

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(120)

CWP No.14221 of 2021

Date of decision: 30.07.2021

Devi Dayal

...Petitioner

Versus

Haryana Vidyut Prasaran Nigam Limited (HVPNL)
and others

...Respondents

(Through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.K. Viridi, Advocate for the petitioner.

Ms. Shubhra Singh, Advocate for respondents
(keeping in view service of advance copy).

* * *

HARSIMRAN SINGH SETHI, J. (ORAL)

The present writ petition has been filed challenging order dated 14.02.2020 (Anexure P/1) passed by the respondents, by which, the claim of the petitioner for the grant of benefit of his past service, which he had rendered as Workshop Instructor in the Department of Technical Education, Haryana towards the service, which the petitioner has rendered as Grid Sub-Station Operator with the Haryana Vidyut Prasaran Nigam Limited (hereinafter referred as HVPNL), has been declined. Further prayer of the petitioner is that an appropriate direction be issued to the respondents No.1 to 3 for the grant of benefits of service, which the petitioner had rendered as Workshop Instructor with Department of Technical Education, Haryana for fixing his pay, for grant of benefit under Assured Career Progression Scheme, for promotion as well as towards his pensionary/retiral benefits.

Facts leading to the filing of the present writ petition are as under:-

The petitioner was appointed as Workshop Instructor in the department of Technical Education, Haryana on 08.02.2012. While he was working on the said post, an advertisement was issued by the respondent-Nigam being Advertisement No.3/2016 (Annexure P/11) advertising 418 posts of Grid Sub-Station Operator. As the petitioner was eligible, he applied for the said post through proper channel. The petitioner competed for the post of Grid Sub-Station Operator and was selected. After being selected, offer of appointment was given to the petitioner on 28.08.2018 (Annexure P/17), wherein, certain stipulations were mentioned with regard to his appointment to the post of Grid Sub-Station Operator and the petitioner was required to give in writing that the conditions mentioned in the said offer of appointment was acceptable to him before he is appointed to the post of Grid Sub-Station Operator. It is an admitted fact that the petitioner accepted the offer of appointment dated 28.08.2018 (Annexure P/17) by giving a written consent and, thereafter, the petitioner was appointed on the post of Grid Sub-Station Operator vide order dated 15.02.2019 (Annexure P/12) in pursuance to which he started discharging his duties on the said post.

Thereafter, the petitioner represented to the respondent-Nigam that he had discharged the duties as Workshop Instructor in the Department of Technical Education, Haryana for a period of approximately 07 years, benefits of which should be given to him while fixing his pay and grant of promotion as well as Assured Career Progression Scheme. The said prayer of the petitioner has been considered by the respondent-Nigam and the same was rejected by the respondent-Nigam vide impugned order dated

14.02.2020 (Annexure P/1) which order is under challenge in the present writ petition.

Learned counsel for the petitioner argues that the benefit of the past service rendered by the petitioner as Workshop Instructor rendered in Technical Education Department has to be taken into consideration by the respondent-Nigam not only for fixing pay of the petitioner as Grid Sub-Station Operator but also for further promotion as well as for the grant of benefit under Assured Career Progression Scheme. Learned counsel for the petitioner submits that as the petitioner had applied to the post of Grid Sub-Station Operator through proper channel and joined the present post only after submitting technical resignation, the respondent-department is under an obligation to grant him the benefit of the past service.

Learned counsel for the petitioner further submits that the rejection of the claim of the petitioner on the ground that as per the terms and conditions of his appointment as Grid Sub-Station Officer, the same is to be treated as a fresh appointment without any benefit of past service, is not correct, as the condition imposed in offer of appointment which is being brought into operation was not part of his ultimate appointment order and therefore, the reliance being placed on the clause which was only in the offer of appointment and not in the ultimate appointment order, cannot be made a ground for declining the relief claimed by the petitioner.

I have heard learned counsel for the parties and have gone through the records with their able assistance.

It is not in dispute that before the petitioner was appointed through offer of appointment letter dated 28.08.2018, a copy of which has been appended as Annexure (P/17), certain conditions were imposed for

appointment which were to be accepted by the candidate. In Para-6 (xii) of the said offer of appointment, it was made clear by the employer that if any person is already an employee of the Center /State Government/Semi Government/Autonomous Body etc. he/she will have to resign from the said post before joining the service and it was also made clear that appointee will be considered as a new entrant in service for all intents and purposes and no benefit of past service rendered by the said employee in the said Center/State Government/Semi Government/Autonomous Body etc. will be granted to him/her.

Learned counsel for the petitioner concedes that the petitioner had himself agreed to the said offer of appointment. That being so, the claim of the petitioner is contrary to the terms and conditions of the offer of appointment, which cannot be sustained. The petitioner after appointment to the said post cannot turnaround and say that he is entitled for the grant of benefit of past service.

