IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 28303 of 2013

Jai Kishan …Petitioner

Versus

Haryana Power Generation Corporation Ltd. (HPGCL), and others. …Respondents

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Chandigarh **SURESH AHLAWAT**

Dated: 10.02.2014 Advocate

Counsel for the respondents

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 28303 of 2013

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Reply on behalf of respondents.

PRELIMINARY OBJECTIONS

RESPECTFULLY SHOWETH

1. That the present petition filed by the petitioner is undoubtedly hopelessly time barred, because as per the petitioner’s own averment made in the petition, he is claimming pay for the post of Tractor Trailer Driver (T.T. Driver) instead of driver as he worked (though as a work charged ) for a limited period as T.T. Driver i.e. from 21.11.1985 to 23.5.1990. After that in 1991 his services were regularized on the post of driver and now he stands retired on 31.10.2005 after attaining the age of superannuation AND this petition is filed in 2013.The petitioner failed to establish that there is recurring cause of action and even for the sake of arguments if he is entitled to salary of TT Driver for the aforesaid period then still the pension could not be fixed accordingly to that salary for which one could be entitled for a particular period long before retirement. So, in this view of the matter, he is even not entitled to the salary of TT Driver at such a belated stage and more over, he was work charged and the employee in whose place he was sent, was also a work charged . So, obviously he is not entitled to re- fixation or revised pension from any angle. So, the writ petition is liable to be dismissed with cost on this score alone.
2. That no junior person then the petitioner was ever promoted on the post in question and moreover the promotion could not be challenged at such a belated stage and that too without imp leading the effected persons, who otherwise are necessary party to resolve the controversy . It is opined by the Hon,ble Courts in many judgments that a petition is liable to be dismissed for non imp leading of necessary parties.
3. That the petitioner neither placed on record the promotion order of any junior person to him nor prayer is made for quashing the promotion of any junior person to him.

**ON MERITS**

1. That the contents of Para No.1 of the petition are wrong and hence denied. As the petitioner has been retired to the post of driver not tractor trailor driver while working under RE/Hydel, HPGCL, Bhudkalan.

2. That the contents of para No.2 are admitted up to the extent that the petitioner was joined a driver on work charge basis on 08.04.1980 at Hydel Project, HSEB, Bhudkalan. Further he was transferred to the O/O AEE/S&T, Khera with H.Q. at Bhudkalan on tractor trialor (TT) against Om Parkash Driver work charged on temporary basis. He was again directed by XEN/S&T, WYC HE Project, HSEB, Bhudkalan vide order No.341 dated 06.10.1986 to report on duty truck No.HRE-9340 attached with AE/S&T, Kheara with immediate effect Thereafter he was made PP on 05.02.1992 and his services were further regularized to the post of Driver w.e.f. 09.10.1991 i.e. the date his junior most Sh. Kuldeep Singh, Driver joined on regular basis without any financial benefits on the recommendation of screening committee.

3. That the contents of para No.3 of the petitioner are wrong and hence denied as No Promotion Policy from Driver to Tractor Trailor Driver was exist at that time. All the newly created post were filled up through screening committee by different units.

4. That the contents of para No.4 of the petition are wrong and hence denied. It is intimated that Sh.Chela Ram was transferred to Construction division HSEB, Hisar in the capacity of W/c Driver and he was appointed to the post of Tractor Trailor Driver on regular basis by superintending Engineer, TCC No.1, HSEB, Hisar on the recommendations of screening committee and Sh. Joginder Singh was selected to the post of W/c Crane Operator on the recommendation of screening committee by Executive Engineer/Turbine, WYC, HE Project, HSEB, Bhudkalan and thereafter he was transferred to Const. S/Divn, HSEB, Ambala City and he was further issued offer of appointed to the post of regular driver in the scale of 1350-2200 by Superintending Engineer. TCC-IV HSEB, Panchkula where the official was working at that time in view of recommendation of screening committee Sh.Joginder Singh was granted the scale of Tractor Trailor Driver by SE/Construction cum O&M, HVPNL vide o/o No.422 dated 20.11.2003 with immediate effect which is separate entity. No work charge Driver junior to Sh.Jai Kishan (Petitioner) was promoted to the post of Tractor Trailor Driver by ignoring him.

