SUPREME COURT OF INDIA

Punjab State Electricity Board

Vs.

Narata Singh

C.A.No.2384 of 2007

(J.M.Panchal and K.S.Radhakrishnan JJ.)

23.02.2010

JUDGEMENT

J.M.Panchal, J.

1. This appeal by special leave is directed against judgment dated January 25, 2006 by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in LPA No.694 of 1995 by which the appellants have been directed to count previous service rendered by respondent No.1, Narata Singh, in the Departments of Punjab State as work charged employee for the purpose of determining qualifying service for pension 2 payable to him as an employee of the Punjab State Electricity Board (for short, the `Board').

2. The admitted facts which emerge from the record of the case are as under: The respondent No.1 worked with Irrigation and Power Department of the State of Punjab on work charged basis from February 1, 1952 to September 18, 1953. From September 25, 1953, he worked as work charged employee with the Bhakra Dam Project and resigned therefrom on January 27, 1962. He thereafter joined the Beas Dam Project on February 1, 1962 and worked at the said project till April 15, 1978 as work charged employee. He was retrenched from the said project with effect from April 15, 1978 and was paid retrenchment compensation of Rs.11,803.20 and gratuity of Rs.8559/- by the competent authority of the project. Bhakra Dam Project and Beas Dam Project are under the Department of Irrigation and Power, State of Punjab and, thus, even as per the appellants, the services rendered by the respondent No.1 as work charged employee in the two projects was, in fact, service under the State of Punjab.

> "The appellant No. 1, i.e., Punjab State Electricity Board is a statutory body constituted under Section 5 of the Electricity (Supply) Act, 1948. The respondent No.1 was employed on work charged basis as a special foreman by the Board as a fresh appointee. He worked in the same capacity from August 6, 1982 to January 5, 1984. With effect from January 6, 1984, he was appointed on regular basis. He retired from the service of the Board with effect from July 31, 1990 on attaining the age of superannuation. The respondent No.1 thereafter moved a representation requesting

the Board to grant him pension and other retiral benefits after taking into account the entire service rendered by him on work charged basis under the State Government. By an order dated January 25, 1991, the respondent No.1 was paid a sum of Rs.29,250/- being the amount payable to him as death-cum- retirement gratuity. The relevant regulation framed by the Board provides that an employee who has served for a minimum period of qualifying service of 10 years would be entitled to pension. The claim of the Board is that the respondent No.1 had served the Board for 7 years, 11 months 4 and 25 days including the work charged service in the Board and was, therefore, not qualified for grant of pension. The claim of the respondent No.1 was that service rendered by him in the State of Punjab as work charged employee should be counted for determining qualifying service for the purpose of pension. Therefore, he instituted C.W.P. No.10911 of 1991 before the High Court of Punjab and Haryana seeking inclusion of work charged service for the purpose of determining qualifying service. A Division Bench of the Punjab and Haryana High Court at Chandigarh, vide order dated January 28, 1992, allowed the writ petition of the respondent No.1 and directed the Board to include work charged service rendered by the respondent No.1 with the State of Punjab for the purpose of determining qualifying service for grant of pension to him. It may be mentioned that the Board had issued a Finance Circular No.24/92 dated May 29, 1992 deciding to include the period of work charged service of an employee with the Board for the purpose of grant of pensionary benefits as well as for counting the said period for determining qualifying service for grant of pension.

Feeling aggrieved by the said decision, the appellants filed special leave petition (C) No.7515 of 1992 before this Court. The said petition was allowed by an order dated October 12, 1992 in the following terms:

"Special Leave granted.

Heard counsel on both sides. The question which is required to be considered is in regard to the service rendered by the respondent No.1 Narata Singh with the Bhakra Management Board and later the Beas Management Board. The question to be considered is whether that service was regulated by the Contributory Provident Fund Scheme and Gratuity Scheme and whether the respondent No.1 had already taken benefit thereof. If so, the effect of that benefit received by the respondent No.1 would have to be considered. It appears that the matter had not been considered from that angle by the High Court. We, therefore, set aside the impugned order of the High Court and remit the matter to the High Court for reconsideration on merit. The appeal is disposed of accordingly. There will be no order as to costs.

Sd/- (A.M. Ahmadi) Sd/- (M.M. Punchhi) October 12, 1992 New Delhi."

