(2012) 03 P&H CK 0467

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18278 of 1998 (O and M)

Shadilal Malik APPELLANT

Vs

State of Haryana and others RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Citation : (2012) 167 PLR 44

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Ashwani Talwar, for the Appellant; Kshitij Sharma, Asstt. Advocate General, Haryana, for Respondent Nos. 1 to 6 and Mr. K.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The petitioner was an employee of the Haryana Dairy Development Corporation that later became a Federation. He was working as Accounts Officer with one of the constituents of the Federation viz., Model Exotic Farm, Bhiwani. This was taken over by the Government and treated as a part of the Animal Husbandry Department, Government of Haryana. The petitioner''s grievance is that his entitlement to pension has been denied to him although the Haryana Government service was pensionable, only on account of the fact that on the day when he became a Government servant on 1.4.1994 till the date when he retired on 31.3.1998, he had less than 10 years of service, which was qualifying service for pension. The petitioner''s basis for a claim to pension is that he had been a contributory to a Provident Fund Scheme under the Federation ever since his entry into service and at the time when he was absorbed with the State Government department, the contribution ''which he had made to the tune of Rs. 84,153/-, had been transferred to the GPF account by the Regional Provident Fund Commissioner. The Employees'' Provident Fund Scheme was introduced in the year 1995 in the Federation but since the petitioner had already come from the Federation and treated as a Government employee, the provision that allowed for persons who were contributories in EPF Scheme to opt for a change for the pension scheme, was not offered to the petitioner. Noticing that there could be hardship to persons like the petitioner, the office of Accountant General had advised the Director, Animal Husbandry that while GPF Rules of the Central Government provided for Rule 35-A to the effect that if a Government servant admitted to the benefit of the Fund was previously subscriber to any Provident Fund of a body corporate, owned or controlled by the Government, or an autonomous organisation registered under the Societies Registration Act, 1860, the amount of his subscriptions and the employer''s contribution would be transferred to his credit in the Fund with the consent of the previous employer, there was no corresponding rule in the Haryana GPF Rules that allowed for such transfer and, therefore, the amount of Rs. 84,153/- transferred to the GPF account could not be treated as an authorized subscription under the Haryana GPF Rules. The office of Account General had advised that even interest would not accrue on the credit given to an employee.

2. Learned counsel for the petitioner points out that the petitioner''s case presents a poignant situation of an employee being not admitted to the EPF Scheme because it had been introduced subsequent to his leaving the Federation and not being admitted to the pension scheme because he did not have requisite years of service in the Government job from the time of his entry into Government service till he retired.

3. Learned counsel for the petitioner relies on instructions of the State as to how a person who was already in the employment of a Government Corporation or Body, who had subsequently joined the Government service with the concurrence of the previous establishment, could count the number of years of service with the previous employer as service spent on Government duty. The counsel pleads that in this case Model Exotic Farm where the petitioner was working has itself been taken over by the Government and therefore, the benefit of the Government instructions would apply in such a situation. The counsel says that the petitioner would be prepared to refund to the Government the EPF amount received by him at the time of his retirement, before staking a claim for pension.

4. The petitioner who had joined the service with the Corporation in the year 1970 cannot lose all the years of his past service and the same shall be counted in terms of the Government instructions and he shall be paid the pension at the rate to which he would be entitled to on the basis of last drawn pay.

5. Learned counsel for the petitioner refers to me several decisions where in similar situations, the Courts have allowed for grant of pension by treating the years of service spent in Government Corporations although there are no specific Rules providing for treating the previous years of service in the Government Corporation as going towards pensionable service in the Government. In one of the earlier rulings of this Court in Vijay Laxmi and others v. State of Punjab and others, 1994(2) R.S.J. 502, this Court was dealing with a situation where the past service with the Government Corporation was recognized for the purpose of

pay when the person was absorbed in Government service. The Court held that once the past service was recognized for the purpose of pay, there would be no justification for denying the same benefit towards pension. In this case also, it is pointed out that the petitioner''s pay with the Corporation had been protected and he was placed on an appropriate scale in the State Government when he was absorbed. In The State of Punjab through the Secondary, Animal Husbandry Department, Punjab Government, Chandigarh v. Dr. H.P. Tandon and another, 1989(2) R.S.J. 184, the Division Bench was considering the case of the petitioner, who had joined a Veterinary Assistant in the Animal Husbandry Department with the Government of Punjab on 5.9.1940. He had joined Princely State of Patiala in the year 1942 after resigning from Punjab and later selected to join the Central Government in the year 1947. He retired from service in the year 1975 and the issue was whether the period of service between 5.9.1940 and 15.10.1947 when he had been working in the Princely State of Patiala could be also counted for the purpose of pension. The Court answered in the favour of the petitioner to include such service as well. In a more recent Division Bench judgment of this Court (of which 1 was a party) in Jai Parkash v. The State of Haryana and others, in C.W.P. No. 17343 of 2007 dated 28.11.2008, the case was of a person, who had been working in the Haryana State Minor Irrigation and Tubewells Corporation Limited and who later joined the office of Commercial Taxation Commissioner, had sought for a consideration that his joining the State Department would constitute a continuity in service for the purpose of claiming the pensionary benefits. Referring to the judgment of the Hon''ble Supreme Court in Gurmail Singh and others v. State of Punjab and others, 1992(7) S.L.R. 744 that dealt with the case of continuity of service for the purpose of seniority, when the person was joining from a State Corporation to a State Department under proper channel, the Court had allowed the benefit of continuity of service. What would apply for the purpose of seniority treating the previous service in a State Corporation as relevant for the purpose of continuity of service ought to be extended logically also to a situation where the claim is for pension.

6. The petitioner would, therefore, be entitled to the reckoning of past service with the Corporation and later with the Federation as relevant for the purpose of pensionary service with the department. At the time of reckoning of the pension, the amount paid to the petitioner towards GPF shall be adjusted with interest at the rate of 12% and the arrears shall be paid within 12 weeks from the date of receipt of copy of the order with interest at the rate of 6% from the date of filing of the petition. The writ petition is allowed on the above terms.