Learned counsel for the petitioner argues that terms and conditions of the offer of appointment were never made a part of the appointment order dated 15.02.2019 (Annexure P/12), therefore, the same cannot be made applicable as only terms and conditions mentioned in the appointment order can bind the petitioner and not those mentioned in the offer of appointment.

This argument of the learned counsel for the petitioner is misplaced. Appointment order dated 15.02.2019 (Annexure P/12) clearly stipulates that order of appointment is being issued consequent upon the acceptance of the terms and conditions offered to the selected candidate.

Once, the appointment order dated 15.02.2019 is consequential to the

acceptance of terms and conditions of the offer of appointment, the terms and conditions of both i.e. offer of appointment and the appointment order, cannot be treated as separate. The petitioner will be bound by the terms and conditions of offer of appointment, acceptance of which has resulted into issuance of appointment order dated 15.02.2019 (Annexure P/12). Therefore, the claim of the petitioner that there was no clause in the actual appointment order for non-grant of benefit of past service is totally misplaced and is accordingly, rejected.

Another argument which the learned counsel for the petitioner has raised is that only the conditions mentioned in Paras-1 to 4 in the offer of appointment were required to be accepted and were accepted by the petitioner and no terms mentioned in Clause 6 of the offer of appointment dated 28.08.2019 were accepted by the petitioner at any stage.

A bare perusal of the offer of appointment (Annexure P/17) would show that in case, any person already employed somewhere before the appointment order is issued, he/she is to bring acceptance of resignation from the said employer and while demanding the said resignation, it was made clear that past service benefit cannot be given to him/her under any circumstances. Offer of appointment is to be read as a whole and not in parts. Once, it was made clear to the petitioner in the offer of the appointment that appointment being offered is a fresh appointment without any benefit of past service rendered in any manner which condition was accepted by the petitioner by giving written consent, now the petitioner cannot take a somersault and state that the said condition was not acceptable to him.

Even otherwise, in order to raise the said contention, the

petitioner had to challenge the said condition 6 (xii) of the offer of appointment dated 28.08.2019. There is no challenge to the condition 6(xii) of the offer of appointment even in the present petition. Further, it is the settled principle of law that in case a benefit is being granted on certain terms and conditions and the same have been accepted, then the acceptance operates as estoppel.

The question as to once an employee has been given fresh appointment with the clear stipulation that the benefit of past service rendered by him/her in another institution will not be given to him/her whether the services rendered by him/her in another institution can be taken into consideration while computing pensionary benefits was decided by this Court on 24.01.2012 while deciding CWP-24484 of 2011 titled as **Jai Narain Kaushik and others vs. State of Haryana and another.** In Jai Narain's case (supra), in similar circumstances as in the present case, the employees on becoming surplus were retrenched from Haryana State Minor Irrigation Tubewell Corporation, (HSMITC) and were absorbed in the other Government undertakings with a clear stipulation that their past services will not be taken into account for any service benefits. Upon retirement, employees approached this Court claiming benefit of past service rendered prior to their retrenchment as qualifying service for computing pensionary benefits. Learned Single Judge of this Court held that keeping in view the stipulation in the scheme of re-employment, wherein it was clearly mentioned that no benefit of past service will be given, the benefit as being sought by the employees in the said petition for taking into consideration their past services as qualifying service is not at all maintainable and the claim was rejected. Against the said judgement, LPA No.570 of 2012 titled

as **Jai Narain Kaushik and others vs. State of Haryana and another** has been filed and the Division Bench of this Court on 4.2.2014, upholding the judgement of the learned Single Judge held that the benefit of past service cannot be given ignoring the condition mentioned for re-employment. Relevant paragraph is as under:-

“When rejecting their case, it was specifically noticed by the authorities that their case is not similar to the one set up by them because in those cases employees were taken into Government service by transfer/absorption from one department to another or from Public Sector to State and before their retrenchment, retrenchment compensation was not given to them. Whereas in the case of appellants, they were sent out of service on account of Corporations, in which they were employed, going in loss and of which there was no chance of revival. It was also noticed that before their names were considered for re-employment, all the employees gave an undertaking that they would not claim benefit of past service. It is also not in dispute that the employees were not asked to re-deposit the compensation amount received by them with the State Authorities. The learned Single Judge has rightly, by taking note of ratio of judgment of the Supreme Court in State of Haryana v. Deepak Sood & Others (Civil Appeal No. 4446 of 2008, decided on 15.7.2008) said that condition imposed was not irrational and was perfectly justified. In the case of Deepak Sood (supra), there was no disruption in service. The employees were taken into service before closure of Corporation in which they were working. Retrenchment compensation was not paid to them. Reliance of counsel for the appellants on the judgment of Supreme Court in Balmer Lawrie & Co. Ltd. v. Partha Sarathi Sen Roy and Others 2013(2) S.C.T. 231 is also of no help to the present appellants. That was the case in which service of an employee was terminated in terms of conditions of services. That was not a case of closure of corporation and adjusting a

