, as such. Thus, the impugned order is hereby set aside. The respondent authorities are directed to consider the case of the petitioner for the purpose of qualifying service for pension, after counting his service for 4 years 7 months and 90 days in view of the order passed by the Hon'ble Supreme Court and also the period of suspension for 3 years 9 months and 22 days for the purpose of qualifying service for pension. Let needful be done within a period of three months from the date of receipt of a certified copy of this order and the petitioner be granted his pension, accordingly, failing which, petitioner shall be entitled for the arrears of pension alongwith interest @ 12 per cent per annum.

With the observations made and directions issued, hereinabove, the present writ petition stands allowed, however, with no order as to costs.”

12. In view of the above factual position and settled principles of law, the present petition is allowed and the order dated 19.07.2017 (Annexure P-8) is set aside and the petitioner is held entitled to count the period from 03.05.1976 to 08.02.1980 as qualifying service for the purpose of pensionary benefits and the respondent-Corporation is directed to release the necessary benefits to the petitioner, within a

period of 03 months from the date of receipt of certified copy of this order.

16.04.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No