
(2016) 01 P&H CK 0237

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 15349 of 2014 in/and CWP No. 21363 of 2013

Er. Suchitra Chaudhary

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Punjab Civil Services Rules (Volume II) — Rule 3.17, 4.19

Citation : (2016) 2 SCT 809

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : Keshav Gupta, AAG, Haryana, Pardeep Singh Poonia, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J. - C.M. No. 15349 of 2014

1. Application is allowed as prayed for.
2. Accordingly, replication along with Annexures P-17 to P-27 are taken on record.

CWP No. 21363 of 2013

Petitioner has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus directing the respondents to protect the pay of the petitioner by counting the service rendered in H.P.G.C.L (for short "Power Corporation") and also to give other benefits like promotions, higher pay scale and seniority etc before her absorption in Haryana Vidyut Prasaran Nigam Ltd. (for short "Nigam"), as mentioned in the legal notice (P-16)

3. Petitioner was initially appointed as an Assistant Engineer/Electrical (Trainee) in Power Corporation in the pay scale of RS. 8000-275-10200-EB-275-13500 vide appointment letter dated 20.12.2007 and was proceeded on deputation in the office of Secy, BBMB, Chandigarh vide order dated 07.07.2009 and joined as

SDO/Carries on 08.08.2009.

4. Thereafter, in response to advertisement No. 2/2009 by Haryana Public Service Commission, she applied for the post of Assistant Engineer (Electrical) through proper channel vide letter dated 21.10.2009 and was allowed vide letter dated 28.10.2009. She was selected in Nigam Ltd as per her merit and option and was offered the post of Assistant Engineer (Electrical) vide memo dated 05.06.2010. The petitioner then requested for transfer of bond liabilities or waive off the bond period on 21.06.2010, which was executed at the time of joining. This liability was transferred to Nigam and she was relieved of her duties on 16.08.2010.

5. The petitioner submitted his technical resignation, which was accepted by the Power Corporation authorities and she was relived of her duties on 16.08.2010 and thereafter, she joined her duties in the Nigam. In office order dated 16.08.2010, when she tendered her technical resignation for administrative reasons, it has been clearly mentioned by the authorised signatory i.e Deputy Secy/Estt (G) for the Managing Director of Power Corporation in a copy forwarded to CAO, HPGCL, Panchkula " He is requested that record of above mentioned certificate may also be made in the service book of the officer under proper attestation to enable her to get her previous service benefit and pension as mentioned in her offer appointment. But the concerned authorities have not given the benefits of previous service by not treating her service rendered in Power Corporation for the period 20.12.2007 to 16.08.2010 as qualifying service for the purpose of promotion and other service benefits such as increment, seniority, ACP etc.

6. Petitioner joined her new assignment with Nigam at Gurgaon on 21.08.2010 (FN) as Assistant Engineer (Electrical) in the pay scale of RS. 9300-34800+5400 vide appointment letter dated 20.08.2010. Petitioner also submitted a representation for pay protection and counting of past service on 15.04.2011, which was rejected on 17.01.2012 by observing that the request was not found feasible of acceptance.

7. Similar benefit has been given to other employees i.e Sh Sukhpal Singh, who was given offer of appointment of Assistant Engineer/Electronics Training vide memo dated 05.09.2007 and joined his assignment on 06.09.2007 in the office of Chief Engineer/FTPS, Haryana Power Generation Corporation Ltd. Similarly, Anil Kumar was also given the benefit of past service, who was appointed as Assistant Engineer (Civil) in Haryana Power Generation Corporation Ltd.

8. On notice, a written statement has been filed by respondent No. 2 admitted that the petitioner joined as Assistant Engineer in Nigam in 2010 and the representation submitted by the petitioner was also dealt with and not found feasible for acceptance in view of the fact that she was intimated well in advance i.e prior to her joining in the Nigam that she would be treated as a new entrant in the services of Nigam for all intents and purposes and no terminal benefits of

past service rendered in Power Corporation will be transferred to the other power utility. Reference has been made firstly to para 6(x) of the offer of appointment issued to the petitioner, which reads as under:-

6(x) If you are at present employed in Central/State Government/Semi Govt./ Autonomous Body etc, you will have to resign your present post before you are allowed to join the HVPNL service. It should clearly be understood that you will be treated as new entrant in the service of HVPNL for all intents and purposes. Ms. Suchitra Chaudhary in compliance of the offer of appointment issued to her, reported her consent and accepted the offer of appointment on the terms and conditions mentioned therein. Further while applying for the post of Assistant Engineer (Electrical) in UHGVNL/HVPNL advertised through HPSC, a NOC was issued to the petitioner by the HPGCL authorities, vide memo dated 10.12.2008 (R-2/1), subject to the following conditions:-

1. That you will have to complete all the terms and conditions as contained in the offer of appointment of Assistant Engineer memo dated 29.11.2007 before joining UHGVNL/HVPNL (on selection).

2. That no terminal benefits of the past service rendered in HPGCL by you will be transferred to the other power utility and you will have no right to claim your lien on the post of AE from the date of your leaving the services of HPGCL on your selection and joining the other power utility and you will be relieved from the post of AE presently held by you in HPGCL after completion of all the required formalities and acceptance of your resignation by the Competent authority, in the even of your selection and joining the post of AE (Electric) in UHGVNL/HVPNL."

9. Written statement has also been filed by respondent No. 3 admitting the date of appointment of the petitioner i.e 29.11.2007 and admitted that she was issued NOC for appearing in interview for the post of AE/Elect/UHGVNL and HPVNL, conducted by HPSC vide memo dated 10.12.2008 (P-3) on her request dated 31.07.2008 on certain terms and conditions. On her selection in Nigam, she submitted technical resignation from the post of Assistant Engineer (Electrical) w.e.f 17.08.2010 (A.N) and requested to waive off remaining bond period or transfer of bond liabilities to other Power Utilities i.e HVPNL to join her new assignment in the HVPNL. The petitioner was requested to execute a fresh bond agreement and the same was executed by her on 06.08.2010 stating that if petitioner fails to service HVPNL (Other Power Utility) also for remaining period of the original bond period i.e 23.12.2010 executed with Power Corporation then she will refund the entire pay and allowance etc and any other expenses incurred by the Corporation along with 9% interest per annum. Thereafter, the technical resignation of the petitioner was accepted w.e.f 17.08.2010 in terms of Rule 4.19 (B) of CSR Vol-II, to enable her to join new assignment. It was further certified that the petitioner had tendered technical resignation on administrative reason to satisfy the technical requirement to join the new assignment in terms of Note 3(2) of Rule 3.17 of CSR, Vol II, Part I. Further it has been stated that no request to count the past service rendered by the petitioner with the Power Corporation

was received either from Nigam or from the petitioner till date Thus, she has no cause of action quo respondent No. 3.

10. The petitioner filed a replication to the written statement filed by respondent No. 2 and stated that as per Annexure P-17 the six months bond period was transferred from Power Corporation to Nigam vide memo dated 03.08.2010 and if Power Corporation and Nigam are separate legal entities, then transfer of bond cannot be made. The service book of the petitioner was also sent to respondent No. 2 by respondent No. 1 vide memo dated 11.08.2011 (P-18). Further during the tenure of the petitioner with Power Corporation, departmental account examination was conducted by the Power Corporation and the result was declared by Nigam vide office order dated 20.01.2009. The petitioner cleared three papers and filed re-evaluation in one paper, which was declared by respondent No. 2.

11. Further before joining the Nigam, the petitioner cleared the Departmental Account Examination vide office order dated 24.09.2009 and also cleared the safety test code vide office order dated 06.11.2008 during her tenure in Power Corporation (P-18/A). The petitioner sought exemption from appearing in Departmental Accounts examination vide letter dated 26.04.2014 (P-19), which was declined and was denied promotion on the ground that she has not cleared the Safety Test Code, vide office orders dated 27.06.2014 and 14.07.2014 (P-20 and P-20/A) She further requested vide letter dated 17.07.2014 to consider her name for promotion to the post of AEE (Provisional) as she was debarred vide office order dated 27.06.2014 and being denied promotion due to non-clearing of Safety Code Test in Nigam. Copies of letter dated 17.07.2014 and office order dated 10.07.2014 are annexed as Annexure P-21 and P-21/A. Further vide letter dated 01.08.2014 (P- 22), the competent authority had considered the request of the petitioner for grant of exemption for passing Departmental Accounts Examination for Engineering Officers and stated the petitioner will be exempted subject to the submission of undertaking by the petitioner in a shape of affidavit to the extent that the petitioner will not claim the benefit of past service rendered in Power Corporation.

