

(2013) 05 P&H CK 0197

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 14148 of 2011 (O and M)

Satinder Pal Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: May 2, 2013

Citation: (2013) 171 PLR 411 : (2013) 4 SCT 613

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Advocate: S.K. Sharma, for the Appellant; Monica Chhibbar Sharma, D.A.G., Punjab for State, Mr. B.R. Bansal for Respondent No. 4 and Mr. Kapil Kakkar, for the Respondent

Final Decision: Dismissed

Judgement

Augustine George Masih, J.

Petitioner has approached this Court praying for quashing of the order dated 21.10.2008 (Annexure P-18) passed by the Director Technical Education and Industrial Training Department, Punjab-respondent No. 2 vide which his claim to count the earlier service rendered by him under the Punjab State Warehousing Corporation (for short "PSWC") for the period 17.2.1984 to 12.8.1985 and from 19.8.1985 to 22.10.1993 in the Punjab State Electricity Board (for short "PSEB") now Punjab State Power Corporation Limited towards pensionary benefits stands rejected. Briefly, the facts of the case are that the petitioner joined the PSWC as a Punjabi Steno on 17.2.1984 and continued as such till 12.8.1985. He applied through proper channel in the PSEB for appointment to the post of a Punjabi Steno. On being selected, he submitted his resignation on 17.8.1985 which was accepted by the Competent Authority vide order dated 25.11.1985. He joined the PSEB on 19.8.1985.

2. An advertisement was issued by the Department of Technical Education and Industrial Training, Punjab. In pursuance thereto, petitioner applied through proper channel and his application for appointment to the post of Punjabi Stenography Instructor was duly forwarded vide No. 121241 dated 19.9.1992 to the Director

Technical Education and Industrial Training, Punjab. On his selection and issuance of appointment letter, petitioner submitted resignation from the PSEB w.e.f. 22.10.1993 which was accepted by the competent authority and the petitioner joined the post of Punjabi Stenography Instructor on 23.10.1993 in the Department of Technical Education and Industrial Training.

3. The Government of Punjab issued instructions dated 14.7.1995 (Annexure P-4) for counting the entire service of a Government employee towards pensionary benefits which would include the service rendered in the autonomous bodies. In pursuance to these instructions, petitioner deposited an amount of Rs. 20,338/- on 17.3.1997, which he had received as retiral benefits from the PSEB on his resignation from there. Petitioner continued to serve the Department of Technical Education and Industrial Training and submitted a representation to the Department claiming counting of the service which he had rendered with the PSWC as also the PSEB. Increments and time bound promotional scale under the assured career progression scheme were also claimed by the petitioner but when no decision thereon was taken, he filed CWP No. 10012 of 2003. The case came up for hearing on 7.7.2003 and was disposed of by this Court with a direction to consider and decide the representation submitted by the petitioner by passing a speaking order. The representation of the petitioner was considered by the respondents and interdepartmental communication thereafter took place and the service book of the petitioner was completed. A final decision was, however, taken by the respondents rejecting his claim for counting of the service rendered by him in the PSWC and the PSEB by passing an order dated 21.10.2008 (Annexure P-18). It is this order which is under challenge in the present writ petition.

4. Counsel for the petitioner contends that the impugned order dated 21.10.2008 is not sustainable as the same is totally a non-speaking order. No reason whatsoever has been assigned by the Director Technical Education and Industrial Training-respondent No. 2. It has further been asserted that the claim of the petitioner is covered in his favour by the judgment passed by this Court in CWP No. 7520 of 2008 titled as J.K. Sharma and another v. The State of Punjab and others, decided on 13.10.2009 (Annexure P-20) wherein two similarly situated employees of the PSEB, who had applied in the Department of Technical Education and Industrial Training, Punjab, have been granted the benefit of the service rendered by them in the PSEB for the purpose of grant of pensionary benefits. Accordingly, prayer has been made for setting aside the impugned order and granting the benefit of counting of service rendered by the petitioner prior to his joining the Government service.

5. Reply to the writ petition has been filed by the PSWC-respondent No. 4 wherein a specific stand has been taken that the petitioner had served with them for a short period i.e. 17.2.1984 to 12.8.1985 as a Steno Typist and voluntarily tendered his resignation w.e.f. 12.8.1985 which was duly accepted by the competent authority

vide order dated 25.11.1985. Petitioner neither submitted any application through the answering respondent for joining PSEB nor sought any permission for the same nor his request was ever forwarded by the answering respondent to the concerned Department.

6. Separate reply has been filed by respondent No. 5-PSEB (now Punjab State Power Corporation Limited). In para 5 thereof, it has been admitted that the application of the petitioner for the post of Punjabi Stenography Instructor was forwarded to the Director, Technical Education and Industrial Training, Punjab vide Director/Personnel, Punjab State Electricity Board, Patiala Memo. No. 121241 dated 29.09.1992. The factum of the petitioner having submitted his resignation on his selection and appointment in the Department of Technical Education and Industrial Training has also been admitted. It has further been stated that the said resignation was duly accepted by the competent authority on 22.10.1993.

