

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).107 OF 2011
(arising out of SLP(C) No.4907/2006)

DAKSHIN HARYANA VITRAN NIGAM LIMITED
THROUGH ITS EXECUTIVE ENGINEER AND ANOTHER

...Appellant(s)

VERSUS

MAHINDER SINGH

...Respondent(s)

WITH

CIVIL APPEAL	NO(s).111	OF 2011
(arising out	of SLP(C)	No.16857/2006)
CIVIL APPEAL	NO(s).112	OF 2011
(arising out	of SLP(C)	No.16858/2006)
CIVIL APPEAL	NO(s).113	OF 2011
(arising out	of SLP(C)	No.13411/2006)
CIVIL APPEAL	NO(s).116	OF 2011
(arising out	of SLP(C)	No.24555/2006)

O R D E R

Leave granted.

Dakshin Haryana Bijli Vitran Nigam Ltd. and Uttar Haryana Bijli Vitran Nigam Ltd. (both successors of the Haryana State Electricity Board) have questioned the orders passed by the Division Bench and Single Judge of the Punjab and Haryana High Court in Civil Writ Petition No.4677 of 2004 and Civil Writ Petition No.3335 of 2004 respectively whereby directions have

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been given for re-determination of the respondents' pension by counting their work charge service subject to the condition of deposit of employers' contribution towards provident fund with interest and the judgments of the learned Single Judges of that High Court in Regular Second Appeal Nos.1262/2006, 4260/2005 and 406/2007 whereby the decrees passed by the trial Courts and the lower appellate Courts in the matter of re-calculation of the retiral benefits payable to the respondents by counting the period of work charge service were upheld.

At the hearing, Shri Neeraj Kumar Jain, learned senior counsel and Shri Alok Sangwan, learned counsel appearing for the appellants fairly stated that the issues raised in the appeals are covered by the judgment of this Court in Dakshin Haryana Bijli Vitran Nigam and others versus Bachan Singh (2009) 14 SCC 793 whereby directions given by the High Court for giving an opportunity to the concerned employee to exercise option was upheld. Paragraphs 16 to 19 of that judgment are extracted below:

"16. The High Court in its impugned judgment had categorically observed that the appellants had failed to produce any record showing that the instructions dated 6-8-1993 and 9-8-1994 were actually got noted in writing from the respondent. The appellants had also failed to produce such material from which it can be inferred that the respondent had any knowledge about the options called by the appellants vide instructions dated 6-8-1993 and 9-8-1994. The High Court also observed

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that in this view of the matter it would be unreasonable to deny pensionary benefits to the respondent and the similarly placed respondents. 17. It may be pertinent to mention that the Full Bench of the Punjab and Haryana High Court in Kesar Chand v. State of Punjab after examining the entire case observed that once the services of a work-charged employee are regularised, he will be deemed to be entitled to the benefit under Rule 3.17(ii) of the Punjab Civil Services Rules, Vol. 2.

18. Rule 3.17(ii) reads as under:

"3.17. If any 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 services except in respect of--

- (i) periods of temporary or officiating service in non-pensionable establishment;
- (ii) periods of service in work-charged establishment; and
- (iii) * * *

(emphasis supplied)

19. The Court in Kesar Chand case held that the period of service spent by an employee on work-charged basis prior to his regularisation, should be taken into consideration for determining his qualifying service. This part is contained in para 19 of the judgment and reads thus:

19. ... 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 eligible for pension 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

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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.

A Full Bench judgment of the Punjab and Haryana
High Court in Kesar Chand case was carried before
this Court by way of filing a special leave
petition. This Court dismissed the said special
leave petition."

In Mahinder Singh's case, the Division Bench of the High
Court referred to the judgment of the Full Bench in Kesar Chand
versus State of Punjab AIR 1988 Punjab and Haryana 265, order
dated 27.8.1997 passed in Civil Writ Petition No.2402 of 1997 -
Darshan Singh versus Chief Accounts Officer, HSEB and observed:

".....Nothing has been brought on record to
show that circular dated 6.8.1993 was ever
brought to the notice of the petitioner. There
is not even an averment in the written statement
that this circular was ever got noted from him.
In this situation, the relief admissible to the
petitioner cannot be denied. Therefore, the
petitioner's claim that the benefit of the
service should be given to him towards the
determination of the amount of pension, has to be
sustained."

