

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8954-2015 (O&M)
Reserved on 02.09.2025
Pronounced on 15.10.2025

Mohd. Zubair

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CWP-11455-2021

Ramesh Kumar

... Petitioner

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Shivam Malik, Advocate and
Mr. Shubham Malik, Advocate
for the petitioner in CWP-8954-2015

Mr. Jasbir S. Malik, Advocate (through VC)
with Shivam Malik, Advocate
for the petitioner in CWP-11455-2021

Mr. APS Sekhon, Advocate
for respondent No.4 in CWP-8954-2015

Mr. Rupender Singh Rama, Advocate for
Ms. Swati Dayalan, Advocate for respondent No.4

Mr. Himanshu Arora, Advocate and
Mr. Abhinav Bajaj, Advocate
for respondents No.6 & 7 in CWP-8954-2015

Mr. Rahul Dev Singh, Addl. AG Haryana

Sandeep Moudgil, J.

(1). This order shall dispose of the above-cited two writ petitions which are interrelated and have common grievance. For the purpose of order, CWP-8954-2015 is treated as the lead case.

(2). The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution for issuance of a writ in the nature of *certiorari* for quashing the impugned orders dated 15.06.2009, 05.10.2010 and 04.05.2012 (Annexures P5, P9 & P11) passed by respondent No.2 rejecting his claim for counting of past service from 04.07.2000 to 06.06.2007 rendered by him in New Delhi Municipal Corporation for the purpose of retiral benefits and thus seeks a direction for counting the said period of service including in Haryana PWD (Irrigation Branch) from 07.06.2007 to 23.09.2008 for retiral benefits and treat him in old pension scheme for all intents and purposes.

(3). Brief facts of the case are that the petitioner was working as Junior Engineer (Civil) in the New Delhi Municipal Corporation (NDMC) since 04.07.2000. After taking due permission from NDMC, the petitioner submitted an application for the post of Assistant Engineer (Civil) advertised by Haryana Staff Selection Commission for the Haryana PWD Department, Irrigation Branch. The petitioner got selected for the advertised post and he was offered the post of Assistant Engineer (Civil) by the respondent No. 5. After relieving by respondent No.6 on 06.06.2007, the petitioner joined the Irrigation Department w.e.f. 07.06.2007. The petitioner thereafter applied for the post Assistant Engineer (Civil) in PWD (B&R) Branch through proper channel wherein he was selected on 30.07.2008 and after relieving by respondent No. 5 on 23.09.2007, the petitioner joined on 24.09.2007.

(4). On 05.01.2009, the petitioner submitted a representation to the respondent No.1 requesting to amend clause 8 of the offer of appointment dated 30.07.2008 (Annexure P4) and to count his past service from 04.07.2000 to 06.06.2007 rendered by him in New Delhi Municipal Corporation for the

purpose of retiral benefit. The said representation was rejected vide order dated 15.06.2009 (Annexure P5) by passing a cryptic and non speaking order on the ground that the benefit is not admissible as per Govt. decision dated 22.08.1988 and 07.01.2002 in terms whereof, if any Central Government Employee joins State Government Service, he will be entitled for the benefit of past service for the purpose of retiral benefits. Vide letters dated 05.10.2010 (Annexure P9) and 04.05.2012 (Annexure P11), respondent No.2 informed respondent NO.3 that the request for the petitioner for counting his past service stands already rejected. Hence this writ petition.

(5). Learned counsel for the petitioner contends that vide letter dated 19.07.2011 (Annexure P7), the Government of Haryana clarified that if any Central Government Employee working prior to 01.01.2006, is re-appointed with the State Government on or after 01.01.2006, he/she will be entitled for the benefit of Punjab CSR Volume-II (Old Pension Scheme). He submits that the case of the petitioner is similar and identical to the controversy which arose before this Court in CWP No. 5975 of 1994 titled as R. C. Verma Versus State of Haryana reported as 2002 (2) SLR 391 wherein petitioner was held entitled for getting the benefit of his past service rendered with the Central Government for his retiral benefits.

