(2016) 10 P&H CK 0046

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 22642 of 2012

Mukhtiar Singh		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: Oct. 5, 2016

Acts Referred:

- Punjab Civil Services Rules (Volume II) - Rule 4.2, Rule 5.3

Citation: (2016) 4 LawHerald 3635

Hon'ble Judges: Mr. Kuldip Singh, J.

Bench: Single Bench

Advocate: Mr. R.K. Arora, Advocate, for the Petitioner; Mr. R.S. Pathania, DAG, Punjab and Mr. Rahul Sharma, Advocate, for the Respondents No. 5

Final Decision: Allowed

Judgement

Kuldip Singh, J.(Oral) - By way of this writ petition filed under Articles 226/227 of the Constitution of India the petitioner seeks issuance of a writ of mandamus directing respondents No. 1 to 4 to consider and finalise the pension case of the petitioner and to release all due pensionary benefits along with interest for the service rendered under Punjab Government.

2. The facts which are necessary for the disposal of the present writ petition are that the petitioner Mukhtiar Singh, who is an ex-serviceman joined the services of Punjab Government as Chowkidar in February 1969 at Government Tanning Centre, Kotkapura under District Industries Centre, Moga. On 30.06.1984 on account of closure of said Government Tanning Centre, Kotkapura, the services of the petitioner were transferred to the Punjab State Leather Development Corporation where he joined the post of Chowkidar on 01.07.1984. The services rendered in the Punjab Government Tanning Centre, Kotakapura was pensionable whereas the job in the Punjab State Leather Development Corporation was not pensionable.

3. The petitioner ultimately retired from service on 31.08.1990. on attaining the age of superannuation. According to the petitioner, the service rendered by him in Punjab Government Tanning Centre, Kotakapura was pensionable, therefore, he is entitled to pension for the period he rendered in the said department. He also claims that the similarly situated employees namely Sh. O.N. Raina, Supervisor; Sh. Mohinder Singh, Instructor; Sh. Mohd. Ismail, Demonstrator; Sh. Chaman Lal Sadana, Foreman, who were also transferred along with the petitioner were granted the same benefits of pension and accordingly, they were paid the retiral benefits after rendering more than 10 years of service.

4. Now, the petitioner claims that his case for pension should be finalised after considering the service rendered by him in Punjab Government Tanning Centre, Kotakapura and he should be granted the same benefits.

5. Respondents No. 1 to 4, in the reply have not disputed the period of service, though they corrected the date of commencement of service to April, 1974 whereas the petitioner claims that the same is February, 1969. It was stated that the pension case of the petitioner was submitted to the office of Accountant General, Punjab by respondent No. 3-the General Manager, District Industries Centre, Moga but the case was returned with certain objections and after removal of said objections, the case was resubmitted wherein the Accountant General, Punjab has taken the plea that pension is not admissible to the petitioner because the Punjab Government Tanning Centre, Kotakapura has been absorbed in Punjab State Leather Development Corporation. Accountant General-respondent No. 4 in the reply has admitted the release of gratuity but have taken the view that pension is not admissible as the Punjab Government Tanning Centre, Kotakapura stood absorbed in the Punjab State Leather Development Corporation.

6. I have heard learned counsel for the parties.

7. In the written statement, respondent No. 1 and 3 have not denied that Sh. O.N. Raina and others who were transferred along with the petitioner to the Punjab State Leather Development Corporation were granted the retiral benefits after considering their service rendered under the Industries department, Punjab Government. Here the job of the petitioner under the Industries department was pensionable whereas the job in the Punjab State Leather Development Corporation was not pensionable. On account of closure of the said the Punjab Government Tanning Centre, Kotakapura where the petitioner had worked, his services were transferred as it was absorbed in the Punjab State Leather Development Corporation. It comes out that the petitioner has served for more than 15 years and 4 months in the Punjab Government Tanning Centre, Kotakapura under the Punjab Government which pensionable job.

8. Rule 5.3 and 4.2 of the Punjab Civil Services Rules, Volume�2, provides as under: -

"Rule 5.3

(1) When a Government employee is transferred from pensionable Government service to a non-pensionable establishment, he cannot be granted any pension or gratuity admissible to him for the qualifying portion of his service until he actually retires from the non-pensionable establishment to which he is transferred.

(2) A permanent Government employee who may be permitted to be permanently absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by Government or in or under a body controlled or financed by Government, or Municipality, Panchayat Samiti or Zila Parishad, shall, if such absorption is declared by Government to be in the public interest, be deemed to have retired from Government service from the date of such absorption and shall be eligible to receive retirement benefit which he may have elected or deemed to have elected, and from the date of such absorption or the date of his voluntary retirement, whichever is later. Each such Government employee is required to exercise an option within six months of his absorption for either of the alternatives indicated below�

(a) receiving the monthly pension and death-cum-retirement gratuity under the usual Government arrangements ; or

(b) receiving the death-cum-retirement gratuity and a lump sum amount in lieu of pension worked out with reference to the commutation table obtaining on the date from which the commuted value becomes payable.

(3) Where no option is exercised within the specified period the employee will be automatically governed by alternative (b). An employee opting for alternative (a) is entitled to commutation of a portion of the pension admissible to him in accordance with the provisions of rules contained in Chapter XI:

Provided that Government shall have no liability for payment of family pension in such a case:

Provided further that no declaration regarding absorption in the public interest in a service or post in or under such Corporation, Company, Municipality, Panchayat Samiti or Zila Parishad shall be required in respect of a Government employee whom Government may, by order, declare to be a scientific employee."

"Rule 4.2

"(1) A Government employee appointed to a service or post after the twenty -sixth day of October, 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension), the actual period not exceeding one -fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years, or a period of five years, whichever is less, if the service or post to which the Government employee is appointed is one �

(a) for which post-graduate research or specialist qualification, or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty-five years of age are normally recruited:

Provided that this concession shall not be admissible to a Government employee unless his actual qualifying service at the time he quits Government service is not less than ten years:

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

(2) Omitted.

(3) Omitted.

(4) A Government employee, who is blind, deaf, dumb or otherwise orthopaedically handicapped or widow at the time of his entry into Government Service, shall be eligible to add to his service qualifying for superannuation pension a period of five years.

(5) A Government employee, who becomes blind, deaf, dumb or otherwise orthopaedically handicapped during the service and is retired from service as a result thereof, shall also be eligible to add to his service qualifying for superannuation pension, a period of five years.

9. The combined reading of the said two rules shows that when the petitioner retired from non-pensionable job, he is entitled to the pension as per the service rendered by him on pensionable job. The result would be that the petitioner is entitled to all the pensionary benefits for service rendered by him in the Punjab Government under the Industries department. The same benefit was allowed to some others as well. Thus, there is no reason to deny the same to the petitioner.

10. In view of the above, the writ petition is allowed and the respondents are directed to grant the pension and other pensionary benefits to the petitioner after computing his service rendered in the Punjab Government Tanning Centre, Kotakapura and release all the benefits within three months from the date of receipt of copy of this judgment. Interest @ 9% per annum is also payable only for 38 months prior to the date of filing the writ petition.