

Before Arun Monga, J.

SUKHDEV SINGH—Petitioner

versus

**PUNJAB STATE POWER CORPORATION LIMITED &
ANR.—Respondents**

CWP No.13132 of 2020

April 7, 2021

A. Constituion of India, 1950—Article 226—Pension—counting of qualifying service —any employee who has rendered service on work charge/adhoc basis is entitled to count period of such service to compute total length of qualifying service for pensionary benefits.

Held that there is no gainsaying to reiterate that any employee who has rendered service on work charge/ adhoc basis, is entitled to count the period of such service to compute the period of such service towards total length of qualifying service for pensionary benefits.

(Para 7)

B. Constitution of India, 1950—Article 226—Pension—Voluntary retirement—once offer of petitioner accepted to be allowed to retire voluntarily, respondent cannot take a somersault to contend that since he had not completed 20 years of regular service prior to seeking voluntary retirement, therefore, petitioner not entitlement to pension.

Held that a perusal of the above would reveal that having once accepted the offer of the petitioner to be allowed to retire voluntarily, the respondent cannot thereafter take a somersault to contend that since he had not completed 20 years of regular service prior to seeking voluntary retirement, therefore, he was not entitled to pension. The respondent Corporation is bound by the principle of *estoppel* by its own conduct and having once accepted the application for voluntary retirement, cannot take a U-turn qua the grant of benefit of pension to which the petitioner is undoubtedly entitled by including the work charge period service for arriving at the minimum bench mark of total 20 years of service.

(Para 11)

Mohit Garg, Advocate,
for the petitioner.

Monica Chhibber Sharma, Advocate
for respondent PSPCL.

ARUN MONGA, J.

(1) Grievance of the petitioner, while invoking the writ jurisdiction of this Court under Articles 226/ 227 of the Constitution of India is qua impugned order dated 18.03.2013(Annexure P-3) whereby his claim for pension has been rejected on the ground that he does not have qualifying service of 20 years. Petitioner seeks issuance of a writ in the nature of *certiorari* to quash the impugned order claiming that the same has been passed erroneously by overlooking the material fact that he had rendered qualifying service of 24 years after adding his work charged service period, immediately prior to his regularization.

(2) Brief factual narrative first, which is not in dispute. The petitioner was appointed as Lorry Cleaner in the respondent Corporation on work charge basis on 28.09.1976. His services were regularized on 18.08.1984. The petitioner request requested/offered to deposit the share of EPF along with interest from 01.03.1976 to 17.08.1984 to get the benefit of service rendered on work charge basis towards pensionary benefits. The said request of the petitioner was accepted and as directed, petitioner deposited an amount of Rs.11,700/- for reckoning of his service in the light of circular issued by the respondent Corporation. On 22.08.2001, petitioner gave 3 months, notice and sought premature retirement. His request was accepted and petitioner was allowed to retire voluntarily on 31.12.2001. He was given benefit of leave encashment. However, he was not granted any pension. His request/claim for seek pension was rejected by the respondent vide impugned order dated 18.03.2013. Hence, the writ petition.

(3) In the return filed on behalf of respondent, there is a conspicuous and stoic silence, perhaps deliberate, with respect to the specific averments of the petitioner that he had rendered total 24 years of service after computing work charge period prior to his regularization. It would not be out of place to reproduce the relevant specific assertion of the petitioner contained in para 6 of the petition and the corresponding response qua the same by the respondent PSPC. The same read as below:-

Para No.6 of writ petition:-

That as enumerated above, the petitioner has done 8 years

of service on the work charge basis and the breaks in the above said work charge service of 8 years stand condoned by the respondent department vide Annexure P-2 Supra and the petitioner after the regularization of his service has also deposited the amount of Rs.11,700/- as calculation of interest as towards EPF. Hence, the respondent department has to consider this period of 8 years in counting the total qualifying service rendered by the petitioner for the purpose of pensionary benefits and by adding these 8 years, the total service rendered by the petitioner comes out to be 24 years and hence as per Punjab Civil Services Rules Volume II the petitioner is entitled to receive the pension.”