7. Separate reply on behalf of respondents No. 1 to 3 has been filed in Court wherein the facts, as have been stated by the petitioner, have been accepted. It has been asserted that the petitioner is not entitled to the benefit as has been claimed by him as the basic instructions, which entitle a government employee for counting the entire service rendered in the autonomous bodies owned by the Government for the purpose of pensionary benefits, are the instructions dated 14.5.1986 (Annexure R-1). As per these instructions, petitioner was required to give his option regarding the grant of pensionary benefits of his earlier service within the stipulated period of time of one year after joining the Government service. Since the petitioner joined Government service on 23.10.1993, he could have given his option for counting his earlier service upto 23.10.1994. He chose to deposit the amount of Rs. 20,338/- which he had received as retrial benefits from the PSEB on 17.3.1997 that would be beyond the period as prescribed under the instructions dated 14.5.1986 and, therefore, the claim of the petitioner, after due consideration, was rejected on merits. Since the petitioner did not exercise the option within the stipulated period, he is deemed to have opted to retain earlier benefits from the previous employer and, therefore, the petitioner cannot now be granted the benefit as has been claimed in the present writ petition.

8. Counsel for the respondents have argued their cases on the basis of their pleadings.

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

10. The claim of the petitioner has to be considered under Rule 3.17-A(1)(v) of the Punjab Civil Services Rules, Vol. II, Chapter 3, which reads as follows:-

(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.

11. Rule 7.5(1) and (2) of Vol. I Part I of the Punjab Civil Service Rules would also be relevant which reads as follows:

7.5(1) Resignation from a service or a post, unless it is allowed to be withdrawn in public interest by the appointing authority, entails forfeiture of past service. (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension.

(3) to (6) xxxx xxxx xxxx

12. A perusal of the above Rules would show that where a technical resignation has been submitted by an employee for taking up another appointment under the Government with proper permission of the competent authority would not entail forfeiture of past service and the same would qualify for pension.

13. Since the petitioner did not submit any application through proper channel nor sought any permission or requested forwarding of his application to the PSEB from his employer namely, PSWC, the period prior to his tendering resignation i.e. the period of service rendered by him from 17.2.1984 to 12.8.1985 with the PSWC, cannot be counted towards qualifying service for the grant of pensionary benefits as it would entail forfeiture of the same as per the Rules reproduced above.

14. However, as regards the service rendered by the petitioner from 19.8.1985 to 22.10.1993 with the PSEB would qualify for the grant of benefit of the said service as the petitioner admittedly had submitted his application for appointment to the post of Punjabi Stenography Instructor through the competent authority, which was duly forwarded to the Director, Technical Education and Industrial Training, Punjab vide Director/Personnel Memo. No. 121241 dated 29.9.1992. On his selection and appointment, the petitioner submitted his resignation which was duly accepted by the competent authority on 22.10.1993 prior to his joining the Department of Technical Education and Industrial Training, Punjab on 23.10.1993. The said service is required to be counted towards the grant of benefit of pension and other pensionary benefits. It has also been admitted that the amount of Rs. 20338/- was deposited by the petitioner on 17.3.1997 on receipt of retiral benefits from the Punjab State Electricity Board respondent No. 5. This would further entitle him to his claim. The objection of the respondents that the petitioner was required to opt for grant of pensionary benefits within a period of one year from the date of absorption in Government service cannot be accepted to be a good ground which can be pressed into service by them at this belated stage in the light of the fact that they had retained the amount of Rs. 20,338/-, received by the petitioner from respondent No. 5, on 17.3.1997. Respondents having accepted the said amount and having retained the same, would be deemed to have accepted the request of the petitioner

for granting him the benefit of prior service rendered by him under the PSEB for the grant of pensionary benefits.

15. Further, the claim of the petitioner is covered in his favour by the judgment passed by this Court in J.K. Sharma's case (supra) wherein law on the issue in question, as in the present case, has been dealt with by this Court in detail and the conclusion reached is that where a PSEB employee had, with the permission of the competent authority, applied for the post under the Punjab Government and having been selected and issued appointment letter, submitted a technical resignation for taking up the assignment under the Government, would be entitled to the counting of the previous service rendered by him under the PSEB for the purpose of grant of pensionary benefits. The case of the petitioner is covered by this judgment. In view of the above, the present writ petition is allowed in part. Order dated 21.10.2008 (Annexure P-18) is hereby quashed; direction is issued to respondents No. 1 to 3 to count the previous service rendered by the petitioner in the PSEB i.e. from 19.8.1985 to 22.10.1993 for the purpose of grant of pensionary benefits. The claim of counting of service rendered by the petitioner in PSWC is rejected.