

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

**Regular Second Appeal No.2282 of 1990 (O&M)
Date of decision: 20.05.2015**

Dr. Satya Narain Verma (since deceased) through LRs.

.....Appellant

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. G.S. Gandhi, Advocate,
for the appellant.

Mr. Siddharth Sanwaria, DAG, Haryana,
for the respondents.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgment of reversal dated 30.07.1990 passed by the Additional District Judge, Jind, whereby appeal filed by the defendants-respondents against the judgment and decree dated 05.04.1989 passed by the Additional Senior Sub Judge, Jind, has been accepted and the suit of the plaintiff has been dismissed.

Dr. Satya Narain Verma-plaintiff filed a suit alleging therein that he remained as HCMS (II) on adhoc basis and served the State of Haryana from 27.08.1971 to 12.07.1974. On 12.07.1974, his services were dispensed with as no longer required and thereafter, he was duly selected for appointment as a medical officer by Haryana Public Service Commission pursuant to the Government order dated 06.12.1974. From 12.07.1974 to

services were dispensed with. Vide order dated 16.08.1977, the Director, Health Services, Haryana had approved his adhoc services. Therefore, the plaintiff-appellant claimed that he was entitled to the benefit of such approved adhoc service towards increments and pensionary benefits under Rule 4.9 of Punjab Civil Services Rules, Vol. I, Part (i). However, the State Government had refused to allow him such benefits vide letter dated 30.07.1986 issued by the Director, Health Services, Haryana.

Upon notice, defendant-respondents filed written statement and took preliminary objections that the suit was time barred and not maintainable. It was admitted that the plaintiff had joined on adhoc basis w.e.f. 28.09.1971 and remained as a Medical Officer up to 12.07.1974 when his services were terminated vide letter dated 13.06.1974. After being appointed on regular basis on the recommendations of Haryana Public Service Commission on 12.02.1975, there was a break in his service from 13.07.1974 to 12.02.1975, therefore, he was not entitled to count his ad hoc service as per the instructions dated 11.06.1974 issued by the Haryana Government, Finance Department. Finally, the claim of the plaintiff for benefit of adhoc service was declined vide order/letter dated 02.07.1981.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. For what period had the plaintiff served under the defendant No.1 and on adhoc basis? OPP
2. Whether the plaintiff is entitled to the benefits of increment, seniority and pensionary benefits by adding the period of service rendered by him on adhoc basis under the State of Haryana? OPP
3. On what date, the plaintiff joined as HCMS (II) on regular basis

under the State of Haryana? OPP

4. Whether the suit is time barred? OPD
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the suit is false and frivolous to the knowledge of the plaintiff, if so, to what effect? OPD
7. Relief.

Trial Court, vide judgment dated 05.04.1989, decreed the suit of the plaintiff-appellant with costs to the effect that he was entitled to the benefits of adhoc service ranging from 28.09.1971 to 12.07.1974 for computing his increments, seniority and pensionary benefits. With regard to limitation on issue No.4, it was held that since the matter remained pending between the parties and finally vide letter dated 03.03.1986 (Ex.P5) his claim was turned down, the suit being instituted on 29.04.1987 was within limitation.

The lower appellate Court allowed the appeal filed by the State on the ground that plaintiff could not get any benefit of counting his past service towards increment, seniority and pensionary benefits in view of specific Service Rules contained in Punjab Civil Services Rules applicable to Haryana State. It was held that vide letter dated 11.06.1974 issued by the Finance Department, Haryana, on regular absorption of an employe who had been on adhoc basis in a Government Department, the pay was to be fixed in accordance with the provisions of Rules contained in Punjab Civil Services Rules. Rule 4.21, Chapter IV, Vol. (II) of Punjab Civil Services Rules deals with an interruption in the service of a Government servant entailing forfeiture of his past service. There were certain exceptions on which account such forfeiture can be avoided. However, case of the plaintiff is not

fact that there was a break in the service of the plaintiff when he was regularly appointed by the Haryana Public Service Commission, no benefit of past service could be extended to him for the purpose of fixation of pay etc. With these observations, findings of the trial Court on issue No.2 were reversed by the lower appellate Court.

