2025:PHHC:135941

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-28761-2025 (O&M)
Date of decision: 25.09.2025

Ranjit Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amrindra Pratap Singh, Advocate
for the petitioner.

Mr. Vikas Sonak, AAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been preferred under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of *certiorari* for quashing of impugned order dated 03.03.2025 (Annexure P-12). Further a writ of *mandamus* has been sought, directing the respondents to count the past service of the petitioner towards regularisation and calculation of pension.

FACTUAL BACKGROUND

2. Briefly, the facts are that the petitioner joined respondent No.3-Municipal Council, Khanna as a Tubewell Operator on 14.09.1992 (Annexure P-2). His services were eventually regularised on 29.12.1994 as he had completed 240 days in service up to 31.10.1993 in terms of instructions dated 19.12.1993 (Annexure P-4). However, on 29.03.1994, the services of the petitioner were terminated without issuing any show

cause notice in this regard. Aggrieved by the same, the petitioner approached the Industrial Tribunal, Ludhiana. Vide award dated 28.07.2011 (Annexure P-5), the learned Tribunal directed that the services of the petitioner be reinstated with continuity of service and full back wages.

3. Thereafter, a resolution (Annexure P-6) was passed by the respondent/Council whereby it was agreed that the petitioner be reinstated subject to him furnishing an affidavit claiming that he would not claim any arrears. In order to regain employment, the petitioner submitted an affidavit dated 02.11.2011 (Annexure P-7) to this effect. Accordingly, vide resolution dated 24.09.2011, the petitioner was given a fresh appointment, as discernible from letter dated 21.06.2012 (Annexure P-8). The petitioner moved a representation before respondent No.2- Director, Department of Local Self Government stating that his services w.e.f 23.07.1992 to 25.06.2012 also be counted towards regular service for the purposes of increment and pensionary benefits. However, his claim was denied vide impugned order dated 03.03.2025 (Annexure P-12).

CONTENTIONS

4. Learned counsel for the petitioner contends that the petitioner was arbitrarily and illegally terminated on 29.03.1994 without even issuing a show cause notice, in spite of the fact that no inquiry or charge sheet was pending against him. The petitioner remained unemployed for 11 years before his services were reinstated in terms of

award dated 28.07.2011 (Annexure P-5) passed by the learned Industrial Tribunal, Ludhiana. Despite a clear stipulation by the learned Tribunal that the petitioner be granted continuity of service and back wages, the respondent/Council refused to reinstate him till he agreed to not claim any arrears. Being a poor person, the petitioner gave into the arm twisting tactics of the respondent/Council and furnished an affidavit dated 02.11.2011 (Annexure P-7) in this regard. The petitioner was also bulldozed into joining the respondent/Council as a fresh appointee instead of having his past service counted, even though he was a regular employee before his unceremonious termination.

5. He further contends that it is a matter of record that the respondent/Council did not challenge the award passed by the learned Tribunal and yet, the petitioner was not provided the relief envisaged by it. Since the petitioner is bound to retire in the year 2026, he moved a representation before respondent No.2 to have the services rendered by him before his termination in the year 1994 counted towards regular service for the purpose of calculation of retiral benefits. The respondent/Council has acted in a manner that is whimsical and arbitrary and thereby antithetical to Articles 14 and 16 of the Constitution of India; as such, the impugned order deserves to be quashed.

6. *Per contra,* learned counsel for respondents submits that the petitioner undertook to not claim back wages, as reflected by affidavit dated 02.11.2011 (Annexure P-7), in order to be reinstated.

Since he gave his explicit consent for the same, he cannot be allowed to subsequently claim the arrears. Further, the petitioner was given a fresh appointment in pursuance of the resolution passed by the respondent/Council, therefore, the benefit of past service cannot be provided to him. Reliance is also placed on the judgment rendered by the Hon'ble Supreme Court in ***High Court of Punjab & Haryana and others vs. Jagdev Singh, 2016(4) SCT 286***, whereby it was held that employees would be bound by the undertaking given by them.

OBSERVATIONS AND ANALYSIS

7. Having heard learned counsel for the parties and after perusing the record with their able assistance, the following question arises for adjudication:

> *Whether an employee can be denied substantial service rights on the basis of an undertaking given by him/her on the dictate of the employer?*

8. It transpires that the petitioner was unjustly terminated by the respondent/Council without issuing a show cause notice or allowing him an opportunity to defend himself. Vide award dated 28.07.2011 (Annexure P-5), the learned Industrial Tribunal, Ludhiana had directed the petitioner to be reinstated. It was categorically mentioned that he be granted continuity of service as well as full back wages. Much to the chagrin of this Court, the act and conduct of the respondent/Council demonstrates no regard for the said award. A perusal of the resolution (Annexure P-6) clearly indicates that the respondent/Council essentially threatened the petitioner to his furnish an affidavit for not claiming the

arrears legitimately accrued to him, if he wished to be reinstated. Palpably, the respondent/Council has much exceeded its authority by dragooning the petitioner into giving up his rights for an opportunity to earn his livelihood.

