
V. Suri

Before Rajesh Bindal, J.

MEHMOOD HASSAN—Petitioner

versus

PUNJAB WAKF BOARD AND ANOTHER—Respondents

CWP No. 3182 of 2011

20th July, 2012

(A) Constitution of India, 1950 - Art. 226 - Service Law - Qualifying Service - What is - Punjab Civil Services Rules Vol. II, Chapter 3 - RL 3.17 A, - Entire service to be counted - Whether applicable to employees of Punjab Waqf Board - Held-For the purpose of calculation of any amount payable to an employee, length of service is always relevant except in cases where a fixed amount is provided irrespective of length of service.

Held, That there is no dispute that for the purpose of calculation of death-cum-retirement benefits, gratuity and leave encashment, qualifying service for Punjab Government employees is counted in terms of the aforesaid rule. The Board in its resolution passed on 15.7.2006 had clearly mentioned that the employees of the Board will also be given the aforesaid benefits at par with Punjab Government employees, hence to state that Punjab Civil Services Rules have not been adopted, only quantum to be paid has been adopted, is totally misconceived. For the purpose of calculation of any amount payable to an employee, length of service is always relevant except in cases where a fixed amount is provided irrespective of length of service.

(Para 9)

(B) Constitution of India, 1950 - Art. 226 - Punjab Wakf Board-Bifurcation of joint Board - Impact on employees - Bifurcation of joint Waqf Board for several States not to result in any changes of liabilities of the employer towards its employees - Bifurcation only for purposes of administrative efficiency.

Held, That there is no merit in the submission made by learned counsel for the respondents that there was break in service of the petitioner as he had resigned from the earlier post. Further, even the contention that the petitioner having been appointed as Clerk-cum-Rent Collector when there was joint Board for the States of Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh and at the time of retirement, he being employee of the Punjab Board, cannot claim benefit at this stage is totally misconceived. Firstly, earlier the Board was common for three States and Union Territory, Chandigarh. For the purpose of administrative efficiency, it was bifurcated. That will not result in any change of liabilities of the employer towards his employees. Further, even when the petitioner was selected as Estate Officer, joint Board was in existence, as Punjab Board came into existence only in the year 2003. It will be totally misconceived to argue that employer of the petitioner as Clerk-cum-Rent Collector was different than his employer as Estate Officer.

(Para 11)

Dinesh Kumar, Advocate, *for the petitioner*.

Neclofar A. Parveen, Advocate, *for the respondents*.

RAJESH BINDAL J.

(1) The petitioner, who retired from Punjab Wakf Board (for short, 'the Board'), has approached this court raising a grievance that his entire retiral dues to which he is entitled to have not been paid. Further prayer has been made to pay gratuity and leave encashment after adding the service rendered by the petitioner as Clerk-cum-Rent Collector with the Board for the period prior to his appointment as Estate Officer.

(2) Briefly, the pleaded facts are that the petitioner was appointed as Clerk-cum-Rent Collector in the Board on 20.12.1973. While he was working on the said post, an advertisement was issued for recruitment to the post of Estate Officer/Section Officer. The petitioner, with the permission

of the authority, applied for the aforesaid post; appeared for written examination and the interview. On being selected, he was issued appointment letter on 16.5.1997. In pursuance thereof, the petitioner joined his duty as Estate Officer on 21.5.1997. It is further pleaded that though there was no requirement of submission of resignation from his earlier post of Clerk-cum-Rent Collector as the petitioner was working in the same office, but still he was forced to submit ante-dated resignation, which was accepted by the authorities vide communication dated 6.1.1998 w.e.f. 20.5.1997. The petitioner superannuated on 30.6.2008. After his retirement, his retiral dues were not paid, rather, a charge-sheet was issued on 14.7.2008 on the allegation of misguiding the authority by submitting false and self-made report to the Head Office. The petitioner filed reply thereto. On consideration thereof, the Chairman of the Board exonerated the petitioner of the charge which was conveyed to the petitioner vide letter dated 19.1.2010. Thereafter, the petitioner was paid arrears of dearness allowance, leave encashment and gratuity in April, 2010. As the amount had not been paid in terms of entitlement of the petitioner, he got a legal notice dated 26.11.2010 served upon the Board. When it was not responded to, the present petition was filed.

(3) Learned counsel for the petitioner submitted that the grouse of the petitioner is that amount of leave encashment and gratuity has not been calculated in terms of the rules and regulations applicable. The service rendered by the petitioner as Clerk-cum-Rent Collector has not been counted. The Board in its meeting held on 15.7.2006 passed Resolution No. 9 (iii) and resolved to grant death-cum-retirement benefit, gratuity and leave encashment to its employees at par with Punjab Government employees w.e.f. 15.7.2006. The petitioner having retired thereafter on 30.6.2008 was entitled to the benefit of the aforesaid resolution. He further referred to Rule 3.17A of the Punjab Civil Services Rules, Volume-2, Chapter-3, wherein it has been specifically provided that the service rendered by an employee on establishment, interrupted or continuous, shall count as qualifying service. In terms thereof, for the purpose of calculation of the benefits, entire service rendered by the petitioner with the Board as Clerk-cum-Rent Collector and as Estate Officer was required to be counted. In support of his plea, reliance was placed upon a Division Bench judgment of this court in **State of Punjab and another versus Hem Raj Mittal (1)**.

