
(2013) 04 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 5475 of 2010 (O and M)

Bhagat Ram Aggarwal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Citation : (2013) 4 SCT 619

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : D.S. Rawat, for the Appellant; Harish Rathee, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.—The petitioner served as Junior Engineer with the P.W.D. (B&R) Department, State of Haryana from 12.4.1966 till 8.2.1980. On 8.2.1980 petitioner joined the Haryana Warehousing Corporation as Sub Divisional Engineer. Petitioner retired from the post of Executive Engineer from the respondent No. 3-Corpora-tion on 30.6.2005 upon attaining the age of superannuation. Challenge in the instant writ petition is to the order dated 6.1.2010 (Annexure P-10) passed by the Engineer-in-Chief, P.W.D. (B&R), Haryana, whereby his claim for grant of pro-rata retirement benefits including pension, gratuity etc. for the period w.e.f. 12.4.1966 to 8.2.1980 has been rejected. Brief facts that require notice are that the petitioner initially joined the P.W.D. (B&R) Department as Junior Engineer on 12.4.1966. The Haryana Warehousing Corporation, respondent No. 3 issued advertisement for filling up a post of Sub Divisional Engineer on 24.1.1980. As per advertisement the date of issuance of the application form was 30.1.1980 and the date of submission of the application form was also 30.1.1980. Even a written test for the applicants was scheduled for the same date i.e. 30.1.1980. The date of interview for the candidates successful in the test was fixed as 31.1.1980. The petitioner being eligible for the post of Sub Divisional Engineer with the Haryana Warehousing

Corporation submitted his application form on the stipulated date and appeared in the written test. He even appeared in the interview and upon being selected was called upon to join on the post on 8.2.1980. Against such factual backdrop the petitioner submitted a request before his parent employer i.e. the Haryana P.W.D. (B&R) Department on 30.1.1980 for issuance of No Objection Certificate. On 8.2.1980 the petitioner submitted his resignation to respondent No. 2 for joining on the post of Sub Divisional Engineer with the respondent- Corporation. However, the resignation of the petitioner was not accepted. In terms of order dated 26.4.1984 respondent No. 2 took a decision as regards retaining the lien of the petitioner on the permanent post of Junior Engineer and to treat the time spent by the petitioner with the respondent No. 3- Corporation as on deputation. On 13.7.1984 the petitioner was served with a charge sheet under Rule 7 of the Punishment & Appeal Rules raising the following two specific Articles of Charge:--

(i) Having undertaken employment as Sub Divisional Engineer in the Haryana Warehousing Corporation, Chandigarh w.e.f. 8.2.1980 without the previous sanction of the govt. in violation of Rule 15 of the Govt. Employees (Conduct) Rules, 1966.

(ii) The petitioner having been absenting himself from duties willfully since 8.2.1980.

2. The petitioner responded to the charge sheet in terms of submitting a reply furnishing the details as regards the short time frame stipulated in the advertisement issued by the respondent-Corporation as also highlighting the fact that he had applied for the requisite No Objection Certificate to the respondent-department before applying for the post of Sub Divisional Engineer. Even though, the petitioner had been charge sheeted under Rule 7 i.e. for imposition of a major penalty but vide order dated 8.1.1985 (Annexure P-4) petitioner was awarded punishment of Censure. Thereafter, vide order dated 26.2.1985 (Annexure P-5) the resignation of the petitioner from the post of Junior Engineer was also accepted w.e.f. 8.2.1980. It is the pleaded case of the petitioner that numerous representations had been furnished to respondents No. 1 and 2 to grant him pension for the period 12.4.1966 to 8.2.1980 and which evoked no response. Finally even a legal notice dated 10.11.2009 (Annexure p-9) was got served upon respondents No. 1 and 2 for grant of pro-rata retiral benefits in relation to the period for which the petitioner had served the respondent-Department on the post of Junior Engineer. Such legal notice had been responded to in the light of impugned memo dated 6.1.2010 (Annexure P-10) taking a view that since the resignation of the petitioner was accepted from back date i.e. 8.2.1980 as per his own request, the question of pensionary benefits for his service from 12.4.1966 to 8.2.1980 from the P.W.D. (B&R) Department, Haryana does not arise.

3. Mr. D.S. Rawat, learned counsel appearing for the petitioner has vehemently argued that the petitioner would be entitled for the benefit of pro-rata retirement benefits for the period in question in the light of office memo dated 7.1.2002

(Annexure P-6) issued by the Govt. of Haryana, Finance Department on the subject of counting of service for the purpose of pension of the employees of the State Govt. on their appointment in an autonomous body under the Haryana Govt. or on seeking absorption in a State Autonomous Body or vice versa. Counsel would place reliance upon para 6 of such office memo which reads in the following terms:--

On appointment from pensionable organization to pensionable organization:--

The Govt./State Autonomous Body will discharge their pension liability by paying in lump sum as a one time payment, the pro-rata pension/service gratuity and death-cum-retirement gratuity for the period of service qualifying for pension up to the date of appointment in a State Autonomous Body or any Department under Haryana Govt., as the case may be, irrespective of the fact the employee was permanent or temporary. The pro-rata pension on lump sum will be determined with reference to the communication table in Chapter 11 of Punjab CSR Vol. II, as amended from time to time.

