(2013) 05 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9064 of 2010

Jagtar Singh and Another	APPELLANT
Vs	
The State of Punjab and Others	RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Citation : (2013) 171 PLR 247

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : R.K. Chopra, with Ms. Maninder, for the Appellant; Monica Chhibbar Sharma, D.A.G., Punjab for Respondent Nos. 1 to 3 and Mr. A.K. Gahlawat for Respondent Nos. 4 to 6, for the Respondent

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—Challenge in this writ petition is to the order dated 25.2.2010 (Annexure P-5) vide which the claim of the

petitioners for granting the benefit of earlier service rendered by them in the Central Reserve Police Force (CRPF) for the purpose of pay fixation

and pension as also the pensionary benefits has been rejected. Petitioners joined as Constables with the CRPF on 27.4.1998 and 16.8.2001 and

continued working as such upto 2.7.2007 and 23.11.2006 respectively. In the year 2006, posts of Constables in the Punjab Armed Police were

advertised. Petitioners applied for No Objection Certificates from the Central Reserve Police Force so as to enable them to apply for the post of

Constables. No Objection Certificates were issued to the petitioners by the Competent Authority. They were selected on merit in the Punjab

Armed Police and accordingly submitted their technical resignation so as to enable them to join the Punjab Armed Police. Their resignation was accepted by the Competent Authority of the CRPF and in that order of acceptance of the resignations dated 30.6.2007 and 23.11.2006

(Annexures P-2 and P-3) respectively, it was mentioned that their technical resignation stands admitted to join new post of Constable (General

Duty) in the Punjab Armed Police. It was further mentioned therein that they would get benefit of past service for all purposes under Rule 26(2) of

the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as ""1972 Rules"").

2. In pursuance to their relieving order, petitioners submitted their joining report as Constables (General Duty) in the Indian Reserve Battalion.

They submitted applications for granting them the benefit of their previous service which included protection of their last drawn pay, grant of benefit

of counting of previous service as qualified service for the purpose of pension and other retiral benefits and for treating them to be covered under

the General Provident Fund Scheme instead of the New Contributory Pension Scheme which had come into effect from 1.1.2004. This claim of

the petitioners was based upon Rule 26(2) of the 1972 Rules, Rule 3.17-A of the Punjab Civil Services Rules Vol.II as also Rule 4.4 of the

Punjab Civil Services Rules Vol.II Part I (hereinafter referred to as ""PCS Rules""). Reliance was also placed upon the Punjab Government (Finance

Department) Instructions dated 24.10.2008 (Annexure P-4) wherein it has been decided that if any government employee was working on or

before 31.12.2003 and had joined some other post/department after submitting his resignation, such employee shall be governed by the old

pension scheme. Learned Senior counsel appearing for the petitioners while referring to these Rules, submits that the rejection of the claim of the

petitioners vide impugned order dated 25.02.2010 (Annexure P-5) cannot sustain and deserves to be set aside. He places reliance upon the

judgments passed by this Court in the case of Rajinder Singh v. State of Punjab, 2001(2) S.C.T. 244, Er. Shyam Lal Chugh v. State of Punjab

and others, 2009(8) S.L.R. 420 and Harbans Lal v. The State of Punjab and others, 2012(3) S.C.T. 362 in support of the claim of the petitioners.

3. On the other hand, counsel for the respondents submits that in the appointment letter which was issued to the petitioners by the respondents, it

was clearly mentioned that the employee will be covered under the ""New Defined Contributory Pension Scheme"". It has been further asserted that the petitioners are not entitled to any pensionary benefits for their previous service as the provisions regarding pensionary benefits contained in the

PCS Rules, Vol.II cannot be made applicable because that scheme had come to an end on 31.12.2003 and as per the Punjab Government

notification dated 24.10.2008 (Annexure P-4), their services would be covered under the New Defined Contributory Pension Scheme.

4. Counsel for the State further contends that the petitioners cannot claim the pensionary benefits from the Punjab Police Department on the basis

of the orders passed by the Central Reserve Police Force Department wherein it has been said that they would be entitled to the previous service

rendered by them under Rule 26(2) of the 1972 Rules, which is not applicable to the Punjab Government Employees. With regard to the letter

dated 24.10.2008 of the Department of Finance, Government of Punjab, it has been asserted that the claim of the petitioners would be covered by

para 2(ii) of the said letter, according to which if any Government employee was working on or before 31.12.2003 in any

Department/Organization of the Central/State Government where he was governed by the Contributory Provident Fund Scheme or any other

pension scheme of the Central/State Government, except the provisions contained in the Punjab Civil Service Rules Vol.II, on his resignation on

technical grounds on or after 1.1.2004, he would not be entitled to the claim under the PCS Rules Vol.II as the same is not applicable to him

because the Scheme has been discontinued with effect from 31.12.2003. Such Government employee can get pensionary benefits/terminal benefits

in respect of his previous service from his previous Department/Organization, if admissible under the Rules of the concerned

Department/Organization. Rule 3.17(A) of the PCS Rules, Vol.II would also not be applicable to the case of the petitioners. She accordingly

contends that the writ petition being devoid of merit, deserves to be dismissed. She places reliance upon a Full Bench judgment of this Court in the

case of State of Haryana and Others Vs. Dr. (Mrs.) Sudha Seth, in support of this contention.

5. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

6. Facts as narrated above are not in dispute. For decision of this case, the Statutory Rules, on which reliance has been placed by the counsel for

the petitioners, deserve to be noted here.

7. Rule 26(2) of the Central Civil Services (Pension) Rules 1972 read as follows:-

26. Forfeiture of service on resignation:

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of

past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether

temporary or permanent, under the Government where service qualifies.

8. Rule 3.17-A(1)(v) of the Punjab Civil Service Rules Vol.II reads as follows:-

3.17-A(1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment

interrupted or continuous, shall count as qualifying service:-

(i to iv) xxxx xxxx xxxx

(v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as

provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointed whether

temporary or permanent under the Government where service qualifies for pension.

9. Further Rule 4.4 of the Punjab Civil Service Rules, Vol.I Part I reads as follows:-

4.4 The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay is regularized as follows:-

a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended-

(i) When appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of

rule 4.13) than these attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantively in respect

of the old post;

(ii) When appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his

substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference; and

in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the

period after which an increment is earned in the time scale of the new post, whichever is less. But if the minimum of the time-scale of the new post

is higher than his substantive pay in respect of the old post he will draw that minimum as initial pay;

(iii) When appointment to the new post is made on his own request under rule 3.17 A and maximum pay in the time-scale of that post is less than

his substantive pay in respect of the old post, he will draw that maximum as initial pay.

10. A perusal of the above Statutory Rules would show that Rule 26(2) of the 1972 Rules and 3.17-A(v) is pari materia to a great extent but a

determinative factor with regard to the applicability of these rules to the employees of the Punjab Government would be the definition of the word

''Government''. Since we are dealing with the persons who had resigned from the Central Government and have joined the Punjab Government as

its employees, the definition as provided under the Punjab Civil Service Rules would be relevant.

11. This issue was dealt with by this Court in a similar matter which had arisen earlier in CWP No. 7233 of 2008 titled as Dr. Daizy Sood v. State

of Punjab and another, decided on 27.2.2013 where a PCMS doctor who was initially appointed in State of Haryana and thereafter came on

deputation with the State of Punjab and ultimately was appointed by way of transfer, sought counting of her earlier service which she had rendered

in the State of Haryana for the purpose of fixation of pay and other benefits. Reliance was also placed for claiming the said benefit on the policy

instructions dated 15.11.2000 which dealt with protection/fixation of pay of Government employees appointed by transfer/open selection etc. from

one service to another. Therein it was held as follows:-

A perusal of the above would show that this is a further explanation to Rule 4.4(i) proviso below 4.4(b) of the PCS Rules. Rule 4.4 or the

instructions dated 15.11.2000 do not define Government, whether it is Punjab or any other State. Since these instructions are an explanation to

Rule 4.4(b) of the PCS Rules, for definition of the term ''Government, which would be determinative factor as far as the present case is concerned,

the Court has to fall back upon the definition given in Chapter-II of the PCS Rules. Rule 2.1 reads as follows:-

Rule 2.1: Unless there is something repugnant in the subject or context, the terms defined in this Chapter are used in these Rules in the sense here

explained.

Term Government has been defined in Rule 2.24 which reads as follows:-

Rule 2.24: Government means the Punjab Government in the Administrative Department.

In the light of the definition given in the PCS Rules, it is apparent that the Government employees and Government service would mean an

employee of the Government of Punjab and service of the Government of Punjab unless specifically said otherwise. Perusal of Rule 4.4 leaves no

manner of doubt that the same is applicable to Punjab Government employees only which has been further required to be read in the context in

which policy instructions/letter dated 15.11.2000 makes it applicable to. It expands the applicability of the Rule not only to the Punjab Government

Employees, but to those employees who were or are employees of a body incorporated or not which is wholly or substantially owned by the

Government as is apparent from para-5(i) of the said letter. This policy letter, therefore, cannot be extended to an employee who was erstwhile an

employee of the State of Haryana. Merely because the petitioner has been appointed under the Statutory Rules by way of transfer which would

give legal sanctity to such appointment, but this does not entitle her to the pay protection and the service benefits which she had earned while

working in the State of Haryana, more so when the offer of appointment dated 26.12.2001 (Annexure P-4) clearly specifies the pay scale and

initial start of pay which petitioner would be entitled to. The appointment of the petitioner was a fresh one as is apparent from the Clauses 2, 3 and

4 of the said offer of appointment wherein probation period, fresh medical certificate and verification of conduct and antecedents were to be again

done afresh of the petitioner. Petitioner having accepted the offer, as made to her cannot, now claim the benefit of previous service, rendered by

her in the State of Haryana. The reliance placed upon the policy decision dated 15.11.2000 (Annexure P-5) by the petitioner for pay protection and other benefits is of no help to the petitioner as the same is not applicable to her case.