Response of respondent PSPCL to the above para:-

That the contents of para 6 are wrong and hence denied. It is further submitted that the petitioner has rendered a regular service of 17 years 4 months and 20 days, which is less than 20 years of qualifying service for the purpose of pension.

(4) No replication to the written statement has been preferred by the petitioner as the same was not deemed necessary by him. It was rightly so, in view of the tacit admission by the respondent PSPCL with regard to his having rendered 24 years of service by including the service of work charge period.

(5) The aforesaid being the factual position, stand taken by PSPCL that the petitioner was rightly retired prematurely as he had rendered “regular” service of 17 years 4 months and 20 days which is less than the requisite 20 years of qualifying service for the purpose of pension is quite evasive and tantamount to an admission of the averments in the petitioner that the petitioner had done 8 years of service on the work charge basis and the breaks in the above said work charge service of 8 years stand condoned by the respondent department and the petitioner after the regularization of his service has also deposited the amount of Rs.11,700/- as calculation of interest as towards EPF. To be noted, the respondent PSPCL has deliberately used the word “regular” service so as to avoid making a direct admission that the requisite total service being 24 years.

As regards the question of reckoning the service for work charge period rendered immediately prior to the regularization of the services of the petitioner, the same are to be undoubtedly counted towards

pensionary benefits. The position in law was settled at rest and is no more *res integra*. Reference may be had to Full Bench judgment of this Court rendered in ***Kesar Chand*** versus ***State of Punjab***¹

(6) In view thereof, there is no gainsaying to reiterate that any employee who has rendered service on work charge/ adhoc basis, is entitled to count the period of such service to compute the period of such service towards total length of qualifying service for pensionary benefits.

(7) In fact, it is rather intriguing that respondent PSPCL should drive the petitioner to needless litigation in as much as a similarly situated employee who had earlier approached this Court for grant of benefit of workcharge service while reckoning qualifying service/ total length of service for pensionary benefits was given the benefit thereof in a case of ***Om Parkash*** versus ***Punjab State Power Corporation Limited &Ors.***² Speaking for this Court, my learned Brother Kuldeep Singh, J(as he then was) opined as below:-

“Now, the question would arise as to whether the work charge service rendered by the petitioner which comes to approx. 9 years 10 months and 9 days is liable to be counted for grant of pensionary benefits to the petitioner or not?

7. The controversy has already been settled by the Hon'ble Supreme Court in case titled as Punjab State Electricity Board and another v. Narata Singh and another, 2010 (3) SLR 202. It is to be noted that previously the Bhakra Dam Project and BSL Nangal were under the Irrigation Department of Punjab Government. The facts of the case are identical with the present case. In the said case, the Hon'ble Supreme Court while considering the SLP against the Division Bench judgment of this Court vide which the prayer of the employee was allowed, observed as under:-

13. The learned counsel for the appellants pointed out the finding recorded by the Division Bench in the impugned judgment to the effect that "we are, therefore, clearly of the opinion that the work charged service of the appellant with the Board must be counted for determining qualifying service for the purpose of pension" and argued that the

¹ 1988(5) SLR 27

² 2017(4) SCT 43

judgment of the High Court should not be construed to mean as giving direction to the appellant to include previous service rendered by the respondent No.1 as work charged employee of the State Government for pension purposes. So far as this argument is concerned, it is true that the Division Bench of the High Court has expressed the above opinion in the impugned judgment. However, the reference to Rule 3.17(ii) of the Punjab Civil Services Rules as well as the Full Bench decision of the Punjab and Haryana High Court in *Kesar Chand v. State of Punjab & Ors.* [1988 (5) SLR 27] and speaking order dated November 16, 2005 passed by the Board rejecting the claim of respondent No.1 makes it abundantly clear that the High Court has directed the appellants to count the period of service rendered by the respondent No.1 in work charged capacity with the State Government for determining qualifying service for the purpose of pension. Further, the respondent No.1 has been directed to deposit the amount of Employee's Contributory Fund which he had received from the appellants along with interest as per the directions of the Board before the pension is released to him. All these directions indicate that the High Court had come to the conclusion that the period of service rendered by the respondent No.1 in work charged capacity under the State Government should be taken into consideration for determining qualifying service for the purpose of pension. Non-mention of such direction in the impugned judgment is merely a slip and the appellants cannot derive any advantage from this.