9. Visibly, the petitioner did not have a real choice and had to submit to the whimsical approach of the respondent/Council as he was struggling financially for over a decade subsequent to his abrupt and illegal termination. As such, in view of Sections 16, 19A and 23 the Indian Contract Act, 1872, which declares any contract which has been entered into under undue influence as voidable or where the object of the said contract is against public policy, as void, the respondent/Council cannot be allowed to take shelter of the affidavit (Annexure P-7) to justify denying the petitioner his legal right, especially in view of the fact that it was them who erroneously terminated his services in the year 1994.

10. Furthermore, the petitioner was given a fresh appointment, apparently merely to deny him any benefits of past service for reasons best known to the respondent/Council as no explanation has been put forth by it in the impugned order. While the award (Annexure P-5) specifically granting continuity of service to him, the respondent/Council seems to have taken an approach that unwarrantedly victimizes the petitioner. Additionally, the Punjab Civil Service Rules, Volume II provide that the service rendered by an employee is deemed

to be of a continuous nature, subject to the exceptions carved out therein. The relevant provisions are reproduced 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) Omitted.*
> *(ii) Omitted.*
> *(iii) Casual or daily rated service.*
> *(iv) Suspension adjudged as a specific penalty.*
> ***Note.****–In cases where an officer dies or is permitted to retire while under suspension will not be treated as an interruption.*
> *(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.*
> *(vi) Joining time for which no allowances are admissible under rules 9.1 and 9.15 of C.S.R., Volume I, Part I.*
> *(vii) If any unauthorised leave of absence occurs in continuation of authorised leave of absence and if the post of the absentee has been substantively filled up, the past service of the absentee is forfeited.*
> *(viii) Transfer to a non-qualifying service in an establishment not under Government control or if such transfer is not made by the competent authority and transfer to service in a grant-in-aid school.*
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> *(A Government employee, who voluntarily resigns qualifying service, cannot claim the benefit under this clause.)*
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> *(ix) Removal from public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of the past service.*
> *(x) Service rendered beyond the date of retirement on superannuation in terms of rule 3.26 of Punjab Civil Services Rules, Volume I, Part I.*
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> *(2) An interruption in the service of a Government employee caused by wilful absence from duty or*

unathorised absence without leave, shall entail forfeiture of the past service.

(3) Willful abstinence from performing duties by a Government employee by resort to pen down strike shall be deemed to be willful absence from duty and shall also entail forfeiture of the past service.

***Note.**–In the case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, the pensionary benefits admissible for service under Central Government would be that admissible under the Government of India rules and the liability for such benefits shall be allocated in accordance with the prevalent orders.*

Clarification (1).–Even after the introduction of rule 3.17(A) and deletion of rule 4.21 the following cases do not entail forfeiture of past service:–

(a) authorized leave of absence;

(b) abolition of post or loss of appointment owing to reduction in establishment. ("Post" or "appointment" means a post or appointment service in which qualifies for pension).

(2) ***While counting such qualifying service for working out aggregate service, the period of break in service shall be omitted****."*

(emphasis added)

11. At this juncture, it may be profitable to refer to a judgment rendered by a Full Bench of this Court in ***Kesar Chand vs. State of Punjab and others, AIR 1988 P&H 265,*** wherein it was opined that the period spent working as a work-charged employee prior to regularization would also be counted towards pensionary benefits. Speaking through Justice G.R. Majithia, the following was opined:

"19. In the light of the above, let us examine the validity of rule 3.17 (ii) of the Punjab Civil Services Rules Vol. II. This rule says that the period of service in a work-charged establishment shall not be taken into account in calculating

the qualifying service. After the services of a work-charged employee have been regularised he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1, 1972, between the Workmen and the Chief Engineer, P.W.D. (B.& R.), Establishment Branch, Punjab , Patiala, which was published in the Government Gazette dated July 14, 1972. Even otherwise, the matter was settled by the Punjab Government Memo No. 14095-BRI (3)-72/5383 dated 6th February, 1973 (Annexure P7) where it was stated that all those work-charged employees who had put in ten years of service or more as on 15th August, 1972, their service would be deemed to have been regularised. ***Once the service of a work charged employee have been regularised, there appears to be hardly any logic to deprive him of the Pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strike at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government had to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for lesion and those who started as work-charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work - charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.”***

(emphasis added)

12. This Court is constrained to observe that the conduct exhibited by the respondents is unbecoming of a public employer. The

State and its instrumentalities, being model employers, are held up to higher standards and therefore, bear an additional responsibility to ensure that their actions are not perceived as arbitrary or violative of the constitutional philosophy. The Hon'ble Supreme Court in ***Maneka Gandhi vs. Union of India and another 1978(1) SCC 248*** has held that Article 21 confers a fundamental right on every citizen to not be deprived of his life or liberty except in accordance with the procedure established by law and that such procedure must be reasonable and fair. Further, in ***L.I.C. of India vs. Consumer Education & Research Centre 1995(4) SCT 678,*** the Hon'ble Supreme Court further clarified that the duty to act fairly is a part of the procedure envisaged under Articles 14 and 21 of the Constitution of India. As such, any approach, especially that of a public employer, that exhibits any signs of arbitrariness would necessarily be in conflict with Articles 14 and 21 of the Constitution of India.

13. While Article 14 strikes at the heart of arbitrary State action and demands that exercise of any public power be only guided by reason and equality, Article 21 safeguards the right to livelihood, which certainly includes just and non-capricious treatment. When a public employer acts on a whim and causes ***implicit economic duress*** to the employee, it betrays the constitutional promise of fairness, which is impermissible with arbitrariness and fair play being sworn enemies. Moreover, the overt display of fair play is integral to the idea of natural justice. A failure to abide by the same would not merely amount to an

administrative misconduct but would be a direct affront to the Rule of Law. This principle was further enunciated by a Constitution Bench of the Hon'ble Supreme Court in ***Rojer Mathew vs. South Indian Bank Ltd. and others (2020) 6 SCC 1*** wherein, speaking through Justice Deepak Gupta, the following was held:

> *"352. If Rule of law is absent, there is no accountability, there is abuse of power and corruption. When the Rule of law disappears, we are ruled not by laws but by the idiosyncrasies and whims of those in power."*

14. Reliance may also be placed on the judgment rendered by a Constitution Bench of the Hon'ble Supreme Court in ***Ajay Hasia vs. Khalid Mujib Sehravardi (1981) 1 SCC 722,*** wherein speaking through Justice P.N. Bhagwati, the following observations were made:

> *"16. ...This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and brought to light in Royappa's case and it was reaffirmed and elaborated by this Court in* ***Maneka Gandhi v. Union of India, (1978) 2 SCR 621****, where this Court again speaking through one of us (Bhagwati, J.) observed :-*
>
> > *"Now the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article, There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits .....****Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an***

> ***essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence"***
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> *This was again reiterated by this Court In International Airport Authority's case (1979) 3 SCR 1014) at p. 1042 (supra) of the Report.* ***It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality.*** *The doctrine of classification which is evolved by the Courts is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached.* ***Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.*** *"*
>
> *(emphasis added)*

15. Lastly, the decision in ***Jagdev Singh's case (supra)*** would not be applicable to the present case as the same is distinguishable on facts as the petitioners therein voluntarily opted out of the revised pay scale and were placed on a notice qua recovery of excess payment. However, in the matter at hand, the petitioner was terminated for no apparent reason, without following the due process and thereafter, he was forced to give up the claim to his arrears as well as the benefit of duration of service towards calculation of pensionary benefits. Clearly,

the petitioner did not have any say or agency in the decision arrived at by the respondents.

CONCLUSION

16. It must be noted that there is an inherent imbalance of power between an employer and an employee. The employer, very unambiguously, controls the source of livelihood of the employee and thereby is in a position of influence. When such employer is an instrumentality of the State itself, a unique opportunity is presented to lead as an example. As such, it is vital that a fair procedure established by law, preventing arbitrary abuse of power is strictly adhered to. Demanding undertakings that lack legal sanctity or capriciously denying benefit of the services rendered by an employee is inconsistent with the constitutional guarantees.

17. Unfortunately, the practice of extracting undertakings from employees who have been reinstated after tedious litigation is rather common. These undertakings are exploitative as they often pertain to forgoing past service benefits including arrears of salary, increments, continuity of service and retiral benefits and are obtained by placing the employees under duress. Often the reinstated employees are issued fresh appointment letters, as is the case in the matter at hand, to deny them any benefits of their past service, which directly impacts their regularization, seniority and pensionary benefits. Considering that livelihoods are at stake, the employees often remain silent in the face of these exploitative practices. This Court cannot allow an employer to

take advantage of their employees' financial circumstances to bend them to their will. As such, the question framed above is answered in the following terms-

> *Such exploitative undertakings are void ab initio since no employee can be forced to contract out of his statutory rights.*

18. Therefore, in view of the above discussions, this Court cannot condone the highly iniquitous arm-twisting tactics employed by the respondent/Council as it renders the entire exercise tainted by the vice of arbitrariness. Accordingly, the present petition is allowed and the impugned order dated 03.03.2025 (Annexure P-12) is hereby set aside. The petitioner shall be entitled to counting of past service and other benefits as per judgments rendered by this Court in ***Harbans Lal vs. State of Punjab, CWP No.2371 of 2010*** and ***State of Haryana and others vs. Jai Bhagwan, LPA No.1892 of 2019***. The respondents are directed to pass an appropriate order in this regard within 03 months from the date of receiving a certified copy of this order.

19. Pending miscellaneous application, if any, also stands disposed of.

(HARPREET SINGH BRAR)
JUDGE

25.09.2025
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No