
(2012) 07 P&H CK 0203
In the Punjab And Haryana At Chandigarh
Case No : Amended C.W.P. No. 22073 of 2010

Satya Narain Mehra

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Citation : (2012) 168 PLR 414 : (2013) 1 SCT 138

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Ravi Kant Sharma, for the Appellant; D.S. Nalwa, Addl. A.G. Haryana, for the Respondent

Judgement

Augustine George Masih, J.—Petitioner through the present writ petition is claiming a writ of Mandamus directing the respondents to count and consider the service rendered by him as a Lower Division Clerk with the Haryana State Electricity Board (hereinafter referred to as the HSEB) from 5.7.1967 to 25.2.1974, service rendered by him from 26.2.1974 to 26.11.1979 in the Punjab Poultry Corporation, Chandigarh and the service rendered by him as a Deputy Superintendent with the Haryana Harijan Kalyan Nigam from 27.11.1979 to 23.2.1984 which was followed by his regular selection and appointment in the Haryana Civil Services (Executive Branch) (hereinafter referred to as HCS (EB)) as Excise and Taxation Officer w.e.f. 24.2.1984 till the date of his superannuation i.e. 30.7.2007. Counsel for the petitioner contends that as per Rule 3.17 (A) of the Punjab Civil Service Rules, Vol.II Part I, as applicable to the State of Haryana (hereinafter referred to as "the Rules"), petitioner will be entitled to the counting of the said service prior to his joining the HCS (EB) for the purpose of pensionary benefits which have been denied to him and only service for the period rendered by him from 24.2.1984 till the date of his retirement i.e. 30.7.2007 has been counted for the grant of pensionary benefits to him. This, counsel contends, is not sustainable in law. His further contention is that the resignation which was submitted by the petitioner was merely a technicality so to take up a fresh

assignment for which he had applied through proper channel after obtaining permission of the employer and, therefore, service rendered by him has to be counted and there is no impediment under the statutory rules governing the service. Reliance has also been placed upon a Division Bench judgment of this Court passed in the case of *State of Punjab v. Hem Raj Mittal*, 1992 (2) SCT 116 as also to the case of a similarly placed employee, namely, D.R. Kataria, who was earlier working as an Upper Division Clerk in Haryana State Electricity Board from 7.12.1966 to 31.12.1973 and thereafter was selected and appointed as an Excise and Taxation Inspector, which service was counted by the respondents vide order dated 22.3.2004 (Annexure P-11). He accordingly prays that the present writ petition deserves to be allowed.

2. On the other hand, counsel for the respondents submits that the period of service rendered by the petitioner as a Lower Division Clerk in the HSEB was from 5.7.1967 to 25.2.1974 which was followed by a stint with Punjab Poultry Corporation, Chandigarh from 26.2.1974 to 26.11.1979. This Corporation was owned by the Government of Punjab and, therefore, there being a change in the employer, disentitles the petitioner to the benefit of the said service. Thereafter, his joining the post of Deputy Superintendent in the Haryana Harijan Kalyan Nigam renders a break of more than 5 years" service from the HSEB and, thus, the said service rendered by the petitioner in the HSEB cannot be counted apart from the fact that he had earlier resigned from the post of Lower Division Clerk on his taking up assignment in the Punjab Poultry Corporation. His further submission is that as per Rule 3.17(A) (d), once a resignation has been submitted by an employee, the said service cannot be taken into consideration for the purpose of counting it for the grant of pensionary benefits as it amounts to forfeiture of the same and, therefore, prior to joining the HCS (EB), petitioner had resigned from the post of Deputy Superintendent, Haryana Harijan Kalyan Nigam, thus disentitling him to the counting of said period also for the purpose of pensionary benefits and, therefore, non-counting of the said period by the respondents while granting the pensionary benefits to the petitioner is not in accordance with law and does not call for any interference by this Court. A feeble attempt has also been made by the counsel for the respondents by contending that the service rendered by the petitioner in Haryana Harijan Kalyan Nigam also cannot be counted as the same is not a statutory body as defined under clause (iii) of the instructions/office memorandum dated 7.1.2002 (Annexure R-1).

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

4. As regards the stand of the counsel for the respondents that the service rendered by the petitioner as a Lower Division Clerk in HSEB from 5.7.1967 to 25.2.1974 and as an Assistant Accountant in Punjab Poultry Corporation, Chandigarh i.e. from 26.2.1974 to 26.11.1979 cannot be counted for the purpose of pensionary benefits as the earlier service which had been rendered by the petitioner, although in a government owned Electricity Board, is followed by

service rendered by him in the Punjab Poultry Corporation, Chandigarh which is a Government of Punjab Undertaking, thereby bringing about a change in the employer, disentitling him to the benefit of said service is correct. Thus, the said period of service cannot be counted for the purpose of pensionary benefits under Rule 3.17 (1) of the Rules, as applicable to the State of Haryana. However, the service rendered by the petitioner as a Deputy Superintendent in the Haryana Harijan Kalyan Nigam from 27.11.1979 to 23.2.1984 is required to be counted for the purpose of pensionary benefits as the service rendered by him in the said Nigam would be covered by the provisions as contained in the office memorandum dated 7.1.2002 (Annexure R-1). Although an objection has been raised by the counsel for the respondents that the said Nigam has not been created under any Statute/Act of the State but the said objection has not been taken by the respondents in their written statement and this submission has been made by the counsel without any basis or any document in support thereof.

5. It is an admitted position that the petitioner while applying for appointment to the HCS (EB) had sought prior permission from his employer i.e. the Haryana Harijan Kalyan Board, which was duly accorded to him by the Competent Authority. Obviously to take up an assignment with the Haryana Government and that too in the HCS (EB), petitioner was required to submit a technical resignation and there appears to be no break in service between acceptance of his resignation and his taking up of a new assignment with the Haryana Government. Thus, the service rendered by the petitioner with the Haryana Harijan Kalyan Nigam is to be counted for the purpose of pensionary benefits. The claim of the petitioner being covered by the office memorandum dated 7.1.2002, denial of the same cannot, thus, be sustained. In view of the above, the present writ petition is partly allowed and a direction is issued to the respondents to count the service rendered by the petitioner as Deputy Superintendent in the Haryana Harijan Kalyan Nigam from 27.11.1979 to 23.2.1984 for the purpose of qualifying service for grant of pensionary benefits. On such an exercise being done, consequential benefits be released to the petitioner within a period of three months from the date of receipt of certified copy of this order.