After remand, the case was heard by a learned Single Judge of Punjab and Haryana High Court. The learned Single Judge by order dated March, 10, 1995 dismissed the petition filed by the respondent No.1. Thereupon the respondent No.1 challenged the

said judgment by filing a Letters Patent Appeal No.674 of 1995. During the pendency of the appeal, respondent No.1 filed an application on August 27, 2004 under Section 151 of the Code of Civil Procedure for bringing on record certain documents in support of his claim that service rendered by him in the State of Punjab should be taken into consideration for the purpose of determining qualifying service rendered by him in the Board. The record further shows that he filed another application for bringing on record certain documents in support of his claim. The Division Bench of the High Court noticed that those documents were neither considered by the learned Single Judge nor by the Board and, therefore, the Division Bench, by an order dated August 24, 2005, directed the Board to consider the case of the respondent No.1 for the grant of pensionary benefits, in the light of new documents filed in the 7 appeal within four months from the date of the order. After passing the said order, the hearing of the appeal was adjourned. Pursuant to the directions given by the High Court, the Board reconsidered the case of the respondent No.1 for grant of pensionary benefits in the light of the documents produced by him on the record of the appeal and rejected the said claim by a speaking order dated November 16, 2005. The order passed by the Board was produced before the Court hearing LPA No.674 of 1995. The main ground on which the claim of the respondent No.1 for grant of pensionary benefits in the light of the new documents was rejected was that the case of the respondent No.1 was not covered by Regulation Circular No.54 of 1985 bearing Memo No.257861/REG.6/Vol.5 dated November 25, 1985 because he had rendered service in the work charged capacity outside the Board, i.e., in the Departments of the State Government, namely, Bhakra Management Board and Beas Management Board and that the said service was a non-pensionable service so far as the State Government was concerned. The Division Bench considered the order dated November 16, 2005 passed 8 by the Board rejecting the claim of the respondent No.1 as well as Rule 3.17(ii) of the Punjab Civil Services Rules and the Full Bench decision of the Punjab and Haryana High Court rendered in *Kesar Chand vs. State of Punjab & Ors.*[1]. The Division Bench noticed that the Full Bench of the Punjab and Haryana High Court had struck down Rule 3.17(ii) of the Punjab Civil Services Rules which, inter alia, provided that period of service in work charged establishments shall not be counted as qualifying service. After noticing the ratio laid down by the Full Bench, the Division Bench concluded that Rule which excluded the counting of work charged service of an employee whose services were regularized subsequently was bad in law and, therefore, the conclusion of the Board that the case of the respondent No.1 was not covered by Circular dated November 25, 1985 because services rendered by him as work charged employee in the departments of the State Government was non-pensionable service so far as the Government of Punjab was concerned, was wrong. In view of the said conclusion, the Division Bench by the impugned judgment has allowed the claim of the 9 respondent No.1 to include work charged service rendered by him with the State of Punjab for grant of pension and directed the Board to count the said period for determining qualifying service for the purpose of pension, giving rise to the instant appeal."

3. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the appeal. The argument that the respondent No.1 had served the Board for 7 years, 11 months and 25 days and was, therefore, not qualified for grant of pension as he had not put in minimum qualifying service of 10 years, is devoid of merits. It is true that the Board is a statutory body constituted under Section 5 of the Electricity (Supply) Act, 1948 and entitled to make regulations in exercise of power conferred by Section 79 of the said Act. It is also true that the regulation relating to pension requires that an employee of the Board must serve for a minimum period of 10 years so as to claim pensionary benefits and that the total service of the respondent No.1 with the Board is of 7 years, 11 months and 25 days. However, the claim made by the 1 respondent No.1 that previous service rendered by him in work charged capacity with the State Government should be taken into consideration for the purpose of determining qualifying service for grant of pension is rightly upheld by High Court. It is relevant to notice that there were many cases where employees who had rendered temporary service under the State Government were retrenched but later on had secured employment under the Central Government and claimed pensionary benefits from the Central Government wherefrom eventually they had retired. There were also cases where employees who had rendered temporary service under the Central Government had secured employment under the State Government and were claiming pensionary benefits from the State Government wherefrom eventually they had retired.

