

(2016) 11 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 734 of 2010 (O&M)

S.S. Negi

APPELLANT

Vs

Haryana Warehousing Corporation

RESPONDENT

Date of Decision : 17-11-2016

Acts Referred:

Constitution of India, 1950 — Article 12, Article 14, Article 16
Haryana Employees Pension Regulations Act, 1996 — Regulation 38, Regulation 39

Citation : (2017) 2 SCT 593

Hon'ble Judges : Kuldip Singh, J.

Bench : Single Bench

Advocate : Naresh Ghai, Advocate, for the Petitioner; Ashwani Talwar, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Kuldip Singh, J.—Petitioner was previously working as Junior Technical Assistant/Technical Assistant in Central Warehousing Corporation since 04.11.1969 and worked there up to 08.06.1978. He applied for the post of District Manager in Haryana Warehousing Corporation through proper channel and was appointed as such on 09.06.1978. While holding the post of Senior District Manager in Haryana Warehousing Corporation, he was promoted as Manager (S&T) on 28.09.2001 with probation for a period of one year. It comes out that vide order dated 13.12.2003, he was reverted to the post of District Manager. Subsequently, vide order dated 12.01.2004 (Annexure P-3), the order was modified and he stood reverted to the post of Senior District Manager without prejudice to his claim as the disciplinary proceedings were pending against him under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987.

2. It also comes out that some departmental proceedings were pending against the petitioner regarding the mis-conduct in 1999-2000 and in 1996. After conducting inquiry, said charges were dropped vide order dated 06.10.2004

(Annexure P-4). It further comes out that the petitioner had earlier filed CWP No.252 of 2004, vide which he challenged the reversion order. However, in view of the fact that the order was modified on 12.01.2004, the petition was disposed of with liberty to the petitioner to challenge the order dated 12.01.2004 (Annexure P-3).

3. It further comes out that the petitioner filed another CWP No.12887 of 2007, whereby he requested for finalizing the departmental proceedings within the specified period, stating that the petitioner was charge-sheeted on 14.08.2003 and retired on 31.07.2004. The said writ petition was disposed of vide order dated 20.08.2007 (Annexure P-6) with a direction to the respondents to finalize the departmental proceedings against the petitioner within a period of three months from the date of receipt of certified copy of that order.

4. A perusal of order dated 23.06.2008 (Annexure P-7) shows that qua the said charges, the petitioner was exonerated. It also comes out that the petitioner filed other CWP No.1110 of 2009, whereby he challenged the reversion from the post of Manager (S&T) to Senior District Manager, stating that the said order was passed during the pendency of the departmental proceedings. The said petition was disposed of vide order dated 28.07.2009 (Annexure P-10) with the direction to the department to consider and decide the representation dated 08.06.2009 made by the petitioner, expeditiously and preferably within a period of three months. Consequently order dated 21.12.2009 (Annexure P-11) was passed, whereby his representation was rejected holding that the petitioner was rightly reverted.

5. It also comes out that the petitioner had addressed communications in the years 2002 and 2003, when he was in service for counting his service record in Central Warehousing Corporation for the purpose of grant of pensionary benefits to him.

6. For this purpose, he filed one more CWP No.11102 of 2009, which was disposed of vide order dated 28.07.2009 (Annexure P-18) with a direction to the respondent to consider and decide the representation dated 26.06.2009 made by the petitioner, expeditiously and preferably within a period of three months. Consequently, office order dated 06.11.2009 (Annexure P-19) was passed, whereby the said prayer was also declined, on the ground that the Central Warehousing Corporation is not financed wholly or substantially from the cess or Central/State Govt. Grants and as per sub- Section(2) of Section 4 of the Warehousing Corporation Act, 1962, the said Central Government it to subscribe to 40% of the share capital of Central Warehousing Corporation and the balance 60% is to be subscribed by other institutions like State Bank, other scheduled banks, cooperative societies, insurance companies, investment trusts, other FLs, recognized associations and companies dealing in agricultural produce or any notified commodity.

7. I have heard learned counsel for the parties and have also carefully gone

through the case file.

8. In the present writ petition, the petitioner has made two prayers. Firstly, he wants this Court to quash the order dated 24.09.2003 (Annexure P-2) reiterated vide order dated 21.12.2009 (Annexure P-11), vide which the petitioner was reverted from the post of Manager (S&T) to Senior District Manager. The second prayer is for quashing the order dated 06.11.2009 (Annexure P-19), vide which his past services rendered in Central Warehousing Corporation w.e.f. 04.11.1969 to 08.06.1978 have not been counted for grant of pensionary benefits.

9. Admittedly, the petitioner retired from service on 31.07.2004. Admittedly, he was promoted to the post of Manager (S&T) on probation of one year. He was reverted vide order dated 12.01.2004 (Annexure P-3). From order dated 21.12.2009 (Annexure P-11), it comes out that during his probation, his work and conduct was found not satisfactory and accordingly, he was reverted.

10. Learned counsel for the petitioner has argued that he was reverted on account of the pending inquiry, in which, he was exonerated later on.

11. I am of the view that the order of reversion was not passed on the basis of pendency of the inquiry but was passed on the basis of overall performance of the petitioner during probation. Therefore, there is no illegality in Annexure P-2, dated 24.09.2003 and office order dated 21.12.2009 (Annexure P-11). Hence, the said orders are upheld and the present qua said orders stand dismissed.