12. Petitioner then submitted a letter dated 29.08.2014 (P-23) along with affidavit (P-24) containing therein that she will not pursue the departmental examination in the writ petition filed in this Court as required vide letter dated 01.08.2014.

13. Respondent No. 2 vide memo dated 22.09.2014 again requested the petitioner to submit the affidavit in the lines as requested vide office memo dated 01.08.2014 (P-25) or to appear in the Departmental Accounts examination. Further vide letter dated 09.10.2014 (P-26), petitioner was informed either to submit the affidavit or to appear in the examination .

14. Reference has been made to order dated 21.10.2013 (P-27) whereby similar situated Vinod Kumar, AE was given the benefit of passing the Departmental

Accounts examination for Engineering Officers as he has already passed the said examination during the service in Corporation. Thus, the petitioner has been discriminated by the respondents by not exempting her from appearing in Departmental Accounts examination.

15. The moot point for consideration before this Court whether the petitioner who was earlier working with the Power Corporation as Assistant Engineer (Electrical), can be given the benefit of past service rendered by her, despite the fact that on her selection in the Nigam, there was a condition at 6 (X) in her appointment letter dated 05.06.2010, that you will be treated as new entrant.

16. A perusal of office order dated 16.08.2010, the technical resignation of the petitioner had to be accepted in terms of Rule 4.19 (B) of CSR Vol-II, which reads as under:-

"4.19

(a) x x x

(b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service. In cases where an interruption in service is inevitable due to the two appointments being at different stations, such interruptions, not exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the Government employee on the date of relief or by formal condonation under Rule 4.23 to the extent to which the period is not covered by leave due to the Government employee.

Note.? The previous service of a Government employee who is transferred to a temporary appointment is forfeited by his resigning the temporary appointment and taking up another temporary appointment of his own accord."

17. Hence, the technical resignation of the petitioner was accepted to satisfy the requirement of the above Rule.

18. Reference at this stage can further be made to Rule 3.17 of CSR, Vol II, Part I, which reads as under:-

"3.17 In the case of an officer retiring on or after 5th January, 1961, if he was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed 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.

(iii) period of service paid from contingencies. Note 1.? In the case of a Central Government employee who is permanently transferred to Haryana Government

and becomes subject to these rules under rule 1.1 (b) of these rules, the terms "continuous temporary service or continuous officiating service", shall include such service rendered under Central Government.

Note 2.- In case of a purely temporary Central Government employee who is permanently transferred to Haryana Government and becomes subject to these rules, the term "continuous temporary service" includes the temporary service under the Central Government. The pensionary liability in respect of such cases shall be allocated on the length of service. Note 3.? (a) In respect of temporary employees of the following categories who render service under the Central/State Governments prior to securing posts under the Central/State Governments on their own violation in response to advertisements or circulars, including those by Union/State Public Service Commission and who are eventually confirmed in their new posts, the proportionate pensionary liability in respect of temporary service rendered under the Central/State Governments to the extent such service would have qualified for grant of pension under the rules of the respective Government, will be shared by the concerned Governments on a service share basis:-

(1) Those who having been retrenched from the service of Central/State Governments secured on their own employment under State/Central Government either with or 14 Punjab Civil Services Rules Volume - II (Chapter - 3) (Haryana State) without interruption between the date of retrenchments and date of new appointment.

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Government through proper channel/with proper permission of the administrative authority concerned.

Explanation.- Where an employee in category (2) is required for administrative reasons for satisfying technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement, to join, with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement. The gratuity, if any, received by the Government employee for temporary service under the Central/State Governments will, however, have to be refunded by him to the Government concerned. (b) Those employees who while holding temporary posts under Central/State Governments apply for post under Central/State Governments direct without permission and resign their previous post to join the new appointment under the Central/State Governments will not be entitled to count their previous service for pension."

