

CWP-16174-2017



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2026:PHHC:014611



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16174-2017 (O&M)

Lt. Col. Ashok Bembey

... Petitioner

Vs.

Punjab State Electricity Regulatory Commission and another

... Respondents

Reserved on: 12.01.2026

Pronounced on: 02.02.2026

Uploaded on: 02.02.2026

Whether only the operative part of the judgment is pronounced ? No

Whether full judgment is pronounced ? Yes

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Petitioner-in-person.

Ms. Gargi Kumar, Advocate and
Mr. Pritish Goel, Advocate
for respondent No.1.

Mr. Vikas Arora, DAG, Punjab.

HARPREET SINGH BRAR, J.

1. Present petition has been preferred under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing of the order dated 12.09.2016 (Annexure P-26), vide which claim of the petitioner for grant of pension and remaining part of gratuity and leave



encashment was rejected and further to issue a writ in the nature of *mandamus* directing the respondents to grant pensionary benefits to the petitioner along with interest @18% *per annum*.

FACTUAL BACKGROUND

2. Upon acquiring a diploma in Mechanical Engineering followed by graduation in Science, the petitioner joined the Indian Army as a Commissioned Officer in June, 1973 and retired therefrom on 23.11.1997. During his service, the petitioner also acquired a post-graduate diploma in Personnel Management and Industrial Relations from Symbiosis, Pune. Respondent No.1-Commission sanctioned various posts in terms of letter dated 19/21.12.2000 (Annexure P-1A) and sought names from various government departments, including the Punjab Ex-servicemen Corporation under the Department of Defence Welfare, Government of Punjab towards the same. The name of the petitioner was also recommended and he was eventually appointed as Deputy Director (Media and Housekeeping) with the respondent-Commission vide appointment letter dated 28.02.2002 (Annexure P-2). The petitioner joined duty on 04.03.2002 and his appointment was renewed time and again till 03.03.2014 against a regular sanctioned post. Thereafter, vide appointment letter dated 03.03.2014 (Annexure P-4), the petitioner was given appointment on contract basis and his pay, an ex-serviceman, has been fixed as per instructions dated 23.01.1992 (Annexure P-5) issued by the Government of Punjab, which also forms a part of the Punjab Civil Service Rules Vol. II. The petitioner is already drawing military pension, but made a claim to pension in



lieu of his civil re-employment, which was rejected by respondent No.1 vide impugned order dated 12.09.2016 (Annexure P-26). Hence, the present writ petition.

CONTENTIONS

3. The petitioner, who is appearing in person, submitted that he is an Ex-serviceman and was re-employed by respondent No.1-Commission from 04.03.2002 to 03.03.2014 against a regular sanctioned post. As such, he has rendered 12 years of uninterrupted service with respondent No.1-Commission. In terms of the Punjab Recruitment of Ex-servicemen Rules, 1982 issued by the Government of Punjab vide notification dated 02.02.1982 (Annexure P-1), the recruitment of Ex-servicemen to civil services by the State government would fall under the category of 'direct appointment.' Further, the service of a military pensioner engaged in civil re-employment is governed by Rule 7.19 of the Punjab Civil Services Rules (for short 'PCS Rules') while Rule 7.17 makes it clear that re-employment of civil pensioners shall be in a 'purely temporary capacity.' Further still, Rule 3.12 of PCS Rules allows for grant of pension, if the employee has served for 10 years or more and the petitioner satisfies this requirement, as he has worked with the respondent-Commission from 04.03.2002 to 03.03.2014. Thus, the petitioner is entitled to the benefit of pension, gratuity and leave encashment as per PCS Rules as well as instructions dated 23.01.1992 (Annexure R-1/9) issued by the Government of Punjab for the entire period of regular service, spanning 12 years, rendered by him. Reliance in this regard was placed on the judgment passed by this Court



in *Dr. Mrs. S.K. Bhatia Vs. State of Punjab, 1997 (4) RSJ 735* and a judgment rendered by the Hon'ble Supreme Court *State of Punjab and another Vs. Suresh Kumar Sharma, 2010 (4) RSJ 490*.

4. The petitioner further argued that he has been given truncated gratuity up to 30.11.2008 by deeming it to be the date of his retirement, in view of attaining the age of superannuation i.e. 58 years. However, the petitioner had continued to serve the respondent-Commission up to 03.03.2014 on re-employment basis, on regular pay scale against a regular sanctioned and approved post, i.e. beyond the age of 63 years and thereafter; he worked on contract basis up to 24.12.2025. He referred to the Punjab State Electricity Regulatory Commission (Appointment and Service Condition of Employees) Regulation, 2012 as amended vide letter dated 05.11.2012 (Annexure P-27), whereby it was clarified that all re-employed employees, who have completed 05 years of service or have attained the age of 63 years shall be allowed to complete their present terms. Additionally, under Rule 6.16C, even temporary government employees would be entitled for terminal gratuity, while he has rendered 12 years of regular service on re-employment. Furthermore, he has been granted leave encashment with respect to 99 days, as discernible from the office order dated 01.02.2016 (Annexure P-17). The 201 days of earned leave that was utilized by him during the course of his employment with the Army has also been deducted out of the 300 days limit calculated up to 30.11.2008 i.e. the deemed date of his retirement. In the year 2013, he had applied for an ex-India leave for 38 days (27.02.2013 to 05.04.2013) under Rule 8.133 of the



PCS Rules. While dealing with the same, the respondent-Commission noted that in 12 years of service rendered by him on re-employment basis, he has not availed any earned leave and at that point, he had 180 days of earned leave to his credit.

5. *Per contra*, learned counsel for respondent No.1 submitted that respondent No.1-Punjab State Electricity Regulatory Commission was a statutory body, constituted under Section 17 of the Electricity Regulatory Commission Act, 1988, which was been replaced by the Electricity Act, 2003. Upon establishment of respondent No.1-Commission, 111 posts under various categories were sanctioned by the Government of Punjab in order to make it functional. However, in terms of letter dated 25.01.2001 issued by the Finance Department, respondent No.1-Commission held a meeting on 23.09.2002 and approved the strength of 84 officers and staff and ultimately, a proposal for 93 posts was sent. In this background, learned counsel contended that since the inception, no permanent/regular posts were sanctioned to respondent No.1-Commission. The staff had been employed on the basis of deputation, re-employment on contract or through service provider agencies. The petitioner himself was also appointed through Punjab State Ex-servicemen Corporation on re-employment basis, as he had prematurely retired from the Army. As indicated by the appointment letter dated 28.02.2002 (Annexure P-2), the appointment was made initially for a period of one year with a clear stipulation that it was meant to be temporary in nature. In fact, it was also mentioned that his services could be terminated at any point of time. The contractual re-



employment of the petitioner was extended periodically up to 04.03.2007 and thereafter, upon request of the petitioner.

6. Further, before completion of his tenure on 04.03.2012, the petitioner filed a representation dated 17.02.2012 seeking extension of his services by another two years and also filed CWP-3348-2012 in this regard on the same date. Vide order dated 23.02.2012, respondent No.1-Commission was directed to consider the claim of the petitioner, however, in the meantime, it was ordered that the services of the petitioner shall not be discontinued on expiry of his present term on 04.03.2012. Accordingly, respondent No.1-Commission extended the re-employment term of the petitioner vide memo dated 05.03.2012 (Annexure R-1/2). Subsequently, after due consideration of the claim of the petitioner, his representation dated 17.02.2012 was rejected vide office order dated 19.04.2012 (Annexure R-1/3). However, the petitioner was allowed to continue in service in terms of the order dated 23.02.2012 passed by this Court, which was also ordered to be continued on 08.05.2012.

7. Thereafter, vide letter dated 16.05.2012 (Annexure R-1/4), the petitioner stated that he does not want to pursue the ongoing litigation, if his case for extension of his services for 02 years could be reconsidered by the respondents. Accordingly, vide order dated 17.05.2012 (Annexure R-1/5), the re-employment term of the petitioner was extended for two years upto 04.03.2014. Ultimately, the petitioner withdrew CWP-3348-2012, as indicated by the order dated 28.05.2012 (Annexure R-1/6). Vide letter dated 03.03.2014 (Annexure R-1/7), respondent No.1-Commission offered the post of Deputy



Director (General Services), on contract basis, to the petitioner w.e.f. 05.03.2014 on fixed emoluments at the rate of Rs.80,000/- per month. Additionally, it was clarified that no other allowances including Dearness Allowance shall be payable during the term of his employment and he would be entitled to pension from the department, from which he retired. The relevant part of the same is reproduced below: -

“2. Pay and Allowances:

- (i) You shall be paid fixed emoluments @ Rs.80,000/- per month.*
- (ii) You shall be paid mobile allowance as applicable.*
- (iii) No other allowance including dearness allowance shall be payable during the term of employment.*
- (iv) Travelling Allowance and Daily allowance as admissible to the equivalent post in Punjab Government/PSPCL.*
- (v) You shall draw full pension including dearness allowance on pension plus other allowances as admissible from the department, from where you have retired.”*

8. Further, on 24.12.2015, the Approved Staff Regulations were notified, wherein it was clarified that since there were no permanent posts in respondent No.1-Commission, its employees would not be provided pension. Regulation 6(d) also prescribed that the employees cannot be engaged on contract beyond 65 years of age. Since the petitioner had already attained 65 years of age, he had to be relieved from his duties on 24.12.2015.

9. Further still, the pay of the petitioner was fixed on the basis of the last basic pay drawn by him in the Indian Army less pension drawn by him



therefrom, in terms of instructions dated 23.01.1992. As such, the petitioner had been drawing his pay as per this criterion from March 2002 to August 2010. However, the ex-servicemen employees moved a representation for a review of the pay fixation criteria. Thus, in September, 2010, their pay was decided to be refixed from the date of their re-employment in respondent No.1-Commission in terms of para A(b) of instructions dated 23.01.1992. The petitioner was also granted annual increments as per para B(b) of the instructions dated 23.01.1992 but there is no provision in the said instructions, which admittedly governed his service with respondent No.1-Commission, for grant of pension or any other retiral benefits to the re-employed civil/ex-servicemen pensioners. The respondents also requested the Government of Punjab to clarify on the matter of eligibility of the petitioner with respect to retiral benefits but no reply was received in spite of the reminders (Annexure R-1/10 colly).

10. Since the petitioner was insisting on disposal of his claim without waiting for the reply from the Government, respondent No.1-Commission referred the matter to Principal Accountant General (A&E), Punjab & U.T. Chandigarh, who clarified that their office does not deal with pensionary benefits relating to respondent No.1-Commission vide letter dated 04.01.2016 (Annexure R-1/12). However, it was clarified that where qualifying service was under 10 years, the gratuity shall be calculated at a uniform rate of half month's emoluments for every completed 06 months period of service. Accordingly, the petitioner was paid gratuity and leave encashment calculated



upto the date of his superannuation i.e. 30.11.2008, when he reached the age of 58 years. In fact, the petitioner gave an undertaking dated 01.02.2016 (Annexure R-1/13) that if he is found ineligible upon receipt of clarification from the Government, he shall refund any or whole amount in lump sum. Vide letter dated 24.11.2017 (Annexure R-1/14), the Department of Power, Government of Punjab clarified that as per instructions dated 23.01.1992, the petitioner is not eligible for pension or leave encashment etc. Respondent No.1-Commission approached the Government of Punjab vide letter dated 21.12.2017 (Annexure R-1/15) asking for clarification regarding payment of gratuity to its employees, however, it was asked to defend its case on its own in this regard, vide letter dated 19.01.2018 (Annexure R-1/16).

11. Learned counsel contended that the date of birth of the petitioner is 30.11.1950 and since the age of superannuation for the employees of the Government of Punjab is 58 years, he was deemed to have superannuated on 30.11.2002. Thus, for the purpose of pensionary benefits, only 06 years, 08 months and 26 days of his service i.e. upto 30.11.2008, can be taken into account. As a matter of fact, respondent No.1-Commission has paid the petitioner gratuity and leave encashment as per Rules even though the Government did not concur with release of the same, in view of the undertaking submitted by him. Yet the petitioner sought pension by filing CWP-13817-2016 before this Court, which was disposed of vide order dated 15.07.2016 (Annexure P-25) with a direction to respondent No.1-Commission to decide the legal notice served by him. Accordingly, the claim of the



petitioner, as raised in the legal notice, was rejected by passing a speaking order i.e. impugned order dated 12.09.2016 (Annexure P-26), as since the inception, there were no regular posts in respondent No.1-Commission. Moreover, Rule 2.4(e) of the PCS Rules clearly stipulates that when the service of an employee is governed by an agreement, that does not contain any provision regarding pension or counting of such service towards pension, he cannot insist on entitlement of pension in lieu of such service. Further, Rule 3.12 of the PCS Rules requires the employment to be substantive and permanent while the appointment letter of the petitioner categorically mentions that his employment would be temporary in nature. Since the petitioner was not appointed in pursuance of an open advertisement and further, has not completed 10 years of regular service before attaining the age of 58 years, he is not entitled to any pensionary benefits.

OBSERVATIONS AND ANALYSIS

12. Having heard the petitioner and learned counsel for respondent No.1 and upon perusal of the record with their able assistance, it appears that the petitioner is an Ex-serviceman, who retired as a Commissioned Officer from the Indian Army on 23.11.1997. Subsequently, he sought civil re-employment and in furtherance of the same, he was appointed as Deputy Director (Media and Housekeeping) in respondent No.1-Commission vide appointment letter dated 28.02.2002 (Annexure P-2). The re-employment of the petitioner was renewed time and again till 03.03.2014, post which, he was appointed on contract basis as indicated by Annexure P-4. The primary



grievance raised by the petitioner pertains to grant of pension and other retiral benefits arising from his re-employment with respondent No.1-Commission.

13. It may be profitable to note that the determinative factor to ascertain the eligibility of an employee for pension and other retiral benefits is the nature of his/her appointment. It is trite law that the pension is not a bounty, but a Constitutional right, that vests in an employee upon him successfully rendering a long and faithful service in terms of the applicable service rules. A three-Judge Bench of the Hon'ble Supreme Court in *State of Odisha Vs. Niranjan Sahoo, arising from SLP(Civil) Nos.7089-7090/2020* opined as follows in this regard: -

*“12. Furthermore, the High Court erred in prioritizing the respondent's claim over the mandatory minimum service requirements for pension eligibility. **Pension is not an automatic entitlement but is subject to the completion of minimum qualifying service under the applicable rules. By directing the release of benefits despite the respondent's failure to meet this criterion, the High Court has given a reasoning that undermines the principles of equity and accountability in public service.** This Court, therefore, holds that the appeals must be allowed, and the High Court's judgment be set aside to uphold the integrity of service rules and ensure consistency in their application.”*

(emphasis added)

14. On that note, while the duration of service is relevant, it is not the sole determining factor with regards to eligibility for pension and other such benefits upon retirement. As such, it is pertinent that the claimant-employee



satisfies all the conditions of eligibility. In other words, merely for the reason of quality or duration, an employee cannot claim to be eligible for pension or any pensionary benefits. A claim to this effect can only be made by a temporary employee if he has - (a) been appointed against a sanctioned post, (b) been subsequently regularized, and (c) rendered the requisite duration of service, as per applicable rules. Certainly, the services rendered by an employee on contractual or *ad hoc* basis can be counted towards the requirement for regularization, if the applicable service rules allow for it. Naturally, this rationale also applies to the matter of an ex-servicemen being re-employed to a civil post. The fact that the petitioner retired from the Indian Army and was selected for re-employment with respondent No.1-Commission does not mechanically entitle him to pension and other pensionary benefits. Like all other employees of respondent No.1-Commission, his service too would be governed by the terms and conditions of his service, as agreed upon during appointment. A reference may also be made to the judgment rendered by a two-Judge Bench of the Hon'ble Supreme Court in ***U.P. Roadways Retired Officials and Officers Association Vs. State of U.P. Civil Appeal No. 894 of 2020***, decided on 26.07.2024, wherein speaking through Justice Prashant Kumar Mishra, the following was held:

*“35. The common thread in the above referred judgments of this Court is that pension is a right and not a bounty. It is a constitutional right for which an employee is entitled on his superannuation. However, **pension can be claimed only when it is permissible under the relevant rules or a scheme.** If an employee*



is covered under the Provident Fund Scheme and is not holding a pensionable post, he cannot claim pension, nor the writ court can issue mandamus directing the employer to provide pension to an employee who is not covered under the rules.”

15. The claim of the petitioner in the instant case arises from the assumption that he was appointed against a regular sanctioned post, whereas a perusal of the appointment letter dated 28.02.2002 (Annexure P-2) would indicate that he was appointed on temporary basis for a period of 01 year. The relevant part of the said letter is reproduced below: -

*“Subject: Regarding Appointment as Dy. Director Media -
House Keeping.*

Ref: Your application dated 10.01.2002.

*You are hereby appointed as Dy. Director Media and House keeping on re-employment basis on standard terms and conditions of such re-employment in the PERC **initially for the period of 1 year** with the clear stipulated that this **appointment is purely temporary and your services can be terminated at any time**. You will supply a person payment order and last pay certificate in support of your service rendered by you in the Defence Service before joining the post of Director Media and House Keeping.*

***This issues with the approach of Chairman.**”*

16. Further still, the petitioner has been relying upon PCS Rules to support his claim. However, it remains unclear if PCS Rules were ever adopted by respondent No.1-Commission. Previously, the petitioner had filed a writ petition before this Court i.e. CWP-13817-2016 and the same was disposed of vide order dated 15.07.2016 (Annexure P-25), which also duly notes that



applicability of PCS Rules to the employees of respondent No.1-Commission has not been proved. The same reads as follows:

“Learned counsel for the petitioner contends that he was working as Deputy Director (Media and Housekeeping) with Punjab State Electricity Regulatory Commission under the Electricity Regulatory Commission Act, 1998. He retired from service on 30.11.2008. Service Rules are framed after his retirement. The petitioner claims pension, stating that Punjab Civil Services Rules are applicable to him.

However, it is not clear that whether Punjab State Electricity Regulatory Commission has adopted the Punjab Civil Services Rules by a specific order or not.

In these circumstances, without issuing notice, the present petition is disposed of with a direction to the respondents to decide the legal notice (Annexure P-24) and decide whether the pension is applicable to the petitioner or not. The necessary decision be taken within two months from the date of passing of this order.”

(emphasis added)

17. The petitioner has further relied upon Punjab State Electricity Regulatory Commission (Appointment and Service Conditions of Employees) Regulations, 2012 (Annexure P-27), but failed to note that the same were merely draft regulations, that had not received the assent of the Government. Be that as it may, even the draft regulations did not contain any provisions regarding grant of pension to the employees of respondent No.1-Commission. Ultimately, the Government of Punjab notified the Punjab State Electricity Regulatory Commission (Appointment and Service Conditions of Employees)



Regulations, 2015 on 24.12.2015 (Annexure R-1/18), which would also be applicable to the petitioner by virtue of Clause 1(c) thereof. A perusal of Clause 4 of the same would also indicate that appointment to any post(s) in respondent No.1-Commission may only be made through deputation, re-employment or on contract basis, provided that direct appointments shall be only on contract basis or service can be outsourced. As such, it is clear that it was never the intention of respondent No.1-Commission to create regular posts. Additionally, Clause 6 limited the duration of service of a contractual employee upto 65 years, in pursuance of which, the petitioner was removed from service. However, no provision is available regarding eligibility qua pension or any other retiral benefits.

18. The ineligibility of the petitioner qua the same is further buttressed by the fact that even the instructions dated 23.01.1992 (Annexure R-1/9), which have also been relied upon by the petitioner, does not provide a framework for granting pensionary benefits of any kind. As a matter of fact, to reconfirm the same, respondent No.1-Commission had also sought clarification from the Government of Punjab. In response, vide letter dated 24.11.2017 (Annexure R-1/14), the Government made it clear that the petitioner would not be eligible for pension or leave encashment etc. in terms of instructions dated 23.01.1992 (Annexure R-1/9). The relevant part of letter dated 24.11.2017 (Annexure R-1/14) is reproduced below: -

“It is intimated that as per Govt. of Punjab, Department of Finance instructions issued vide No.6.287.91-FPII/841 dated



23.01.1992, Shri Ashok Bembey is neither eligible for pension nor for leave encashment etc.”

19. Notably, respondent No.1-Commission only released a certain amount towards gratuity and leave encashment to the petitioner after obtaining an undertaking (Annexure R-1/13) from him that he shall refund the amount released or a part thereof in lump-sum if he is found not entitled to the same and an order is issued by the Government of Punjab in this regard. *In arguendo*, even if PCS Rules are considered applicable to the case of the petitioner, Clause 3 of Rule 6.1.6C of the same specifically forbids grant of gratuity to a re-employed pensioner. Moreover, Rule 7.19 only provides that as far as an ex-serviceman is concerned, the fact that they are drawing a military pension would not affect the pension accrued to them in lieu of their civil service. Nowhere does it provide that ex-servicemen must necessarily be provided pension on civil re-employment. Moreover, the petitioner's claim for pension and other benefits has not been rejected because he was already drawing military pension but for the reason that the post to which he was re-employed was never pensionary in nature. Lastly, Rule 3.12 does not come to the aid of the petitioner either as the conditions laid down therein for eligibility towards pension remain unsatisfied. For ready reference, Rule 3.12 is reproduced below: -

“3.12. The service of a Government employee does not qualify for pension unless it conforms to the following three conditions:—

First.—The service must be under Government.



Second.—The employment must be substantive and permanent.

Third.—The service must be paid by Government.

These three conditions are fully explained in the following rules.

Note.—The question whether service in a particular office or department qualifies for pension or not is determined by the rules which were in force at the time such service was rendered; orders subsequently issued declaring the service to be non-qualifying, are not applicable with retrospective effect.”

20. A perusal of the appointment letter (Annexure P-2) issued to the petitioner makes it abundantly clear that he was appointed in a temporary capacity. Further, the Note attached to Rule 3.12 further elucidates that whether or not any service rendered would count towards qualifying service for pension would be determined by the rules applicable at the time such services were rendered. As discussed above, none of the applicable instructions or regulations provide for grant of pension or any pensionary benefits to the petitioner by virtue of being an employee of respondent No.1-Commission.

21. Since the very inception, the petitioner was well aware of the fact that he was a temporary employee whose services could be terminated at any point of time. Thus, there never existed an occasion, where he could have had a legitimate expectation to be treated as a permanent and regular employee by virtue of the nature of his employment. As such, it is abundantly clear that the petitioner is not entitled to any pension or pensionary benefits in view of the nature of his appointment or in terms of the applicable rules and regulations.



Therefore, it would not serve any purpose to discuss the issue regarding the duration of service of the petitioner being over 10 years or not.

CONCLUSION

22. In view of the discussion above, especially the fact that respondent No.1-Commission never intended on creating any regular posts, present petition is dismissed.

23. The pending miscellaneous application(s), if any, shall stand disposed of.

02.02.2026
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No