> "Therefore, the question of allocation of pensionary liability in respect of temporary service rendered under the Government of India and State Governments was considered by the Central Government. The Central Government consulted the State Governments and it was decided that as proportionate pensionary liability in respect of temporary service rendered 1 under the Central Government or the State Governments to the extent of such service could have qualified for grant of pension under the Rules of the respective Government, will be shared by the governments concerned on a service share basis, so that the Government servants are allowed the benefit of counting their qualifying service both under the Central Government and the State Governments for grant of pension by the Government from where they eventually retire. This decision was reflected in letter dated March 31, 1982 addressed by the Under Secretary to Government of India to the Secretary to Government of all the States Finance Department (except Government of Jammu and Kashmir and Nagaland). The abovementioned policy decision taken by the Central Government was considered by the finance Department of Government of Punjab. It was decided by the Government of Punjab that proportionate pensionary liability in respect of temporary service rendered under the Central Government/State Government to the extent such service could have qualified for grant of pension under the rules of respective Government will be shared by the Government 1 concerned on a service share basis, so that the Government servants are allowed the benefit of counting their qualifying service both under the Central Government and the State Government for grant of pension by the Government from where they eventually retire. This policy decision taken by the Government of Punjab is reflected in a letter dated May 20,

1982 addressed to all the Heads of Departments, Registrar, Punjab and Haryana High Court, Commissioner of Divisions, District and Sessions Judge and Deputy Commissioners in the State. The abovementioned policy decisions taken by the Central Government and the Government of Punjab were taken into consideration by the Board which issued a Memo dated November 25, 1985 with reference to the subject of allocation of pensionary liability in respect of temporary service rendered in the Government of India and State Government and adopted the policy decision reflected in the letter dated May 20, 1982 of the Government of Punjab, with effect from March, 31, 1982 as per the instructions and conditions stipulated in the said letter. This is quite evident from Memo No.257861/8761/REG.6/V.5 dated November 25, 1 1985 issued by the under Secretary/P&R/ for Secretary, PSEB, Patiala."

4. The effect of adoption of the policy decisions of the Central Government and the State Government was that a temporary employee, who had been retrenched from the service of Central/State Government and had secured employment with the Punjab State Electricity Board, was entitled to count temporary service rendered by him under the Central/State Government to the extent such service was qualified for grant of pension under the Rules of the Central/ State Government.

5. The short question which arises for determination of this Court is whether the work charged service rendered by the respondent No.1 under the Government of Punjab prior to securing employment with the Board would qualify for grant of pension under the Punjab Civil Services Rules. This dispute deserves to be determined because the contention of the appellant is that the High Court was neither justified in referring to the definition of "temporary post" as given in Regulation 3.17(ii) of Punjab Civil Services Rules nor the Full 1 Bench decision in Kesar Chand (supra) but the High Court should have taken into consideration the definition of "temporary post" as per Regulation 2.58 of PSEB MSR Vol.I Part-I, 1972. As noticed earlier, by memo dated 25.11.1985, the Board adopted letter dated 20.5.1982 of the Department of Finance, Government of Punjab in order to allocate liability of pension in respect of temporary service rendered under the State Government. A bare glance at letter dated 20.5.1982 makes it very clear that allocation of pensionary liability in respect of temporary service rendered under the Government of India and the State Government was agreed upon on certain conditions being fulfilled, one of which was that the period of temporary service rendered under the Central/State Government should be such which could be taken into consideration for determining qualifying service for grant of pension under the Rules of respective government. In order to determine whether work charged service rendered by the respondent No.1 under the State Government could have been taken into consideration for the purpose of calculating qualifying service, one has to refer to definition of "temporary 1 post" as defined in Punjab Civil Services Rules and not to the Rule referred to by the Board. Rule 3.17(ii) of the Punjab Civil Services Rules reads as under:

"If an employee was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed

without interruption by confirmation in the same or another post, shall count in Full as qualifying service except in respect of :- (i) ... ...