19. Further the application of the petitioner was sent through proper channel by respondent No. 2 to respondent No. 3 and as per Annexure P-17, the six months

bond period was transferred from Power Corporation to Nigam, vide memo dated 03.08.2010. The original bond period was for 03 years, which was reduced to 02 years. Further in the advertisement 2/2009, there was a condition at No. 19, that Government employees of the Union and other States would not be allowed any benefit of their past service under their respective Government and this condition could not be applied in the case of the petitioner, as she was neither the employee of Union Government or of any other State. Merely by accepting her technical resignation, as per offer of appointment (P-6), the petitioner could not be denied the benefit of pay protection and past service. Further Sukhpal Singh, who was given offer of appointment of Assistant Engineer/Electronics Training vide memo dated 05.09.2007 was given benefit of past service rendered as Jr. Engineer in the Power Corporation towards pension and was held entitled to be governed under Old Pension Rules.

20. Reference at this stage can be made to a judgment of this Court in a case of Sukhdev Singh and others, 2005(2) S.C.T 564 whereby it was held that once the selection and appointment of a Government Servant is made subject to resignation from his earlier post and the benefit of past service is protected for the purpose of length of service, the same cannot be denied alleging that acceptance of his resignation was not proper.

21. This Court further in a case of Dr. Vikas Choudhary v. National Institute of Technology, Kurukshetra and others, 2012(2) SCT 137 was examining the case of the petitioner who was selected for the post of Lecturer but was denied senior scale and selection grade and his past service experience was not counted on the ground that he had not applied through proper channel. This Court held him fully entitled for counting his past service and to grant senior scale and selection grade, as at the time of interview, he had produced NOC and Last Pay Drawn Certificate. In para 6 and 7, it has been observed as under:-

6. The petitioner duly produced the No Objection Certificate dated 26.02.1997(P19) as well as last pay drawn certificate dated 26.02.1997 (P20) from his former employer (MM College Fatehabad). Thus, it cannot be said that the petitioner did not apply through proper channel. He was considered by the respondent Institute as candidate already working as lecturer in the Government aided College. As per the interview letter dated 03.02.1997 (P18), the candidates whose application for the post, has not been forwarded by their respective employers, were required to bring "Last Pay drawn" certificate as well as "No Objection Certificate" from the employers and only on submission of these certificates, such candidates were to be interviewed. On the basis of production of these documents, the petitioner was duly considered as candidate already working as lecturer in other institute i.e. MM College, Fatehabad and it was on account of this fact that the petitioner's pay was protected as per the Last Pay Drawn Certificate submitted by the petitioner before interview. In fact, the petitioner's provident fund from his former employer (MM College Fatehabad) was also officially transferred to the respondent Institute. The said application

carried the endorsement of the College authorities dated 27.03.1998 and the Director High Education. The same has been placed on record as P-21 along the replication.

7. There is no doubt that the petitioner was fully qualified and is entitled for counting his past service rendered in the MM College Fatehabad towards grant of senior scale and selection grade. The objection of the respondent-institute is unfair and arbitrary on the face of it. The petitioner was allowed to be interviewed only in case, he brought the original No Objection Certificate from his previous employer (MM College, Fatehabad) and in the absence of the application forwarded by the former employer, no objection certificate was required to be produced. The petitioner admittedly produced the same and it was only thereafter he was interviewed."

22. In the present case as well, the petitioner had sent her application through proper channel vide letter dated 21.10.2009 and was allowed by the Power Corporation vide letter dated 28.10.2009 and when she was selected for the post, the technical resignation of the petitioner was accepted by the Power Corporation authorities and she was relieved of her duties on 16.08.2010 and thereafter, she joined her duties in the Nigam. Further, vide Annexure P-17, the six months bond period was transferred from Power Corporation to Nigam, vide memo dated 03.08.2010. The original bond period was for 03 years, which was reduced to 02 years when she joined the Nigam.

23. Thus, for all intents and purposes, her last pay drawn with respondent No. 3 is liable to be protected, in view of the above mentioned judgments.

24. Accordingly, the present petition stands allowed and respondent No. 2 is directed to protect the last pay drawn by the petitioner in respondent No. 3 and she be exempted from passing the Departmental Accounts examination.