(6). It is vehemently urged that the petitioner had applied through proper channel from NDMC to Haryana Staff Selection Commission after getting due permission/NOC from the erstwhile employer and on this ground alone, the entire service of the petitioner is liable to be counted for all intents and purposes. He submits that the petitioner's case stand on a better footing as he had served the NDMC on regular basis and therefore, the respondents have

no occasion to deny the rightful claim of pension. Reliance has been placed on order dated 31.08.2010 of this Court in 'Harbans Lal Vs. State of Punjab and Ors. (CWP No. 2371 of 2010) wherein this Court held that even the work charged service of the employee if rendered before 01.01.2004 is liable to be counted for purpose of Old Pension Scheme. It is argued that once the services of the petitioner rendered previously are counted for the purpose of ACP scales, he has every right for the counting of those services for the purpose of pension as qualifying service.

(7). In the written statement dated 14.10.2015 filed on behalf of respondents No.1 to 4, it has been averred that prior to petitioner's joining in Haryana PWD (Irrigation) Department, he was working as Junior Engineer (Civil) in New Delhi Municipal Council (NDMC), after being so appointed and his consequent joining on 04.07.2000 and since NDMC is not a Government Department and only a local body, therefore, as per Finance Department Haryana notification No.2/50/2008-1 pension dated 15.02.2010, only those Haryana Govt. employee re-appointed on or after 01.01.2006 in the same or other Govt. Department, will be covered under Punjab CSR Volume-II. (old pension scheme). He submits that petitioner was neither a Haryana Government employee nor a Central Government employee and therefore, is not covered under the above provision/notification.

(8). Similar stand has been taken by respondent No.6-NDMC primarily taking objection that the writ petition itself is not maintainable against it as the New Delhi Municipal Corporation is a statutory public body established by the Parliament under the New Delhi Municipal Council Act, 1994 for the area comprising of the territory that is described as Lutyen's Delhi

being the seat of Central Government with Govt. of India being the owner of about 80% of the properties in the area. It is submitted that NDMC are only the implementing authority of the rules, policies and schemes framed and enacted by the Central Govt. It is further urged NDMC had never denied any benefit, allowance to the petitioner which were applicable to him while he was serving and since he left the services of the NDMC, now he has bound by the rules and policies of the State Government where he is presently serving.

(9). Respondents No.4&5 have filed separate written statements stating therein that respondents NO.1 to 3 are the main contesting party who have to consider the claim of the petitioner for counting of his past service rendered in NDMC since 04.07.2000 and the respondents No.4&5 are only the pro forma respondents.

(10). Heard learned counsel for the parties.

(11). The petitioner's transition between posts was made with due permission through proper channel, and his service record has remained continuous and regular. The Government of Haryana, through its clarification dated 19.07.2011, as well as judicial precedent in *R.C. Verma v. State of Haryana* (2002(2) SLR 391), recognizes that employees who shift from Central Government or its undertakings to State Government service with proper approval are entitled to count past qualifying service for retiral benefits under the Punjab CSR Volume-II (Old Pension Scheme).

(12). The State of Haryana vide notification No.P.D. Hr. No.1/2(77) 87-2 FR-II dated 22.08.1988 considered the issue in regard to counting of service, rendered by the State Govt. employees under the State Government before their absorption in the Central Autonomous Bodies and the Service rendered by the

employees of the State Autonomous Bodies under the State Autonomous Bodies before their absorption in the Central Government/Central Autonomous Bodies, for pensionary benefits and vice-versa and a conscious decision was taken to allow counting of service towards pension under the new organization where an employee borne on pensionable establishment is allowed to be absorbed in such organization. The relevant portion of the portion of the said notification dated 22.08.1988 reads as under:-

“A) In case post/service is pensionable in the new organisation.

Where an employee borne on pensionable establishment is allowed to be absorbed in such an organisation, the service rendered by him/her shall be allowed, to be counted/towards pension under the new organisation irrespective of the fact whether the employee was temporary or permanent in the old organisation. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he/she/retires as a temporary employee in the new organisation he/she will get, terminal benefits as are normally available, to temporary employees.

The Government/Autonomous Bodies will discharge their pension liability by paying in lump-sum as a one-time payment, the prorata pension/service gratuity/terminal gratuity and death cum retirement gratuity for the service upto the date of absorption in autonomous bodies/Governments as the case may be, prorata pension will be determined ith reference to the commutation table in chapter 11 of the Punjab Civil Services Rules. Vol-II as amended from time to time.

