

**SUPREME COURT OF INDIA**

Punjab State Electricity Board

Vs.

Jit Singh

C.A.No.1793 of 2009

(Tarun Chatterjee and H.L. Dattu JJ.)

23.03.2009

**ORDER**

1. Leave granted.

2. Punjab State Electricity Board ('Board' in short) is before us in this appeal, inter alia calling in question the correctness or otherwise of the judgment and order passed by the High Court of Punjab and Haryana in Writ Petition No. 7326 of 2005 dated 12.7.2007.

3. The facts in nutshell are, the respondent was appointed as security guard on ad hoc basis on 27.01.1976 and his services were regularized with effect from 9.8.1978. He retired from service on attaining the age of superannuation on 31.7.2000. On his retirement, the respondent has received all the pensionary benefits.

4. The Board has issued a circular dated 23.01.2001, giving certain benefit of "ad hoc service" to Board employees. In short, in the circular, it is stated, that, the period of ad hoc service would be counted towards retirement benefit on regularization, provided the employees fulfil certain conditions. A clarification is also issued by the Board, by Memo No. 41614/659 dated 14.2.2001, clarifying the circular dated 23.1.2001.

5. To take benefit of the circular issued by the Board, the respondent had made a request to the Board to count his ad hoc service in the Board before regularization of his service for the purpose of calculating the pensionary benefits. The said claim is rejected by the Board vide its order dated 5.10.2004. This issue was agitated by the respondent by filing a Writ Petition before the High Court of Punjab and Haryana. The court has granted relief to the respondent. The findings and the conclusions reached therein is the subject matter of this civil appeal.

6. The learned counsel for the Board would contend, that, the High Court was not correct in relying on the full bench decision of the Punjab and Haryana High Court in the case of *Kesar Chand vs. State of Punjab & Others*<sup>1</sup>; since in that decision the court was concerned with the issue, the effect of regularization of service of work charge employee for the purpose of pensionary benefits which are available to the other public servants. It is further contended,

that, the Circular/Memo dated 23.1.2001 and subsequent Circular/Memo dated 14.2.2001 are only prospective and the benefit cannot be granted to such of those employees who have retired from service prior to the issuance of Circular/Memo dated 23.1.2001 and clarificatory Memo dated 14.2.2001. It is further contended that the reliance placed by the respondent on Clause 7 of the Finance Circular No. 73/89 issued by the Board is misplaced, since that circular was made applicable to work-charge employees only. It is also contended, that, since the respondent has not questioned the validity or otherwise of the Circular/Memo dated 23.1.2001 and 14.2.2001, he cannot take the benefit of those circulars, since they are prospective and issued after respondent retired from service on attaining the age of superannuation.

7. The learned counsel for the respondent-employee would contend that there is no essential difference between a 'work charge employee' and an employee appointed on ad hoc basis and, therefore, the High Court was justified in relying on the full bench decision of Punjab and Haryana High Court in Kesar Chand's case and directing the Board to reconsider the case of the respondent in the light of the said decision.

8. The issue that requires our consideration and decision is, whether the High Court was justified in relying on the decision of Kesar Chand's case to annul the order passed by the Board dated 5.10.2004 and secondly, whether the ad hoc service of an employee of the Board before regularization of his service requires to be counted while calculating the pensionary benefits of the respondent.

9. To resolve the controversy, we require to notice Memo/Circulars issued by the Board dated 23.1.2001 and 14.2.2001. They are :- (a) "Memo No. 21064/21114/ENG-27(44)LCL 75 Dated 23.1.2001 Subject: COUNTING OF ADHOC SERVICE FOR PENSIONARY BENEFITS ONLY The matter regarding benefit of Adhoc Service has been under the active consideration of the Board for some time past, the Board in its 11/2000 meeting held on 29.12.2000 has decided that entire adhoc service rendered by the Board employees, shall regularization, provided the employees fulfill the following conditions:-

“i) Who fulfilled the condition of minimum prescribed qualifications and experience, if any, for the past at the time of appointment and were recruited by following proper procedure were continuing un-interruptedly till date of regularization.

ii) Who fulfilled condition of minimum qualification and experience at the time of recruitment but were not recruited by following proper procedure and continued in service without any interruption.

iii) This benefit will not be admissible to those who do not fulfill either of the above two conditions. It was specifically decided that this benefit shall not be given to those employees who have either been retired or retired from the service of the Board."

(b) Memo No. 41614/659 ENG-27(44)LCL 75 Dated : 14.2.2001 SUBJECT : COUNTING OF ADHOC SERVICE FOR PENSIONARY BENEFITS ONLY Part 2

of this office memo No. 21064/21114/ENG-27 (44) LC-75 dated 23.1.2000 vide which instructions were issued on the subject cited is amended and may be substituted as under :- 2) This benefit shall also not be given to these employees who have either retired on attaining the age of superannuation/compulsory retired/taken premature retirement or resigned from the service of the Board.”