(ii) periods of service in work-charged establishment; and"

A bare reading of the above-quoted rule makes it clear that periods of service in work charged establishments were not counted as qualifying service. Therefore, the work charged employees had challenged validity of the said Rule. The matter was considered by the Full Bench of Punjab and Haryana High Court. In *Kesar Chand vs. State of Punjab & Ors.*[2], the Full Bench held that Rule 3.17(ii) of the Punjab Civil Services Rules was violative of Article 14 of the Constitution of India. The Full Bench decision was challenged before this Court by filing a special leave petition 1 which was dismissed. Thus, the ratio laid down by the Full Bench judgment that any rule which excludes the counting of work charged service of an employee whose services have been regularized subsequently, must be held to be bad in law was not disturbed by this Court. The distinction made between an employee who was in temporary or officiating service and who was in work charged service as mentioned in Rule 3.17(ii) of the Punjab Civil Services Rules disappeared when the said rule was struck down by the Full Bench. The effect was that an employee holding substantively a permanent post on the date of his retirement was entitled to count in full as qualifying service the periods of service in work charged establishments.

In view of this settled position, there is no manner of doubt that the work charged service rendered by the respondent No.1 under the Government of Punjab was qualified for grant of pension under the rules of Government of Punjab and, therefore, the Board was not correct in rejecting the claim of the respondent for inclusion of period of work charged service rendered by him with the State Government for grant of pension, on the ground that service rendered by him in the 1 work charged capacity outside PSEB and in the departments of the State Government was a non-pensionable service."

6. The apprehension that acceptance of the case of the respondent No.1 would result into conferring a status on them as that of employees of the State of Punjab has no factual basis. It is true that the State Government has power to frame rules governing services of its employees under Article 309 of the Constitution whereas the Board has power to prescribe conditions of service by framing regulations under Section 79(c) of the Electricity (Supply) Act, 1948. However, governance of a particular institution and issuance of instructions to fill up the gap in the fields where statutory provisions do not operate, is recognised as a valid mode of administration in modern times. It is not the case of the Board that it was compelled to adopt the policy of the State Government. The Board, on its own free volition, had issued letter adopting the policy of the State Government. Merely because the employees of the Board like respondent No.1 are entitled to count period of duty performed by them as work charged employees in the State Government for the purposes 1 of pension etc., it would not be proper to conclude that they became the employees of the State of Punjab. In fact, having

larger interest of the employees, the Board had decided to adopt the policy decision of the State Government which can never be termed as arbitrary or irrational.

7. The contention, that the two circulars, namely, one dated March 31, 1982 and another dated May 20, 1982 cover only the employees of the State Government and the Central Government and the Board, which is a distinct legal entity from the State of Punjab, is not covered by the same, is merely stated to be rejected. It is neither the case of the respondent No.1 nor the case of the State Government that employees of the Board are covered by the circulars dated March 31, 1982 and May 20, 1982. However, it is their case that the employees of the Board were entitled to benefit contemplated by those two circulars as soon as the policy laid down in those two circulars was adopted by the Board vide letter dated November 25, 1985. The effect of adoption of the two circulars, i.e., one of the Central Government and another of the State Government is that a work charged employee who 1 has rendered services either under the Central Government or the State Government would be entitled to count the period of service so rendered by him for the purpose of claiming pensionary benefits as an employee of the Board.

8. It is wrong to argue that adoption of circulars by the Board does not create a reciprocal arrangement between the Board and the State of Punjab and/or Central Government.

> "The language of the three circulars is clear and unambiguous and, therefore, those circulars will have to be interpreted plainly. The conjoint and meaningful reading of the two circulars dated March 31, 1982 and May 20, 1982 with circular dated November 25, 1985 of the Board unequivocally and clearly creates an arrangement between the Central Government, State Government and the Board under which an employee of the Board who had earlier occasion to render service as a work charged employee either in the Central Government or in the State Government would be entitled to count the period of service so rendered, when the question arises as to whether he has put in qualifying service for grant of pension by the Board arises. The respondent No.1 has 2 never requested the Board to consider his case for promotion de hors the circular dated November 25, 1985. Having regard to the facts of the case, this Court is of the opinion that the High Court was justified in issuing mandamus as prayed for by the respondent No.1."

9. The plea that case of the respondent No.1 should have been rejected because it has financial repercussions is totally devoid of merits. Before adopting the policy underlying two circulars, the Board must have taken into consideration the financial implications as well as demands of the employees and thereafter must have resolved to adopt those circulars. It has been brought to the notice of the Court that subsequently circular dated November 25, 1985 was rescinded by the Board. However, there is no manner of doubt that those employees who were covered by the circular dated November 25, 1985 till it was in force would be entitled to claim benefits under the same.