12. Now, coming to the second relief claimed by the petitioner, it is stated that the petitioner worked in Central Warehousing Corporation from 04.11.1969 to 08.06.1978. Later on, he applied for the post of District Manager through proper channel and was selected as District Manager in Haryana Warehousing Corporation. The letter dated 12.11.2002 (Annexure P-15) shows that the petitioner applied through proper channel and that Haryana Warehousing Corporation had addressed said letter to the Managing Director of Central Warehousing Corporation requesting to forward the service book of the petitioner to its office duly completed in all respects together with a copy of his resignation and relieving orders. They were also requested to deposit the employer's share of the CPF/pro-rata pensionary benefits along with interest for the period of service he rendered by the petitioner in the Central Warehousing Corporation.

13. The copy of the letter dated 03.09.2003 (Annexure P-16) shows that Central Warehousing Corporation, accordingly, deposited/transferred the share of CPF, Gratuity, CPF interest and CPF employees share to the Haryana Warehousing Corporation.

14. Now, the question would arise whether the services rendered by the petitioner in the Central Warehousing Corporation are liable to be counted for the purpose of pensionary benefits in Haryana Warehousing Corporation?

15. Admittedly, the Central Warehousing Corporation and the Haryana Warehousing Corporation are constituted under Warehousing Corporations Act,

1962. Section 4 of the Central Warehousing Corporation Act, shows that the authorized share capital of the Central Warehousing Corporation shall be twenty crores of rupees divided into two hundred thousand shares of the face value of one thousand rupees each; any shares remaining to be issued may be issued, with the sanction of the Central Government from time to time, as and when the Central Warehousing Corporation may deem fit. The Central Government shall after due appropriation made by Parliament by law can subscribe for forty per cent of the share capital issued at any time and the remaining sixty per cent of the share capital may be subscribed for, within such period and in such proportion as may be specified by the Central Government by the following institutions, namely:

- a) the State Bank;
- b) other scheduled banks;
- c) co-operative societies;
- d) Insurance companies, investment trusts and other financed institutions;
- e) recognised associations and companies dealing in agricultural produce or any notified commodity.

The respondents have relied upon the Regulations 38 and 39 of the Haryana Employees' Pension Regulation Act, 1996 and the Haryana Government Instructions dated 22.08.1988 and 07.01.2002.

16. In the reply, the plea has been taken the Central Warehousing Corporation is not financed wholly or substantially from cess or Central/State Govt. Grants and that as per Rule 4(2) of the Warehousing Corporation Act, 1962, the Central Government shall subscribe for 40% of the share capital issued at any time and the remaining 60% share capital may be subscribed for, within such period and in such proportion as may be specified by the other institutions like State Bank of India etc.

17. After considering the facts and circumstances, I am of the view that Central Warehousing Corporation as well as Haryana Warehousing Corporation are constituted under the same parent Act i.e. Warehousing Corporation Act, 1962. In the Central Warehousing Corporation, the Central Government has a major say and most of the acts are done with the prior approval of the Central Government. The Warehousing Corporation is, in fact, the arm of Central Government, though, it subscribes only 40% share but the same could be increased by the Central Government. The petitioner applied for the post of District Manager in Haryana Warehousing Corporation through proper channel and the abovementioned correspondence show that even the Haryana Warehousing Corporation had asked the Central Warehousing Corporation to submit the service book and CPF contribution etc. of the petitioner be remitted to them. The same was, accordingly, submitted to them by the Central Warehousing Corporation, vide letter dated 03.09.2003 for the purpose of counting the service

of the petitioner for computing his pension. It goes to show that initially, the Haryana Warehousing Corporation wanted to process the case of the petitioner for counting the said previous service in Central Warehousing Corporation but later on, they changed their mind. The relevant extract of the instructions dated 22.08.1988 (Annexure P-12) is as under:

"2. Central/State autonomous body means body which is financed wholly or substantially from Cess or Central/State Govt grants. "Substantially" means that more than 50% of the expenditure of the autonomous body is met through cess or Centres/State Government grants. Autonomous body includes a Central/State Statutory body or a Central/State University but does not include a public undertaking."

A perusal of the said instructions shows that the autonomous body includes the Central/State Statutory authority, though the definition of State/Central Autonomous body is also given but the State Statutory authorities are different from the State/Autonomous bodies.

18. Here the Central Warehousing Corporation was constituted under the Act of the Parliament and Haryana Warehousing Corporation was also constituted under the said Warehousing Corporation Act, 1962. Therefore, it is a Central/State Statutory authority and included in the autonomous body of the Centre/State for which the cap of expenditure by the State/Centre Government is not applicable.

19. In view of the matter, this Court has come to the conclusion that the services rendered by the petitioner in the Central Warehousing Corporation from 04.11.1969 to 08.06.1978 are liable to be computed for the purpose of grant of pensionary benefits by the Haryana Warehousing Corporation. Consequently, the impugned order dated 06.11.2009 (Annexure P-19) is hereby quashed. The respondent-Haryana Warehousing Corporation is directed to compute the service of the petitioner rendered by him in the Central Warehousing Corporation and calculate the pensionary benefits, accordingly and releases the same to the petitioner. The amount of CPF, which is stated to have been paid to the petitioner at the time of his retirement is ordered to be re-deposited with the Haryana Warehousing Corporation for release of pensionary benefits.

20. Since, there was a bonafide dispute between the parties, regarding computing the previous service, therefore, no interest shall be payable.

21. As such, the present petition is partly allowed.