(4) On the other hand, learned counsel for the respondents submitted that the resolution of the Board dated 15.7.2006, as was circulated on 4.8.2006, does not come to the rescue of the petitioner. It only talks of grant of death-cum-retirement benefit, gratuity and leave encashment to the employees of the Board at par with Punjab Government employees w.e.f. 15.7.2006. It means only the amount. Punjab Civil Services Rules as such have not been adopted. She further submitted that the petitioner had resigned from his earlier job and appointed afresh on the new post. There was no continuity of service, rather, the earlier contract of service came to an end, hence, the same cannot be counted towards the total service rendered by the petitioner with the Board for the purpose of calculation of his retiral dues. Further, it was submitted that when the petitioner had joined as Clerk-cum-Rent Collector in the year 1973, there was one Board for the States of Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh. In 2003, it was bifurcated and Punjab was separated. The petitioner had not rendered any service in Punjab Board. The service already rendered as Clerk-cum-Rent Collector was in the joint Board for the States of Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh.

(5) Heard learned counsel for the parties and perused the paper book.

(6) The only issue under consideration in the present petition is as to whether the service rendered by the petitioner with the Board as Clerkcum-Rent Collector prior to his appointment in the same Board as Estate Officer is to be counted towards qualifying service for the purpose of calculation of gratuity and leave encashment.

(7) The facts, which are not in dispute, are that the petitioner had initially joined as Clerk-cum-Rent Collector with the joint Board for the States of Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh on 20.12.1973. While he was still in service, six posts of Estate Officer were advertised by the Board. The petitioner after permission from the authority applied for the post, appeared in the written examination and interviewed and consequently selected. He joined on the post of Estate Officer on 21.5.1997. Though according to the petitioner, he was not

required to submit his resignation from the earlier post as he was working in the same office, but still on insistence by the authority, he submitted his resignation which was accepted w.e.f. 20.5.1997. He ultimately retired on 30.6.2008. Payment of his retiral dues was initially delayed on account of charge-sheet issued to him. Having been exonerated, some of the dues were paid to him on 22.4.2010. It is at this stage that the petitioner raised a grouse that the entire amount due to him had not been paid. The grouse is that the service rendered by the petitioner as Clerk-cum-Rent Collector from 20.12.1973 to 20.5.1997 has not been counted as qualifying service for the purpose of calculation of gratuity and leave encashment. The stand of the respondents is that the petitioner never worked in Punjab Board, as it was joint Board for the States of Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh upto 2003, when Punjab Board was bifurcated. In support of his claim, the petitioner has placed reliance on the resolution passed by the Board on 15.7.2006, in terms of which a circular was issued on 4.8.2006. The Board in the aforesaid resolution had decided to grant death-cum-retirement benefits, gratuity and leave encashment to its employees at par with Punjab Government employees w.e.f. 15.7.2006. As far as application of the resolution is concerned, the petitioner would be entitled to the benefits accruing thereunder for the reason that he retired on 30.6.2008.

(8) Now the question is as to what is the effect of the aforesaid resolution. Learned counsel for the petitioner sought to claim that once the Board decided to grant death-cum-retirement benefits to its employees at par with Punjab Government employees, the relevant rules and regulations for the purpose would automatically become available. Punjab Civil Services Rules, Volume-II, Chapter-3 deal with the service qualifying for pension. Rule 3.8 provides that unless otherwise provided by special rule or contract, the service of every government employee begins to qualify for pension when he takes charge of post to which he is first appointed. Rule 3.17-A provides that subject to other rules and except in the cases mentioned in the rule, entire service rendered on establishment, interrupted or continuous, shall count as qualifying service. Exception in clause (v) thereof is that service preceding resignation is not to be counted except in cases where such resignation is allowed to be withdrawn by the appointing authority or

where such resignation has been submitted to take up, with proper permission, another appointment under the government. The relevant rule is extracted below:

“3.17-A (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-

(i) to (iv) xx xx xx

(v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government where service qualifies for pension.”

(9) There is no dispute that for the purpose of calculation of deathcum-retirement benefits, gratuity and leave encashment, qualifying service for Punjab Government employees is counted in terms of the aforesaid rule. The Board in its resolution passed on 15.7.2006 had clearly mentioned that the employees of the Board will also be given the aforesaid benefits at par with Punjab Government employees, hence to state that Punjab Civil Services Rules have not been adopted, only quantum to be paid has been adopted, is totally misconceived. For the purpose of calculation of any amount payable to an employee, length of service is always relevant except in cases where a fixed amount is provided irrespective of length of service.

(10) In the present case, it is not disputed that the petitioner was initially appointed in the Board on 20.12.1973 as Clerk-cum-Rent Collector. While in service, he applied for the post of Estate Officer with due permission. Being successful in the written test and interview, he was appointed as such. There is no break in service. On the asking of the Board, he submitted his resignation from the previous post. Under these circumstances, it cannot be held that for the purpose of calculation of qualifying service of the petitioner, the service rendered by him as Clerkcum- Rent Collector is not to be counted. Similar view was expressed by this Court in Hem Raj Mittal's case (supra).

(Rajiv Narain Raina, J.)

(11) There is no merit in the submission made by learned counsel for the respondents that there was break in service of the petitioner as he had resigned from the earlier post. Further, even the contention that the petitioner having been appointed as Clerk-cum-Rent Collector when there was joint Board for the States of Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh and at the time of retirement, he being employee of the Punjab Board, cannot claim benefit at this stage is totally misconceived. Firstly, earlier the Board was common for three States and Union Territory, Chandigarh. For the purpose of administrative efficiency, it was bifurcated. That will not result in any change of liabilities of the employer towards his employees. Further, even when the petitioner was selected as Estate Officer, joint Board was in existence, as Punjab Board came into existence only in the year 2003. It will be totally misconceived to argue that employer of the petitioner as Clerk-cum-Rent Collector was different than his employer as Estate Officer.

(12) For the reasons mentioned above, the present petition is allowed. The respondents are directed to calculate the retiral benefits available to the petitioner after adding his service rendered as Clerk-cum-Rent Collector with the Board prior to his appointment as Estate Officer in the same Board.