10. The argument that the respondent No.1 is already given the benefit of his previous service rendered as work charged employee under the Board while counting qualifying service for 2 the purpose of pension and would not be entitled to benefit of memo dated November 25, 1985 adopting policy decisions of the Government of Punjab because the same was subsequently cancelled, has no force. It is true that the policy decision mentioned in memo dated November 25, 1985 was rescinded by the Board in the year 2004. However, the Resolution of the year 2004 does not indicate at all, that it is retrospective in nature nor it is the case of the learned counsel for the appellants that the Resolution of the year 2004 has retrospective effect. Therefore, on the basis of the Resolution of the year 2004, the respondent No.1 cannot be denied the benefit of counting of previous service rendered by him as work charged employee under the Government of Punjab for the purpose of determining qualifying service under the Board for grant of pension.

11. It was stressed that the service of the respondent No.1 with the Government of Punjab came to an end on April 15, 1978 when he was retrenched whereas after a lapse of more than four years, he joined the services of the Board on August 6, 1982 and, therefore, the gap being not condonable under 2 Rule 4.23 of the Punjab Civil Services Rules, the claim of the respondent No.1 should have been rejected, has no substance.

> "The policy decision of the Board indicates that the benefit of policy decision of the Government of Punjab was to be available to an employee of the Board with effect from March 31, 1982. A conjoint and meaningful reading of the memo dated November 25, 1985 issued by the Board and the policy decision of the Government of Punjab as reflected in letter dated May 20, 1982 of the Department of Finance makes it more than clear that the benefit would be admissible to one who having been retrenched from the service of the State Government, secured on his own, employment under the Board either with or without interruption between the date of retrenchment and date of new appointment. There is no manner of doubt that the respondent No.1 was retrenched from the service of the State Government. This fact is not only admitted in the list of events supplied by the learned counsel for the appellant but is also mentioned in the impugned judgment. The record shows that on his own, the respondent No.1 secured employment under the Board with interruption 2 between the date of retrenchment and date of new appointment. Therefore, it is wrong to argue that the respondent No.1 having joined service of the Board after a lapse of more than four years from the date on which he was retrenched by the State Government would not be entitled to the benefit of the memo dated November 25, 1985."

12. It was contended that the additional documents produced by the respondent No.1 before the court in appeal could not have been taken into consideration and, therefore, the impugned judgment should be set aside. It is true that the documents which were sought to be relied upon at the appellate stage were not produced by the respondent No.1 before the learned Single Judge who had decided the writ petition filed by him. However, there is no manner of doubt that those documents were brought on record by filing applications which were

allowed. The order allowing the applications was never challenged by the appellants before the higher forum. The appellants, by their conduct, had permitted the said order to attain finality. As those documents were neither considered by the learned Single Judge nor by the 2 Board, the Division Bench had directed the Board to reconsider the claim of the respondent for pension by inclusion of service rendered by him as work charged employee under the State Government. That direction was accepted and implemented by the appellants by considering the case of the respondent No.1 in the light of new documents.

> "Thereafter, the claim of the respondent No.1 was rejected by a speaking order and the speaking order was produced before the Court. The Court had thereafter heard the learned counsel for the parties and, thus, the appellants were given sufficient opportunity to meet with the case of the respondent No.1 based on new documents. The existence of the documents relied upon by the respondent No.1 at the appellate stage was never disputed by the appellants. On the facts and in the circumstances of the case, this Court is of the firm opinion that neither the appellants were taken by surprise when the respondent No.1 produced new documents which were considered by the Court nor any prejudice was caused to them. Therefore, consideration of new documents by the Court does not have any vitiating effect on the ultimate 2 decision of the Court."

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 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 vs. State of Punjab & Ors.* 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 2 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."

14. The net result of the above discussion is that this Court does not find substance in any of the arguments advanced on behalf of the appellants. The appeal lacks merit and, therefore, deserves to be dismissed. Therefore, the appeal fails and is dismissed. There shall be no order as to costs.

15. The appellants are directed to implement the directions given by the High Court in the impugned judgment as early as possible and not later than three months from the date of receipt of the writ of this Court.

[1]*1988 (5) SLR 27*