12. In the light of the above, petitioners arc not entitled to the benefit of previous service for the pay protection as claimed under Rule 4.4 of the

PCS Rules Vol.I Part I as also for counting the said service for the purpose of pensionary benefits. Reference can also be made to the Punjab

Government''s letter dated 24.10.2008 wherein the grant of benefit of past service to Government employees, who resigned on technical grounds

on 1.1.2004 or thereafter, was dealt with and the clarification dated 26.7.2005 issued by the Central Government was made applicable to the

Punjab Government. The letter dated 24.10.2008 reads as follows:-

Sub: Grant of benefit of past service to Govt. Employees who resign on technical ground on 1.1.2004 or thereafter.

Sir,

I am directed to address you on the above subject and to state that in respect of the Govt. employees, who joined service on 1.1.2004 or

thereafter, the New Defined Contributory Pension Scheme has been made applicable. This scheme was made applicable by the Central Govt. for

their employees from 1.1.2004 or thereafter and new defined contributory pension scheme is based on the same. The concerned authority of the

Govt. of India was requested by the Punjab Govt. to give clarification that if an employee of the State Govt. was in service prior to 1.1.2004 and

he was appointed to a post under the Central/State Govt. after this date whether in his case, the Old Pension Rules will be applicable or he will be

governed by the New Pension Scheme. In this connection, the Central Govt. has invited attention to the clarification issued vide letter No. OM

No. 28/30/2004- P&PW(B), Dated 26.7.2005, and it has been decided to make the same applicable by the Punjab Government as under:-

(i) If any employee of the State Govt. was covered under the Old Pension Scheme on or before 31.12.2003, and he joins some other

post/department after submitting his resignation, such employee shall be governed by the Old Pension Scheme.

(ii) If any Govt. employee was working on or before 31.12.2003 in any Department/Organization of the Central/State Govt. where he was

governed by the CPF schemes or any other pension scheme of the Central/State

Govt., except the provisions contained in the Punjab Civil

Services Rules Vol.II and he resigns on technical grounds on or after 1.1.2004 and joins Central/State Govt. in his case, the provisions contained

in the Punjab Civil Services Rules Vol. II shall not be applicable to him, because this scheme has been discontinued from 31.12.2003. Such

employees can get pensionary benefits/terminal benefits in respect of their previous service from their previous department/organization. If

admissible under the rules of the concerned department/organization.

These instructions may be complied with strictly.

13. It is the assertion of the counsel for the petitioners that the claim of the petitioners would be covered by clause (i) of this letter but I am afraid,

the same is not correct in the light of the definition as provided in Rule 2.24 which defines ''Government'' to mean ''Punjab Government in the

administrative department''. Applying the said definition, clause (i) would be applicable to a Government employee, who had been working in same

Punjab Government Department or a body incorporated or which is wholly or substantially owned and controlled by the Punjab Government, who

joins some other post or department again under the Government of Punjab after submitting his resignation and was covered under the old pension

scheme which was applicable on or before 31.12.2003. The claim of the petitioners has rightly been considered under clause (ii) of the letter dated

24.10.2008 which clearly is applicable to the case of the petitioners as they were working on or before 31.12.2003 in an Organization of the

Central Government where they were governed by a pension scheme of the Central Government other than the provisions contained in the Punjab

Civil Service Rules Vol.2. Petitioners would be entitled to get pensionary benefits/ terminal benefits in respect of their previous service from their

previous Department/Organization, if entitled to, under the Rules of the concerned Department/Organization. The claim of the petitioners, thus,

cannot be accepted.

14. The judgments relied upon by the counsel for the petitioners would not be applicable to the case in hand. In Rajinder Singh''s case (supra),

there was a specific decision taken by the Punjab Government vide instructions dated 25.5.1982 granting benefit of service rendered by an

employee even on temporary basis under Central Government/State

Government. In Engineer Sham Lal Chugh''s case (supra), it was held that

once the Government has framed a policy to grant benefit of past service on 20.5.1982, for computation of pension, the Authority cannot say that

the benefit is not available or permissible. Harbans Lal''s case (supra) was a case where the employees had rendered service on work charge basis

under the Government of Punjab prior to 1.1.2004 and they continued as such till the regularization of their services which took place after

1.1.2004. On the basis of their date of regularization being after 1.1.2004, they were being denied the benefit of General Provident Fund Scheme

and were said to be covered under the new Defined Contributory Pension Scheme. It is under these circumstances that the Court proceeded to

hold relying upon Rule 3.17-A that such employees cannot be termed to be new entrants in the Punjab Government Services w.e.f. 1.1.2004. The

situation is not the same in the case of the petitioners. They were Central Government employees prior to joining the State Government service

which is subsequent to 1.1.2004 as they were relieved from the CRPF on 2.7.2007 and 23.11.2006 respectively. In view of the above, finding no

merit in the present writ petition, the same stands dismissed.