retrenched employee. In the present case, Corporations in which the appellants were working went into loss. Those were closed. Retrenchment compensation was paid as per Rules and thereafter a favour was shown to the appellants by taking them back into service in a way denying opportunity of entry into service to large number of young persons. In the case of Balmer Lawrie (supra), situation was altogether different. Taking note of that case, it was said by the Supreme Court that service conditions need to be fair and reasonable. That was a case of entry in service. But in the present case, it is re-entry into service after retrenchment. Filing of an affidavit by the appellant not to claim past benefit was a condition precedent to get re-entry in service. It is not open for the appellants to challenge the same at this stage. No case is made out to cause interference by this Court in the present appeal and the writ petitions mentioned above.

Dismissed.”

Again, the same question of law arose for consideration before this Court in CWP-21633 of 2013 titled as **Ajmer Singh vs. State of Haryana and others** and the learned Single Judge again held that benefit of services rendered in Haryana State Minor Irrigation Tubewell Corporation Limited from where the petitioners therein were retrenched cannot be given after the said petitioners retired from office of Director, Development and Panchayat Haryana. A Co-ordinate Bench of this Court held that once there was clear stipulation that the subsequent appointment is fresh appointment and no benefit of past service will be given, an employee cannot claim the same for computing pensionary benefits. Relevant paragraph of the judgement is as under:-

“The facts, as have been narrated above, do not require reiteration as there is no dispute on them. The determinative factor, as far as the claim of

the petitioner is concerned, is dependent upon the terms of his appointment. The appointment letter, which has been issued to the petitioner and Condition No. 2 thereof has been reproduced in the impugned order, which reads as follows:-

“ Your appointment is made afresh on available Group C post and you will be entitled to draw minimum pay of the post being offered. Accordingly, you will not claim any benefit of the past service for the period prior to retrenchment as per your declaration on oath or for the period you remained out of service as a result of retrenchment in any manner.”

It has further been mentioned in the impugned order that the benefit of prior service has only been granted to those employees who were declared surplus and subsequently appointed on transfer basis in other departments and the benefit of pay protection has been given to them. This precisely is the reasoning given by the Hon'ble Supreme Court in Deepak Sood's case (supra) where similar claim, as has been made by the petitioner, was made but in the light of the fact that their appointment has been made on the basis of the transfer, they were granted the benefit of counting of the past service rendered by them in the Municipal Corporation for granting them the ACP Grade. Petitioner, unfortunately, has been appointed as a fresh hand and, therefore, has been held entitled to the minimum of the pay of the post being offered to him. This is the basic distinction between the claim of the petitioner and that of employees, whose cases were considered by the Supreme Court in Deepak Sood's case (supra). The appointment of the petitioner determines his claim. As the appointment of the petitioner was a fresh one, the previous service cannot be taken into consideration. The impugned order dated

dated 26.07.2013 (Annexure P-8) is in accordance with law and, therefore, does not call for any interference by this Court.

The contention of the counsel for the petitioner with regard to his claim viz-a-viz Sh. Brij Bhushan Sharma, who was a Pump Operator and was appointed in the PWD (Public Health) Department and after having been declared surplus and retrenched from the Haryana State Minor Irrigation Tubewell Corporation Limited who is stated to have been granted the benefit, as has been made by the petitioner, cannot be made a precedent especially when the benefit, if any, conferred on such an employee, if he is similarly placed as the petitioner, wrongly, cannot entitle another employee for claiming the same benefit, which is not permissible in law and that cannot be treated as a ground for seeking parity as it would amount to perpetuating illegality, which the Court cannot be a party to.

Finding no merit in the present writ petition, the same stands dismissed.”

Against the said judgement, LPA No.857 of 2014 titled as **Ajmer Singh vs. State of Haryana and others** was filed which was also dismissed by the Division Bench of this Court on 12.08.2014 holding that benefit of past service cannot be given as the same will be contrary to the conditions of employment. Relevant paragraph is as under:-

“In this case, the appellant joined as Junior Engineer (Civil) in the Corporation on 16.10.1979. The said Corporation was closed and services of the appellant were dispensed with, with effect from 30.7.2002. Subsequently, on a representation made by the appellant, he was appointed as Junior Engineer in the office of the Director, Development and Panchayat, Haryana, in the year 2006. The said appointment of the appellant was a fresh appointment, as is clear from Condition No.2 of his

appointment letter, which has been re-produced in the impugned order passed by the learned Single Judge. The said Condition specifically provided that the appointment of the appellant was afresh and the appellant will be entitled to draw minimum pay of the post being offered. He shall not claim any benefit of the past service. The learned Single Judge, after considering the said Condition, has come to the conclusion that claim of the appellant for counting his past service was rightly rejected by respondent No.2. The contention raised by the appellant that some similarly situated employees were given the said benefit has also been considered and it has been found as a fact that those employees were not given fresh appointment, rather being surplus, they were transferred to other Departments, and in that situation, the benefit of past service was given to them.