In the case of Om Prakash, the learned Single Judge referred
to the order passed in Mahinder Singh's case and granted relief
to the writ petitioner in similar terms.

In the other three cases, the suits filed by the respondents

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were decreed by the trial Courts by relying upon Rule 3.17 of the
Punjab Civil Services Rules, Volume II and the judgment of the
Full Bench of the High Court in Kesar Chand versus State of
Punjab (supra). The lower appellate Courts confirmed the decrees
passed by the trial Courts and the learned Single Judges of the
High Court dismissed the second appeals.

Since the issues raised by the appellants have already been
decided by a Coordinate Bench in Bachan Singh's case (supra), we

do not find any valid ground much less justification to interfere with the impugned orders.

In the result, the appeals are dismissed and the following directions are given for ensuring payment of pension and other retiral benefits to the respondents by counting the period of work charge service:

- i) Within six weeks from today, the respondents shall deposit the amount of EPF in terms of the direction given by the Division Bench of the High Court in Civil Writ Petition No.4677 of 2004.
- ii) Within next six weeks, the concerned authorities of the appellants shall calculate the amount of pension, revised pension and other retiral benefits payable to the respondents by counting their work charge service along with regular service and pay the arrears etc. along with interest at the rate of 10% counted from the date of retirement till the date of actual payment.
- iii) The monthly revised pension payable to each of the respondents shall be paid w.e.f. 1.4.2011.
- iv) The appellants shall also pay cost of Rs.25,000/- to each of the respondents.

The appellants are also directed to submit reports to this Court by 21st April, 2011 showing compliance of the aforementioned
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directions. The Registry is directed to list the matters before the Court on April 25, 2011.

.....J.
(G.S. SINGHVI)

.....J.
(ASOK KUMAR GANGULY)

NEW DELHI,
JANUARY 04, 2011.

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ITEM NO.36

COURT NO.11

SECTION IVB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4907/2006
(From the judgement and order dated 06/09/2005 in CWP No. 4677/2004
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

EX. ENGR. DAKSHIN HARYANA BIJLI V.N. & ANR

Petitioner(s)

VERSUS

MAHINDER SINGH

Respondent(s)

(With prayer for interim relief and office report)

WITH

SLP(C) NO. 16857 of 2006
(With prayer for interim relief and office report)
SLP(C) NO. 16858 of 2006
(With prayer for interim relief and office report)
SLP(C) NO. 13411 of 2007
(With prayer for interim relief and office report)
SLP(C) NO. 24555 of 2007
(With office report)

Date: 04/01/2011 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Neeraj Kumar Jain, Sr. Adv.
Mr. Sanjay Singh, Adv.
Mr. Umang Shankar, Adv.
Mr. Ugra Shankar Prasad, Adv.

Mr. Alok Sangwan, Adv.
Mr. Devashish Bharuka, Adv.

Mr. Devinder Pratap Singh, Addl. Adv. Genl.
Ms. Pragati Neekhara, Adv.
[in SLP(C) No.24555/2007]

For Respondent(s) Dr. Ramesh K Haritash, Adv.
[in SLP(C)Nos.4907/06 and 16858/06]

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Mr. B.K.Satiya, Adv.
[in SLP(C)No.16857]

Mr. Vikas K. Sangwan, Adv.
[in SLP(C) No.24555/2007]

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

In terms of signed order, the appeals are dismissed and the following directions are given for ensuring payment of pension and other retiral benefits to the respondents by counting the period of work charge service:

i) Within six weeks from today, the respondents shall deposit the amount of EPF in terms of the direction given by the Division Bench of the High Court in Civil Writ Petition No.4677 of 2004.

ii) Within next six weeks, the concerned authorities of the appellants shall calculate the amount of pension, revised pension and other retiral benefits payable to the respondents by counting their work charge service along with regular service and pay the arrears etc. along with interest at the rate of 10% counted from the date of retirement till the date of actual payment.

iii) The monthly revised pension payable to each of the respondents shall be paid w.e.f. 1.4.2011.

iv) The appellants shall also pay cost of Rs.25,000/- to each of the respondents.

The appellants are also directed to submit reports to this Court by 21st April, 2011 showing compliance of the aforementioned directions. The Registry is directed to list the matters before the

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Court on April 25, 2011.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed Order is placed on the file)