The said authority is directly attracted in the facts of the present case. Therefore, the work charge service of the petitioner rendered in Bhakra Dam Project and BSL Nangal is liable to be counted as qualifying service for the pension in terms of judgment in the case of *Narata Singh (supra)*.”

(8) I am in respectful agreement with above views expressed by my Brother Judge. It is, thus, clear as day light that work charge period service is to be counted towards total length of service for computing qualifying service for pensionary benefits, in the case of petitioner as well. Needless to say that 8 years of work charge service is to be added to 17 years of regular service and benefit thereof is to be given to the petitioner.

(9) The other insipid argument on behalf of respondent PSPCL is that since petitioner had sought premature retirement without having rendered 20 years of regular service, therefore, he is not entitled to the pensionary benefit is also being noted only to be rejected. The said argument flies in the face of Punjab Civil Services (Premature Retirement Rules) 1975, particularly Rule 2 thereof, which for ready reference is reproduced hereinbelow:-

“2. Retiring Pension and gratuity.—

(1) A retiring pension and death-cum-retirement gratuity shall be granted to a Government employee who retires or is required to retire under rule 3.

2 (i) While granting proportionate pension and gratuity to an employee retiring under sub-rule (2) or sub-rule (3) of rule 3, as the case may be, his qualifying service, as on the date of intended retirement shall be increased by a period not exceeding five years, so however, that the total qualifying service of the employee as so increased shall not in any case exceed thirty-three years or the period of qualifying service which the employee would have completed had he retired on the date of his superannuation.

(ii) The weightage of five years under clause (i) shall not be admissible in cases of those Government employees who are prematurely retired by the appropriate authority in public interest under sub-rule (1) of rule 3.

(3) The pension and gratuity of the employee retiring under sub-rule (2) or sub-rule (3) of rule 3, as the case may be, shall be based on the emoluments as defined in rule 6.19-C and 6.24 of the Punjab Civil Services Rules, Volume II, and the increase in his qualifying service under sub-rule (2) shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(4) The amount of pension to be granted after allowing increase in the qualifying service under sub-rule (2) shall be subject to the provisions of rules 2.2 and 6.4 of the Punjab Civil Services Rules, Volume II.”

(11) A perusal of the above would reveal that having once accepted the offer of the petitioner to be allowed to retire voluntarily, the respondent cannot thereafter take a somersault to contend that since

he had not completed 20 years of regular service prior to seeking voluntary retirement, therefore, he was not entitled to pension. The respondent Corporation is bound by the principle of *estoppel* by its own conduct and having once accepted the application for voluntary retirement, cannot take a U-turn qua the grant of benefit of pension to which the petitioner is undoubtedly entitled by including the work charge period service for arriving at the minimum bench mark of total 20 years of service.

(12) As an upshot of the observations and discussion above, writ petition is allowed. Impugned order dated 18.03.2013 is quashed. It is held that claim of the petitioner to seek pensionary benefits was wrongly rejected. Writ of *mandamus* is issued to the respondents to release the pensionary benefits to the petitioner by adding period of work charge service rendered by him immediately prior to his regularization and the consequential benefits arisen therefrom shall be disbursed to him within a period of 60 days of the petitioner approaching the competent authority along with web print of the instant order. Since the petitioner's pecuniary benefits have been wrongly denied driving him to needless litigation, he shall also be entitled to compensatory interest @ 8% per annum on the amount of pecuniary benefits from the due date till actual payment. Any further delay in payment thereof beyond 60 days granted by this Court shall entail interest @ 12% to be calculated from the date they fell due till actual date of payment.

(13) Writ petition stands allowed in above terms. No costs.

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