(2016) 01 P&H CK 0278

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 1315 of 2015.

Naresh Chander APPELLANT

Vs

Punjab State Power Corporation Limited Patiala and Others RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:
Constitution of India, 1950 — Article 226, 300A

Citation : (2016) 2 PLR 565

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Naveen Daryal, Advocate, for the Appellant; Sehaj Bir Singh, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J. - The challenge in this petition is to the reasons recorded in the impugned memo dated December 26, 2013 by which the Punjab State Power Corporation Limited has denied the claim of the petitioner for pension refusing to count the period of seven years spent on work-charged service with regular service for purposes of pension and pensionary benefits. The right to pension by clubbing both work-charged service and regular service is no longer res integra and is covered by the Full Bench decision of this Court in Kesar Chand v. State of Punjab and others, AIR 1988 PH 265 against which the Special Leave Petition was dismissed by the Supreme Court.

2. Besides, Kesar Chand case the right stands re-affirmed by the Supreme Court in a detailed judgment rendered in Dakshin Haryana Bijli Vitran Nigam and others v. Bachan Singh, AIR 2009 SC 2745; (2009) 14 SCC 793. The reasons for declining the prayer are threefold. Financial Circular No.2/92 dated January 14, 1992 requires a procedure to be followed in case, employee wants to take benefit of work-charged service. He has to submit his service record certified by the Sub Divisional Officer together with the EPF account number assigned during work-charged service. This formality has not been completed by the petitioner.

Therefore the Corporation is unable to determine as to length of service under various Sub Divisions in which the petitioner served as work-charged employee.

3. The second reason is that his case can be considered only after he deposits 12% interest earned on EPF contributions to the credit of the employee as per Financial Circular 41/95 dated December 07, 1995. That amount will have to be deposited in the account of the department after conducting the pre-audit of his work-charged service. The third reason for rejecting the claim is that the petitioner retired on April 30, 2004 and the claim is time-barred.

4. In the opinion of this Court, all the three reasons are not insuperable. The procedure laid down in the two Financial Circulars can be completed by both the parties by identifying the 7 years of service as work-charged employee looking to the service record. The primary duty is on the Corporation to take steps for completion of paper formalities. If the petitioner has approached this Court after inordinate delay, he can easily be denied the monetary benefit prior to three years from the date of filing of the writ petition given that pension is a recurring cause of action. Moreover, pension is not a bounty. It is a right in property constitutionally protected by Article 300-A of the Constitution. The first two are procedural issues which can be taken care of in the manner provided by the Financial Circulars. The third reason for rejection is partially over-ruled. The monetary benefits of arrears of pension will be restricted to three years prior to the institution of the writ petition i.e. on January 23, 2015. However, the pension will be redetermined notionally as qualifying service for the entire period by clubbing work-charged service with regular service. The petitioner will come forward to complete the formalities required under the Financial Circulars and the officers concerned in the Corporation will cooperate with him in the completion of the necessary formalities. This exercise is directed to be undertaken and concluded within two months from the date of receipt of certified copy of this order. To this end, the petitioner would approach the dealing person in the Corporation immediately who will help him in completion of formalities and deposit of interest on EPF into the account of the Corporation. The pension will be paid accordingly after redetermination including correction of the last pay drawn.

5. This petition is allowed to the extent indicated above.