10. In our view, before we advert to the issues canvassed, it would be useful to extract the decision of the Board on the claim made by the respondent. It is as under :- "Memo No. 12958/SGE-740 Dated: 5.10.04 Subject: In response to the legal notice given under Section 80 CPC by Shri Jit Singh, ASI, retired, on 31.7.2000. In response to the above, it is being intimated to you that as per the instructions of Board, you are not entitled to the benefit of ad hoc service for pensionary benefits.

11. The facts which are not disputed and which cannot be disputed also are, that, the respondent was appointed as a security guard on ad hoc basis on 27.1.1976 and his services were regularized as security guard with effect from 9.8.1978. The respondent retired from service on attaining the age of superannuation on 31.7.2000.

“The Board has issued a circular dated 23.1.2001 for the purpose of counting of ad hoc service rendered by the Board employees for the purpose of quantifying the pensionary benefits after their services are regularized in the Board, if they satisfies the conditions envisaged in the circular. By yet another Circular/Memo dated 14.2.2001 the Board has clarified its earlier circular that the benefit of the circular dated 23.1.2000 shall not be given to those employees who have either retired on attaining the age of superannuation/compulsorily retired/take premature retirement or resigned from the service of the Board before issuance of the Board's circular dated 23.1.2000. That only means the circulars are given prospective effect. The respondent in the writ petition filed does not question the validity or otherwise of the circular issued on the ground that they are violative of any Constitutional provisions, including Article 14 of the Constitution of India. It is not even the case of the respondent that the circulars issued by the Board is arbitrary, since it treats employees retired from service prior to and after issuance of the circular of the Board. Therefore, it may not be proper for us to take up an issue which is not pleaded or urged either before this Court or before the High Court by the respondent-employee of the Board.”

12. A retired employee of the Board being of the view that he is entitled for the benefit of the Circulars issued by the Board dated 23.01.2001 and 14.02.2001, has approached the Board to count his service when he worked as adhoc employee till the date of regularization of his service for the purpose of calculating his pensionary benefits. This request is rejected by the Board by its cryptic and non-speaking order. The order so made was the subject matter of the writ petition. The court following the decision in Kesar Chand's case (supra) has allowed the petition on the ground that in the said decision, it has been held "that once service of work charge employee is regularized, there is no logic to deprive him of the pensionary benefits available to other public servants. Even the temporary or officiating service of the government has to be reckoned in determining the qualifying service."

13. In Kesar Chand's case, the facts were, the employee had joined as Beldar on August 1, 1951 as a work charge employee in the office of the Sub-Divisional Officer, Pathankot. He had regular service without any break till the date of retirement from service on attaining the age of superannuation. While claiming pensionary benefits at least from the date, he is deemed to have been regularized in service, he had relied on the award passed by the Industrial Tribunal, and further had questioned the vires of Rule 3.12 and Rule 1.2 of the Punjab Civil Services Rules, which had been relied on by the respondents to deprive the pensionary benefits. It was his further case that he was a government servant<sup>8</sup> and was paid from the government revenue and, therefore, could not be excluded from the purview of Punjab Civil Services Rules in relation to pension. In the back drop of the aforesaid fact scenario, the Punjab and Haryana High Court granted relief to the work charge employee, who had put in continuous service till the date of retirement on attaining the age of superannuation.

14. In the instant case, the facts are not identical. The respondent is an employee of Punjab State Electricity Board and not an employee of the State Government. He is not claiming any benefit under Punjab Civil Services Rules, but claiming benefit in view of the circulars issued by the Board. He has not even questioned the vires of the circular issued by the Board, wherein a cut off date is prescribed by limiting to those ad hoc employees who are still in service and whose services have been regularized etc. Therefore, in our opinion, the High Court by placing reliance on a decision which does not have any bearing on the fact situation pleaded by the petitioner ought not to have observed that the principles enunciated in Kesar Chand's case will apply to the case of the respondent and, therefore, authorities of the Board should reconsider the claim of the respondent-employee in the light of the principles enunciated in the said case. Therefore, we cannot sustain this portion of the order passed by the High Court.

15. Now, we come to the order passed by the Board dated 5.10.2004. In our view, it is suffice to state, that, the order is a non-speaking order in the sense, it does not contain any reasons much less cogent reason so fair play requires recording precise and cogent reasons when an order affects the right of citizen. In the impugned order, we do not see any reason in the order passed by the authorities of the Board. Therefore, in our view, the High Court ought to have set aside the order and remitted the matter to the authorities of the Board, to reconsider the claim of the respondent in accordance with law. That only means the order should have been an open remand, instead of asking the Board to reconsider the claim with reference to a particular principle laid down by the High Court in a different factual scenario. Since, we are remanding the matter, we have not answered the second issue.

16. In the result we allow this appeal and set aside the impugned order and direct the authorities of the Board to reconsider the claim of the respondent in accordance with law.

17. The appeal is disposed of accordingly.

<sup>1</sup>[AIR, 1988 Punjab and Haryana, 265]