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Present: Vs. State of Haryana and Another

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Court : Punjab and Haryana

Decided On : Sep-12-2013

Appellant : Present:

Respondent : State of Haryana and Another

Judgement :

CIVIL WRIT PETITION No.5128 o

1. IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CIVIL WRIT PETITION No.5128 of 1995 DATE OF DECISION: SEPTEMBER 12 2013 D.S.Verma, Chief Engineer(Retd.) .....Petitioner Versus State of Haryana and another .....Respondents CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA Present: Present Mr.OP Gupta, Advocate with Mr.Sukhdev S.Kanwal, Advocate for the petitioner. Mr.SS Goripuria, Deputy Advocate General, Haryana. <><><> TEJINDER SINGH DHINDSA, J.The petitioner superannuated on 30.11.1992 while serving as Superintending Engineer with the Public Works Department (Public Health Branch), State of Haryana. He instituted the instant writ petition in the year 1995 claiming a three-fold relief i.e. i) Salary and emoluments of the higher post of Chief Engineer for the period he officiated and worked against such post; ii) The grant of pensionary/retiral benefits of full qualifying service of 33 years, and iii) Grant of personal pay of `100/- per month from 20.7.1981 to 30.11.1992 i.e. the age of Malik Sushama Rani 2013.09.19 15:44 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION No.5128 o

2. retirement and the same to be also reckoned for computation of retiral dues.

2. Brief facts are that the petitioner initially joined service with the Public Works Department, Irrigation Branch in the erstwhile State of Punjab on 22.4.1954 as a Draftsman. He worked in such capacity till 7.9.1961. While serving, the petitioner acquired the AMIE qualification in 1960 and upon applying through proper channel secured fresh appointment as Assistant Engineer in the PWD (Public Health Branch) on 8.9.1961. Upon such selection and appointment, he was relieved by the Irrigation Branch and joined with the Public Health Branch without any break. Upon the re-organization of the State of Punjab, the services of the petitioner were allocated to the Successor State of Haryana.

3. During the course of time, the petitioner earned promotion to the rank of Superintending Engineer. It is pleaded that on account of pendency of Civil Writ Petition No.9358 of 1989 filed by one B.D.Sardana, Superintending Engineer in this Court and by virtue of certain interim directions passed therein, regular promotion to the cadre of Chief Engineer was not made and resultantly, the senior most Superintending Engineer was deputed to take charge of the higher post. In such situation, the petitioner was given the charge of the higher post of Chief Engineer w.e.f. 6.4.1990 which he continued to hold till his date of superannuation i.e. 30.11.1992. It is against such backdrop that the claim of pay of the higher post of Chief Engineer from 6.4.1990 to 30.11.1992 has been raised. Malik Sushama Rani 2013.09.19 15:44 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION No.5128 o

3. 4. Further pleaded case of the petitioner is that upon retirement his verified qualifying service was taken to be 31 years and 2-1/2 months (from 8.9.1961 to 31.11.1992). The petitioner, thus, seeks even the benefit of service that he had rendered with the Public Works Department (Irrigation Branch) to count towards qualifying service for grant of pensionary benefits.

5. Reliance has been placed upon Finance Department letter dated 20.7.1981 whereby the Government had introduced an incentive scheme of giving one special increment in the form of personal pay to any one who underwent sterilization operation with not more than three surviving children after the said

date subject to both spouses falling within a specified age limit. The petitioner claims to have undergone the vasectomy operation on 20.9.1976 and as such, claims that the benefit of such incentive of one special increment in the form of personal pay would be admissible to him and would count for the purpose of computing retiral dues.

6. In the written statement filed on behalf of respondents 1 and 2, it stands admitted that the petitioner had served and officiated against the higher post of Chief Engineer for the period in question i.e. 6.4.1990 to 30.11.1992. It is stated that on account of pendency of Civil Writ Petition No.9358 of 1989, the Government was not in a position to issue regular promotion orders of the petitioner on the post of Chief Engineer and, accordingly, he had been directed to work on the higher post in his own pay and rank due to administrative expediency of work. As regards the benefit of service rendered by the petitioner with Malik Sushama Rani 2013.09.19 15:44 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION No.5128 o

4. the Punjab Public Works Department (Irrigation Branch), a stand has been taken that the relevant record is very old and even though efforts have been made to verify the service particulars of the petitioner but no response has been forthcoming from the concerned office. As such, the claim has been resisted by stating that such benefit was never sought by the petitioner while in service or even at the stage of submitting his pension papers and the same would be construed as an afterthought.

