

(2011) 09 P&H CK 0184

High Court Of Punjab And Haryana At Chandigarh**Case No:** C.W.P. No. 20912 of 2008

Dev Dutt

APPELLANT

Vs

Haryana Urban Development
Authority and OthersRESPONDENT

Date of Decision: Sept. 5, 2011**Hon'ble Judges:** Nirmaljit Kaur, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Nirmaljit Kaur, J.

The prayer in the present petition is for quashing of the order dated 08.09.2008 (Annexure P-9) passed by Respondent No. 1, vide which, the claim of the Petitioner for counting the benefit of past service towards qualifying service has been rejected.

2. The facts, in short, are that the Petitioner retired on superannuation while posted as Assistant in the Office of Estate Officer, HUDA, Faridabad on 30.11.2005. He was an employee of the Haryana Food and Supplies Department since 13.04.1973 as Sub-Inspector. On 11.09.1978, he was retrenched along with some other employees. The Chief Secretary to Government Haryana vide P-2 conveyed policy of Haryana Government directing all the MDs/Heads of Nigams/Cooperative Banks/HUDA etc. that in view of Haryana Government decision, these retrenched employees are to be absorbed first and till their absorption, No. other person is to be appointed. It was also directed that all Heads should get non-availability certificate from the Director Food and Supplies, Haryana and only they can make other appointments. On 21.11.1978, the Petitioner was appointed as Clerk in HUDA in the same pay scale and he resumed the duty on 30.11.1978. The Chief Administrator HUDA vide letter dated 03.06.1980 (Annexure P-4) in view of the Haryana Government Policy took decision and gave the benefit of past service in the Food Supplies towards increment and pay of the Petitioner was protected by giving benefit of past service. The Petitioner vide his representations Annexures P-7 and P-8 requested that he be

granted the benefit of past service towards qualifying service as the previous service was under the Haryana Government and on pensionable post. However, his claim was rejected.

3. Learned Counsel for Respondent No. 2 and 3 while opposing the prayer of the Petitioner submitted that the Petitioner had joined the department as Sub-Inspector, Food and Supplies Haryana on 13.04.1973 through the Employment Exchange on ad hoc basis as stop gap arrangement. His services were terminated on 11.09.1978. However, as per CSR Vol.II, Part-I under Rule-6.16(1) and 3.17 in the case of an officer retiring on or after 5th January, 1961, if he was holding substantively permanent post on the date of his retirement, his temporary or officiating service under the State Government without interruption by confirmation in the same or another post shall count in full as qualifying service except in respect of:

(i) Period of temporary or officiating service in non-pensionable establishment.

(ii) Deleted (Vide No. 1/2(55)88-2FR-II dated 04.02.1992.)

(iii) Period of service paid from contingencies.

4. The Petitioner remained posted in Food and Supplies Department on ad hoc basis w.e.f. 13.04.1973 to 11.09.1978 and this period cannot be counted for the purpose of qualifying service for pensionary benefits as per State Government Letter No. 2179-IFR-74/20589 dated 11.06.1974, whereby, the State Government had decided not to count the ad hoc services of the employee whose services had not been regularized in either of department by the Public Service Commission/Subordinate Service Selection Commission (now Staff Selection Commission).

5. Heard.

6. The averments made by the Petitioner in paras 3, 4 and 5 have not been denied by the Department-Respondents No. 2 and 3 i.e. Food and Supplies Department, whereas, Respondent No. 1-HUDA in response to the averments made by the Petitioner in paras 3, 4 and 5 submitted as under:

3. That the contents of para 3 of the Writ petition do not relate to the answering Respondent and would better be replied by the concerned Respondent.

4, 5. That in reply to the contents of para 4 and 5 of the writ petition, it is submitted that the Petitioner along with 19 others were given appointment on 21.11.1978 on the post of clerk. It is pertinent to mention here that the Petitioner has not been absorbed in HUDA as this was fresh appointment and not a continued service from Food and Supplies Department, Haryana or transfer in HUDA in any manner.

7. It is, therefore, not disputed that the Petitioner had worked with the Haryana Government on pensionable post continuously from 13.04.1973 to 11.09.1978 i.e. 5 years 4 months 29 days and was retrenched from Haryana Food and Supplies

Department along with some C.W.P. No. 20912 of 2008 4 other employees on 12.09.1978.

8. It is also not denied that the Government of Haryana issued specific directions vide letter dated 29.09.1978, placed on record as Annexure P-2 to all the Heads of Boards/Corporations/Federations/Nigams/Co-operative Banks etc. that till these employees retrenched from the Food and Supplies Department, Haryana are absorbed, No. other person is to be appointed by them and to this effect, non-availability certificate is to be obtained from the Director, Food and Supplies, Haryana. It is also not denied that the Petitioner was working on the pensionable post in the Food and Supplies Department, Haryana.

9. It is also an admitted position that the pay of the Petitioner in his previous service was protected as per the orders issued by the Chief Administrator, Haryana Urban Development Authority, Chandigarh vide Annexure P-4. The operative part of the said order reads as under:

After a careful consideration, it has been decided that in view of the policy of the State Government enunciated in their circular letter No. 2/3/78/GGSI dated 29th September, 1978 relating to these retrenched employees of the Food and Supplies Department, the past of these officials should be protected. It is, therefore, requested that they may be allowed the same pay on their appointment as Clerk in HUDA as they were drawing in the Food and Supplies Department before their retrenchment.

10. This Court in the case of Vijay Laxmi and Ors. v. State of Punjab and Ors. reported as 1994 (2) RSJ 502, in somewhat similar circumstances observed that the protection of pay etc. is indicative of the fact that the Petitioners were not to be denied the benefit of their service on their becoming the employees of the Government and the said benefit also extends towards pension. Para 3 of the same reads as under:

3. Indisputably, the projects etc. where the Petitioners were working, had been taken over by the Government vide order dated June 21, 1974 with effect from April, 1974. At that time, it has not been stated that the Petitioners shall not be given the benefit of their past service towards leave or pension. The order by which the projects were taken over is on record as Annexure P1 with the writ petition. A perusal thereof shows that the pay and allowances etc. were protected. It was nowhere mentioned that on being appointed in Government service, the Petitioners will not be given the benefit of past service towards pension etc. The condition was imposed only subsequently. Further more, No. reason for imposing such a condition have been disclosed. The protection of pay etc. is indicative of the fact that the Petitioners were not to be denied the benefit of their service on their becoming the employees of the Government. The benefit of their past service towards pay was duly protected. Once the past service has been recognised for the purpose of pay,

there appears to be No. justification for denying them the same benefit towards pension etc. The admitted position is that the petitioners had served the Board which is virtually an instrumentality of the State for long period ranging from 10 to 16 years before their absorption in Govt. Service. The denial of the benefit claimed by the Petitioners would cause them a heavy recurring loss. It would be unfair. It would be arbitrary.

11. In the present case also, it is admitted that the pay of the Petitioner in the previous service was protected.

12. In view of the above, the present petition is allowed and the order dated 08.09.2008 (Annexure P-9) passed by Respondent No. 1 is set aside It has been brought to the notice of this Court that the Petitioner has since died and he is survived by his wife-Kaushalya, three daughters and one son. Accordingly, the Respondents are directed to grant the benefit of past service rendered by husband of the Petitioner in the Food and Supplies Department from 13.04.1973 to 11.09.1978 towards qualifying service in accordance with law.