4. Counsel would argue that in the light of memo dated 7.1.2002 (Annexure P-6) an employee has to submit a technical resignation before joining the State Autonomous Body and such resignation would not entail forfeiture of past service for the purpose of retirement benefits. Counsel has further argued that in the light of the fact that the resignation of the petitioner had been accepted vide order dated 26.2.1985 (Annexure P-5) and w.e.f. 8.2.1980, there would be no impediment in so far as the benefit of pro-rata benefits are concerned in relation to the service rendered by the petitioner for the period w.e.f. 12.4.1966 to 8.2.1980 with the State Govt.

5. Per contra, learned counsel appearing for the State would advert to the common written statement filed on behalf of respondents No. 1 and 2 and would submit that the request for No Objection Certificate was received in the office of respondent No. 2 only on 5.2.1980, even though, the same was dated 30.1.1980. The stand taken on behalf of the State is that the claim of the petitioner would not be covered in the light of memo dated 7.1.2002 as such memo is not to apply in case of employees, where the selection/appointment in the other entity is not through proper channel. It has been argued on behalf of the State that since the petitioner had joined the Haryana Warehousing Corporation on 8.2.1980 without obtaining the requisite No Objection Certificate and without even acceptance of his resignation, his employment with such Corporation cannot be construed to have been facilitated through proper channel.

6. Having heard learned counsel for the parties at length and having perused the pleadings on record, I am of the considered view that the action of the State Govt. in denying to the petitioner the benefit of pro-rata pensionary benefits for the period w.e.f. 12.4.1966 to 8.2.1980 is arbitrary and violative of Articles 14 and 16 of the Constitution of India.

7. The memo dated 7.1.2002 (Annexure P-6) clearly envisages that such office

memo would apply to employees who have applied for the job from one organization to the other through proper channel. Still further, in terms of para 6 the Govt./State Autonomous Body, as the case may be, will discharge their pension liability by paying in lump sum as a one time payment, the pro-rata pension/service gratuity and death-cum-retirement gratuity for the period of service qualifying for pension up to the date of appointment in a State Autonomous Body or any department under the Haryana Govt. as the case may be irrespective of the fact that the employee was permanent or temporary. The admitted position of fact is that the petitioner was a confirmed employee with the P.W.D. (B&R) Department, Haryana and had served on the post of Junior Engineer w.e.f. 12.4.1966 to 8.2.1980. On 8.2.1980 he joined the Haryana Warehousing Corporation i.e. the State Autonomous Body on the post of Sub Divisional Engineer. The resignation of the petitioner stands accepted in the light of order dated 26.2.1985 (Annexure p-5) but w.e.f. 8.2.1980 itself. As such, the resignation having been accepted, it shall be deemed that post facto permission stood granted to the petitioner and the objection raised in the impugned memo dated 6.1.2010 (Annexure P-10) for denying the pensionary benefits for the period w.e.f. 12.4.1966 to 8.2.1980 cannot sustain.

8. Even otherwise, the State Govt. cannot proceed in a manner oblivious to the factual situation, wherein the petitioner applied for a post advertised by the Haryana Warehousing Corporation on 30.1.1980 and submitted the application for grant of No Objection Certificate on the same date. The State Govt. in its reply has admitted that it had received such application on 5.2.1980. The request for resignation from the post of Junior Engineer under the respondent-department was submitted on 8.2.1980 i.e. the date the petitioner joined the respondent-Corporation on the post of Sub Divisional Engineer. No explanation has been forthcoming as regards the inaction on the part of the State Govt. on the application seeking No Objection Certificate that had admittedly been received on 5.2.1980 itself. The State Govt. cannot derive any advantage in having sat over the matter. In the peculiar facts of the case and specially in the light of the fact that the resignation of the petitioner having been accepted later in point of time but w.e.f. 8.2.1980 it cannot be accepted that the petitioner had sought employment in another State Autonomous Body without following proper channel. As such, the claim of the petitioner for grant of pro-rata pensionary benefits from the period w.e.f. 12.4.1966 to 8.2.1980 is found covered in the light of memo dated 7.1.2002 (Annexure P-6).

9. A similar issue as regards the entitlement of an employee to be paid pension in lieu of the service rendered with the Govt. of Haryana prior to joining the service of the National Mineral Development Corporation Ltd. i.e. a Govt. of India Undertaking came up for consideration before this Court in case of M.M. Lal Bareja Vs. State of Haryana and Others, . While examining such issue in the light of Rules 3.17 and 4.19 (b) contained in Chapter III of the Punjab Civil Service Rules (Vol. II) as applicable to the State of Haryana, it was held that pension is payable even to such an employee who was holding a temporary post under the

State Govt. and who may have subsequently resigned from the previous post in order to join another service under the Central or the State Govt. It was further held that the rules contemplate the grant of pension to a person who has resigned from service in order to take up another appointment and such resignation is not to be treated as resignation from public service.

10. For the reasons recorded above, the present writ petition is allowed. The impugned order dated 6.1.2010 (Annexure P-10) is quashed. The petitioner is held entitled to the benefit of pro-rata pension and other admissible retirement benefits for the period w.e.f. 12.4.1966 to 8.2.1980 i.e. the service rendered as a confirmed employee under the Haryana P.W.D. (B&R) Department. Such benefit be released in favour of the petitioner within a period of two months from the date of receipt of a certified copy of this order. Petition allowed in the aforesaid terms.