7. Insofar as the benefit of a special incentive/special increment for having undergone the sterilization operation, categoric averments have been made in the written statement that in his entire service tenure, the petitioner never raised the claim in regard thereto and as such, it would not be open for him to claim such benefit at such a belated stage.

8. Learned counsel for the parties have been heard at length.

9. Learned counsel appearing for the petitioner, at the very outset, would submit that he would not be pressing the claim as regards special increment of `100/- on

account of the petitioner having undergone the vasectomy operation in the year 1976. As such, such claim stands declined.

10. The factual position as regards the petitioner having officiated and worked against the higher post of Chief Engineer from 6.4.1990 till his date of superannuation i.e. 30.11.1992 stands admitted. The only justification brought forth by the State to deny to him the pay and emoluments of the higher post is that he had been called upon to work against the post of Chief Malik Sushama Rani 2013.09.19 15:44 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION No.5128 o

5. Engineer in his own rank and pay on account of administrative expediency of work.

11. The question as regards entitlement to the pay and emoluments in relation to the higher post against which the employee has discharged his duties, be it on an officiating basis, is no longer res-integra. It is by not well settled that an employee who has been called upon by the State Government to work against the higher post would be entitled to the pay and emoluments of such post. A reference in this regard may be made to the judgment of the Hon'ble Supreme Court in Smt.P.Grover v. State of Haryana and another, AIR 198.SC 1060.1060 As such, there would be no justifiable basis with the State Government to deny to the petitioner the pay and emoluments to the post of Chief Engineer for the period 6.4.1990 to 30.11.1992 as he has, admittedly, discharged the duties of such post during such period.

12. In the case of Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma, 1998(3) SCT 90.90 an issue came up for consideration before the Hon'ble Supreme Court wherein the respondent had been promoted as Junior Engineer-I in the year 1990 and continued on that post without being paid salary for the post, and the State had chosen to deny emoluments of such post on account of an undertaking having been given by him that on account of such promotion given purely on stop-gap arrangement, he would not claim promotion as of right not would he claim any benefit pertaining to that post. Holding the respondent therein to be entitled to the pay and emoluments of Malik Sushama Rani 2013.09.19

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6. the higher post against which he had been called upon to officiate as a stop-gap arrangement, it was observed in the following terms: .....An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy.....

13. As such, the stand of the State Government that the petitioner had been called upon to work/officiate on the post of Chief Engineer in his own rank and pay would be of no consequence.

14. This Court is of the considered view that the denial to the petitioner even as regards service rendered with the PWD (Irrigation Branch) by merely stating that the record is very old and such service does not stand verified is wholly untenable. Placed on record at Annexure P11 along with the writ petition is Memo No.3406/3E dated 14.5.1994 which is in the nature of a certificate issued by the Superintending Engineer, Western Jamuna Canal (East) Circle, Karnal and which states in the following categoric terms: Sh.Devinder Singh, Draftsman has worked in the office of the Superintending Engineer WJ.East Circle 3, Alipur Road Delhi from 1.3.1959 to 7.9.1961 as per record from 1.3.1959 to 7.9.1961 are verified from the office copies of the pay bills.

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7. 15. There would be no basis to discard such official document. Even though the petitioner in his pleadings has stated to have served with the PWD (Irrigation Branch) from the year 1954 onwards, still even if the benefit of such service as verified in the certificate dated 14.5.1994 at Annexure P11 is given i.e. for a period of about 1-1/2 years, the petitioner would be vested with the benefit of maximum permissible qualifying service of 33 years. The petitioner is, accordingly, held entitled to such benefit.

16. For the reasons recorded above, the writ petition is allowed. The petitioner be released the salary of the higher post of Chief Engineer for the period 6.4.1990 to 30.11.1992 along with all consequential benefits and be also granted the benefit of full qualifying service of 33 years for computation of retiral benefits. The requisite financial benefit be calculated and released to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

17. Petition allowed in the aforesaid terms. (TEJINDER SINGH DHINDSA) September 12, 2013 JUDGE SRM Note: Whether to be referred to Reporter?. (Yes/not Malik Sushama Rani 2013.09.19 15:44 I attest to the accuracy and integrity of this document

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