Learned counsel for the appellant does not dispute the aforesaid Condition of appointment of the appellant. However, he again argued on discrimination, but it has not been disputed that the similarly situated employees, who were given the benefit of past service, were not given fresh appointments, rather they were transferred to other Departments, where their past services were counted. So far as the claim of the appellant viz-a-viz Shri Brij Bhushan Sharma, who was a Pump Operator in the Corporation and was appointed in the PWD (Public Health) Department, is concerned, it has been observed by the learned Single Judge that the said appointment cannot be made a precedent, especially when the benefit, if any, conferred on such an employee, if he is similarly placed as the appellant, wrongly, cannot entitle another employee for claiming the same benefit. We are of the same view that an illegality cannot be perpetuated and the doctrine of 'parity' or 'right to equality' under Article 14 of the Constitution of India cannot be invoked. Thus, we do not find any illegality in the impugned order passed by the learned Single Judge.

Dismissed.”

This question again came up for consideration as to whether a

service, which the employee had rendered prior to his/her fresh appointment, can be taken into consideration as qualifying service for grant of pensionary benefit. A Division Bench of this Court on 29.05.2018 in LPA No.1105 of 2017 titled as **State of Haryana and others vs. Nathu Singh** held that where an employee has been appointed with a clear stipulation that subsequent appointment is fresh appointment and no benefit of previous service will be given to him/her and previous service cannot be taken into account for any purpose including computing of pensionary benefits, the same cannot be claimed by an employee. Relevant paragraph is as under:-

“In the case in hand as well, as has been noticed above, there were specific conditions laid down in the letter of offer of appointment regarding appointment being afresh; at the beginning of the scale; to be placed at the bottom of the seniority and with no benefit of past service. Specific condition was there that in case the aforesaid conditions are acceptable to the person concerned, he may join service. The respondent with his eyes open joined service. Meaning thereby, he accepted all the terms and conditions as laid down in the letter of offer of appointment. Further, he continued to serve the department for a period of more than six years without raising any grievance or challenging the terms of his appointment or the scheme under which his appointment had been made. He, now cannot be permitted to turn around and file a petition nearly two years after his retirement claiming that his past service be counted for the purpose of pensionary benefits especially, when the service rendered in the Corporation, was not pensionable.”

The said order passed by the Division Bench of this Court on 29.05.2018 has already been upheld by the Hon'ble Supreme Court of India in SLP (c) No. 23416 of 2018 on 07.09.2018 and review petition has also

been dismissed by the Hon'ble Supreme Court of India on 28.11.2018.

Even otherwise, in the facts and circumstances of the present case, grant of past service benefit towards fixation of pay, Assured Career Progression Scheme as well as promotion will create anomaly. It is an admitted case that 418 posts of Grid Sub-Station Operator were advertised and seniority of the selected candidates will depend upon the merit, which they obtained during selection. Learned counsel for the petitioner has admitted that there are certain candidates who are senior to the petitioner in the selection and in that case, if the benefit of past service is granted to the petitioner, not only petitioner, being junior in the merit in selection and consequently junior in the seniority list in the cadre of Grid Sub-Station Operator will be getting higher salary but, will be getting Assured Career Progression Scheme and further promotion ahead of his seniors which is impermissible. Therefore, the claim made by the petitioner in the present petition for fixation of salary, grant of promotion and Assured Career Progression Scheme by taking into consideration his past service which he had rendered as Workshop Instructor in the Department of Technical Education, Haryana is misplaced and cannot be accepted.

As far as the claim of the petitioner for the grant of pensionary/retiral benefit by taking into consideration the past service rendered by the petitioner as Workshop Instructor in Technical Education Department is concerned, the same stands on different connotation. Annexure P/1 i.e. impugned order is silent about the grant of benefit of the service rendered by the petitioner as Workshop Instructor in the Technical Education Department for computing pensionary benefits. The impugned order dated 14.02.2020 (Annexure P/1) will not come in the way of

petitioner in case Rules governing the service entitles the petitioner the benefit of service rendered by him as Workshop Instructor in the Department of Technical Education, Haryana as well as service rendered in respondent-Nigam for computing the pensionary benefits. This aspect will be considered by the respondent-Nigam at the relevant time, when the petitioner will attain the age of superannuation.

Keeping in view the above, no ground for interference in the impugned order dated 14.02.2020 (Annexure P/1) by this Court is made out.

Dismissed.

July 30, 2021

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/N