5. That the contents of Para No.5 of the petitioner are wrong and hence denied. It is intimated that Sh. Chela Ram & Sh. Joginder Singh were transfer to other station of Erstwhile HSEB and they had been appointed to the post of Tractor Trailor Driver/Driver by the respective authority. But the petitioner continued to work as driver at Hyde Project, HPGCL, Bhudkalan, The petitioner was also offered to work other station of Erstwhile HSEB with tractor trailor on completion of work and surplus of tractor trailor at Hydel Project, Bhudkalan but he had refused. Accordingly, he was retired to the post of Driver while working under RE/Hydel Project, HPGCL, Bhudkalan.

6. That the contents of para No.6 of the petition are matter of record.

7. That the contents of para No.7 of the petition are matter of record.

8. That the contents of para No.8 of the petition are correct.

9. That the contents of para No.9 of the petition are admitted.

10. That the contents of para No.10 of the petition are admitted.

11. That the contents of para No.11 of the petition are wrong and hence denied because writ petition filed by the petitioner is not maintainable and time barred.

12. That the contents of para No. 12 of the petition, the reply may be read with at para no.4 & 5 as above. Further it is pertinent to mention here that the petition was working from 21.11.1985 to 23.05.1990 as a driver on temporary basis. He was not regularized on that time then his claim to payment of salary from 21.11.1985 to 23.05.1990 is not made out and further judgment cited by the petitioner in para No.13 & 14 is not applicable in the present case.

13. That the contents of Para No.13 of the petition, the reply may be read with at para No.4 as above.

14. That in reply to para No.14 of the writ petition, it is submitted that there was no order issued to the petitioner to work on the post of TT driver from 21.11.1985 to 23.05.1990. It is submitted that there was no post of TT driver in the office of the respondent and only one post of driver available on that time further petitioner was appointed on the post of driver on work charge basis. Judgments cited by the petitioner in this para not applicable in this case. According to new concept of law regarding pay for equal work and petitioner raised his frivolous claim after 23 years.

15. That the contents of para No.15 are not related with this case. It is submitted that Shri Naresh Chander, work charge Fitter (Now Technician) belong to the other category employee and he promoted to the post during his service period still he is serving employee whereas petitioner now is claiming his promotion after 8 years of his retirement from service. It is settled law that no person can claim for promotion after his retirement. It is further submitted that there was no service rule for promotion to the post of TT driver on that time from the post of driver.

16. That the contents of Para No.16 of the petition, the reply may be read with at para No.1 of the Preliminary Objections as above.

17. That the whole action of the respondent is legal, justified and in accordance law/rule.

18. That the contents of para No.18 alongwith its sub para No.A to E are also wrong and hence denied. There is no law point involved in the present writ petition for adjudication by this Hon’ble Court.

19. That the contents of para No.19 of the petition are wrong and hence denied. As no fundamental right of the petitioner has been infringed, therefore, the petitioner has no right to invoke extraordinary writ jurisdiction of this Hon’ble Court under Articles of 226/227 of the Constitution of India. The petition filed by the petitioner has no merits in the eye of law and the same is liable to be dismissed with costs as per facts mentioned above.

20. That the contents of para No.20 of the writ petition is matter of record.

Prayer para of the writ petition alongwith sub-para No. i) to v) is wrong and hence denied. The petitioner is not entitled for any relief under this false petition. The present petition filed by the petitioner deserves to be dismissed being devoid of merits.

Keeping in view of the above facts, it is therefore, respectfully prayed that the writ petition filed by the petitioner being false and frivolous and devoid of merits may kindly be dismissed with costs in the interest of justice.

Place: Panchkula Respondent No.3

Dated:

Through counsel

**SURESH AHLAWAT**

Advocate

Verification:

Verified that the contents of reply of para No.1 of preliminary objections and reply of para no.1 to 20 on merit are true and correct to the best of our knowledge based on information derived from official record.

Place: Panchkula Respondent No.3

Dated: