

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

C.W.P. No. 16694 of 2007

DATE OF DECISION : 09.09.2009

Sudershan Kumar (deceased) through LRs

... PETITIONER

Versus

Dakshin Haryana Bijli Vitran Nigam Limited and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Jagbir Malik, Advocate,
for the petitioner.

Mr. B.S. Rana, Advocate,
for the respondents.

* * *

SATISH KUMAR MITTAL, J. (Oral)

The petitioner has retired as Store Munshi from the services of Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter referred to as 'the respondent Nigam'). In the present petition, he is claiming for counting of his work charge service for the purpose of pensionary benefits.

The respondent Nigam has not counted the said service on the ground that in spite of the instructions issued vide circulars dated 6.8.1993 and 8.9.1994, the petitioner did not exercise the option within the stipulated period. On the other hand, it is the case of the petitioner that he was not aware of the aforesaid instructions, as the same were not got noted from him. This issue has been considered and decided by a Division Bench of

this Court in CWP No. 8573 of 2004, titled as Sh. Bharpoor Singh (Retired A.F.M.) versus Dakshin Haryana Bijli Vitran Nigam Ltd. and others, decided on 16.9.2005, while observing as under :

“It has been categorically pleaded by the petitioner that being an illiterate person and working in the field he did not have any knowledge about the instruction dated 6.8.1993 (Annexure P-1). Nothing has been brought on record by the respondents that the aforesaid instructions were got noted from the petitioner by any official/officer of the respondent-Corporation. As per para 4 of the instructions dated 6.8.1993 (Annexure P-1), the instructions had to be got noted from all the employees and receipt of the letter had to be acknowledged, but no such acknowledgment has been placed on the record. Learned counsel for the petitioner brought to our notice that the issue involved in the present writ petition has been specifically dealt with by a Division Bench of this Court in the case of **Lilu Ram Vs. State of Haryana and others, C.W.P. No. 2476 of 1994, decided on 9.10.1997**. A copy of the said judgment has been annexed with the writ petition as Annexure A-1. On perusal of the judgment in Lilu Ram's case (supra), we are satisfied that the petitioner's case is squarely covered by that judgment.”

In view of the said observations, rejection of the claim of the employee for not counting the work charge service was set aside. The respondent Nigam challenged the said decision of the Division Bench, by filing SLP (Civil) No. 7284 of 2006, which was taken up with a bunch of SLPs, and has now been dismissed by the Hon'ble Supreme Court, while observing as under :

“In view of the law as has been articulated in a large number of cases where this court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing by the respondent. In the absence of any such material it can well be inferred that the respondent had no knowledge about the options called by the appellants.”

In view of the aforesaid legal position, learned counsel for the respondents is not in a position to show any record, whereby the aforesaid instructions were ever got noted from the petitioner. In view of this conceded factual position, this writ petition is allowed and the respondents are directed to allow the petitioner to exercise his option in accordance with the instructions dated 6.8.1993 and 9.8.1994, within a period of three months from today, and thereafter, the work charge service of the petitioner be counted towards the pensionary benefits. It is made clear that in terms of the aforesaid instructions, the petitioner will deposit the employer's contribution of EPF with interest, immediately after exercising the option.

September 09, 2009
ndj

(SATISH KUMAR MITTAL)
JUDGE