(ii) An employee with contributory Provident Fund benefits on his/her permanent absorption in the new organisation against a

pensionable post/service will have the option either to receive contributory Provident Fund benefits which have accrued to him from the old organisation and start his service a fresh in the new organisation or choose to count service rendered in the old organisation as qualifying service for pension in the new organisation by foregoing employer's share of the contributory Provident Fund with interest received from the old organisation which will be paid to the latter by the former organisation. The option shall be exercised within one year from the date of absorption. If no option is exercised within the stipulated period, the employee shall be deemed to have opted to receive Contributory Provident Fund benefits. The option once exercised shall be final.”

(13). A perusal of the above would show that an employee originally serving in a pensionable establishment is subsequently absorbed into another pensionable organization, the entirety of past service whether rendered in a temporary or permanent capacity shall be counted towards pension in the new organization. Pensionary benefits shall accrue only if such service in the new organization eventually leads to confirmation; otherwise, on retirement as a temporary employee, only terminal benefits admissible to temporary staff will be available.

(14). The conditions of service qualifying for pension as mentioned in Section 15 Chapter IV of the HCS (Pension) Rules, 2016 also endorse and reaffirm the claim of the petitioner in accordance with the above-reproduced notification dated 22.08.1988 wherein it has been categorically specified that the benefit of past qualifying service shall be admissible on appointment from a pensionable organization to a department under the Haryana Govt. Clause (B) of Section 15 of the HCS (Pension) Rules, 2016 read as under:-

“15. Benefit of past service towards pension.—

(B) On appointment from a pensionable organization to a department under Haryana Government -

On absorption or subsequent appointment of an employee from a pensionable -

(a) Organization to a department both under Haryana Government or vice-versa; or

(b) Statutory body only under GOI to a department of Haryana Government or vice-versa, the benefit of past qualifying service shall be admissible subject to conditions that—

(i) the terminal benefits of past qualifying service, received if any, from the previous Organization shall have to be deposited in the Consolidated Fund of Haryana with interest, at the rate(s) as applicable to General Provident Fund. The interest shall be levied at the rate applicable on General Provident Fund accumulation from time to time computed in the same manner (i.e. with annual compounding), from the date of joining service under Haryana Government to the date of deposit in the state exchequer; and

(ii) the application has been submitted through proper channel in case of subsequent appointment.

(15). It becomes pertinent to highlight that the petitioner received appointment letters from respondent No.5 and respondent No.1 wherein it was mentioned regarding applicability of new defined pension scheme, however, it has been specifically pointed out that the said clause has been amended in case of newly joined Assistant Engineers, namely, Sukhbir Mawalia, Surender Deshwal, Abhishek, Manoj Kumar and Zakir in whose cases, the benefit of counting of past service towards their new service in Haryana Irrigation

Department has been allowed to them and the petitioner has been discriminated by denying the counting service rendered by him in NDMC.

(16). It is a settled administrative practice that when a Government employee moves from one public service to another with proper approval and through proper channel, the past qualifying service is typically counted for the purpose of pension and other retiral benefits. The object of this principle is to protect the rights of employees and not to penalize those who serve public bodies with dedication merely because they opt for a career transition within the framework of public service.

(17). The objection that NDMC is not a Government Department does not withstand scrutiny. NDMC operates as a statutory authority under the New Delhi Municipal Council Act, 1994, serving Central Government purposes, and functions as an implementing body of Government policies. There is no specific denial from NDMC regarding the petitioner's regular service or eligibility.

(18). In light of the above, it is apparent that the petitioner, having served in NDMC and then in Haryana Government service with due permission and application through proper channel, fulfills all statutory and administrative conditions for counting his past service towards pension and retiral benefits under the Old Pension Scheme (Punjab CSR Vol-II) as well as the HCS (Pension) Rules, 2016. The denial of this benefit is arbitrary and discriminatory, especially when similarly placed employees have been granted the same.

(19). Accordingly, the impugned orders dated 15.06.2009, 05.10.2010, and 04.05.2012 (Annexures P5, P9, and P11) are quashed. The respondents are

directed to count the petitioner's service rendered in NDMC together with his service rendered in Haryana Government Department for determining retiral benefits, and to treat the petitioner as covered under the Old Pension Scheme, in accordance with law.

(20). The writ petition stands allowed.

15.10.2025

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No