

(2016) 10 P&H CK 0189

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 8788 of 2014 (O&M).

Anand Singh - Petitioner @HASH State of Haryana and Others

Date of Decision : 05-10-2016

Acts Referred:

Citation : (2017) 1 SCT 250

Hon'ble Judges : Tejinder Singh Dhindsa, J.

Bench : Single Bench

Advocate : Y.P. Malik, Advocate, for the Petitioner; Ravi Pratap Singh, AAG, Haryana, for the Respondent; Hitesh Pandit, Additional Advocate General, Haryana for Ashok S. Chaudhary, Advocate, for the Respondent No. 2 to 4

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J. - Petitioner who was serving on the post of Clerk with the Haryana Urban Development Authority (in short "HUDA") retired on 29.02.2012 upon attaining the age of superannuation.

2. Claim set up in the instant petition is for counting of his past service i.e. from 05.05.1977 to 03.11.1989 with Haryana Tanneries Limited towards qualifying service for computation of pension and other retiral benefits.

3. Brief facts on which there is no dispute may be noticed. Petitioner was initially appointed under the Haryana Tanneries Limited on 05.05.1977 as Machine Operator. Having met with an accident during the course of his duties and having suffered injuries, he was adjusted on the Clerical side and as a Clerk w.e.f. 11.12.1982. Petitioner was promoted to the post of Store Keeper on 15.10.1986. In the year 1988, State Government ordered the closure of Haryana Tanneries Limited, Jind and the employees thereof including the petitioner were retrenched. Vide order dated 26.10.1989 at Annexure P-3, petitioner was offered appointment on the post of Clerk under HUDA and which he accepted. Petitioner stands retired w.e.f. 29.02.2012.

4. Counsel appearing for the petitioner has argued that the petitioner had been adjusted and granted appointment with HUDA in pursuance to a Division Bench

order dated 01.12.1988 passed in CWP No.9469 of 1988 that had been instituted by the Haryana Tanneries Limited Employees Union (Regd.), Jind. Contention raised is that it is in pursuance to the directions issued by the Division Bench that the retrenched employees including the petitioner were adjusted either as Class-IV employees or other managerial staff in the Government Corporations or Board and as per qualifications possessed by them. It is contended that under such circumstances, there would be no justifiable basis for denying to the petitioner the benefit of past service rendered under the Haryana Tanneries Limited for computing and calculating pensionary benefits.

5. Per contra, learned counsel appearing for HUDA would place reliance upon Memo dated 03.10.2013 at Annexure P-9 and would submit that as per Instructions issued by the State Government dated 16.10.1998 as also 03.07.2003, the petitioner is not entitled for counting of past service rendered in Haryana Tanneries Department towards pensionary benefits.

6. Counsel for the parties have been heard at length.

In CWP No. 9469 of 1988 filed by the Haryana Tanneries Employees Union (Regd.), Jind, directions had been issued to the State Government to take back and adjust the retrenched employees either as Class-IV employees or as managerial staff in the Corporations or Boards as per qualifications held by such staff. It was directed that such absorption of the retrenched employees would be done within a period of six months from the date of passing of the order i.e. 01.12.1988. Relaxation of age limit wherever required was also to be granted. The Division Bench further made it clear that any appointment which is made in pursuance to the judgment and order would be treated as a fresh appointment for purpose of seniority amongst the employees. The issue as regards taking into account past service rendered in the Haryana Tanneries Limited for grant of pensionary benefits was specifically dealt with and in the following terms:

"The retrenched employees also will be entitled to take into account the service rendered in the Haryana Tanneries Ltd. in case they are appointed in pensionable jobs for the purpose of pension and other retirement benefits."

7. It is not in dispute that the present petitioner had been offered appointment on the post of Clerk under HUDA in deference to and in obedience to the Division Bench directions contained in the order dated 01.12.1988 while deciding CWP No.9469 of 1988 at Annexure P-2. It has also been conceded that the post on which the petitioner had been so appointed as a Clerk in HUDA was a pensionable job.

8. In the considered view of this Court, the claim set up in the instant petition stands crystallized in favour of the petitioner in view of the Division Bench order dated 01.12.1988 passed in CWP No.9469 of 1988 and as reproduced and extracted herein above.

9. Counsel for the petitioner has apprised the Court that the State Government

had sought review of the Division Bench order dated 01.12.1988 but the review application was dismissed. Even such submission has not met with any rebuttal at the hands of the counsel appearing for the State Government as also for HUDA.

10. The reference made in Memo dated 03.10.2013 (Annexure P-9) to the Instructions dated 16.10.1998 and 03.07.2003 to deny to the petitioner benefit of past service to count towards pensionary benefits is wholly misconceived. The claim of the petitioner stands settled by an order of this Court. The Instructions that may have been issued by the State Government cannot possibly operate to negate the judgment and order passed by Division Bench of this Court and in favour of an employee.

11. It may also be apposite to take note that the petitioner along with certain others had earlier approached this Court by filing CWP No.11043 of 1993 seeking benefit of pay protection under HUDA and by giving benefit of service rendered by them earlier in point of time with Haryana Tanneries Limited, Jind. The aforementioned writ petition was disposed of vide order dated 02.08.1994 (Annexure P-6) directing respondent-HUDA to consider the claim and to decide representation that had already been filed by the petitioners therein. In purported compliance of the directions issued by this Court, order dated 02.08.1994 at Annexure P-6 has already been passed and whereby the present petitioner along with another employee has been granted benefit of pay protection and by taking into reckoning the past service rendered by him with the Haryana Tanneries Limited, Jind. The contents of the order dated 02.08.1994 at Annexure P-6 are not in dispute. HUDA having granted benefit of pay protection to the petitioner by giving benefit of service rendered in Haryana Tanneries Limited, Jind cannot possibly now be permitted to take an anomalous situation of denying benefit of same very service for grant of pensionary benefits.

For the reasons recorded above, the Memo dated 03.10.2013 at Annexure P-9 is set aside. Petitioner is held entitled to the grant of pensionary benefits by taking into account his past service rendered with the Haryana Tanneries Limited i.e. w.e.f. 05.05.1977 to 03.11.1989 for computing his pensionary benefits. Such direction is being passed particularly in the light of his rights that already stand crystallized in terms of judgment dated 01.12.1988 passed by a Division Bench of this Court in CWP No.9469 of 1988 titled as The Haryana Tanneries Employees Union (Regd.), Jind v. State of Haryana and others.

The requisite financial benefits be computed and released to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

Petition allowed in the aforesaid terms.