On the question of limitation, reference was made to a letter dated 06.12.1985 (Ex.P2) placed on record by the plaintiff-appellant, in which it was stated that earlier also he had been informed vide letter dated 02.07.1981 that benefits of adhoc service could not be given to him with regard to increment, seniority and pension after being appointed on regular post. There was no specific denial of the plaintiff-appellant with regard to the letter dated 02.07.1981. Hence, the suit filed by the plaintiff in the year 1987 was held to be barred by limitation. Ultimately, the appeal of the State was accepted and suit was dismissed.

Mr. Gandhi, learned counsel for the appellant has referred to the instructions dated 11.05.1974 issued by the Finance Department, Haryana, placed on record as Annexure P-14. As per clause 2 of the said instructions, on regular absorption of employee in a Government department, the pay is to be fixed in accordance with the provision of rules. As per these instructions, if adhoc service exceeds one year before regular appointment and the employee had worked in a time scale, then that service will be counted for increments. It was clarified that annual increment should be given to adhoc employees subject to the terms and conditions of their appointment. Essential condition, as per Annexure P-14, was that the adhoc service should exceed one year. Learned counsel for the appellant has further referred to Rule 4.21 of Punjab Civil Services Rules (Annexure P-

entailing forfeiture of his past service. But, there are certain exceptions to the above said rules and as per Rule 21 (d), on account of abolition of post or loss of appointment owing to reduction of establishment, forfeiture of past service would not be done by the department. Further as per Rule 4.23 (1) of the above Rules, the said interruption should have been caused by the reasons beyond the control of Government employee concerned. As per Clause (3) of Rule 4.23, the interruption should not be of more than one year's duration. In case of two or more interruptions, the total period of all interruptions to be condoned should not exceed one year. He further argued that as per Rule 4.9 of the Punjab Civil Services Rules (Haryana), Vol-I, Part I (Annexure P-15), all duty in a post on a time scale counts for increment in that time scale. He finally argued that pursuant to instructions regarding Rule 4.9 (Annexure P-15), the defendants-respondents issued a letter dated 06.12.1985 (Ex.P2), which specifically states that the case of plaintiff-appellant has been examined again and it has been decided that his past service rendered will not be considered for fixing his pay when he became regular. Despite the aforesaid rules, the plaintiff-appellant, vide letter dated 06.12.1985 (Ex.P2) was informed that on re-examination of his case for fixation of salary, the benefits could not be given to him.

Learned State counsel, on the other hand, has argued that vide letter dated 30.06.1971 (Ex.D2), the plaintiff-appellant had been appointed as Medical Officer in HCMS II on temporary basis at Rs.400/- per month in the scale of Rs.400-30-700-40-1100 for a period of six months. Clause 5 of the said letter is reproduced as under:-

“5. Your appointment being purely temporary is liable to be terminated on an month's notice except in cases of removal for misconduct or your character and antecedents being reported to be unsatisfactory in that case no notice will be issued.”

As per aforesaid clause, his appointment was purely on temporary basis and was liable to be terminated on one month's notice, except in case of removal for misconduct or character etc. It was open to the Government to dispense with his service by giving one month's notice. Thereafter, vide letter dated 13.06.1974 (Ex.D1), his services were dispensed with as no longer required by giving him notice of one month. Thereafter, in the month of December, 1974, vide Ex.D3, he was appointed on regular basis on the recommendations of Haryana Public Service Commission in the scale of Rs.400-30-700/40-1100. The defendants-respondents have placed on record letter dated 02.07.1981 (Ex.D5), whereby it has been clarified that the benefit of adhoc service cannot be given towards fixation of salary on regular appointment. The lower appellate Court dismissed the suit of the plaintiff-appellant being time barred as he had been informed way back vide letter dated 02.07.1981 (Ex.D5) that benefit of adhoc service could not be given to him.

The following questions of law arises for consideration in this appeal:-

1. Whether on account of break in service, the plaintiff-appellant is entitled to get benefit of adhoc service towards fixation of his pay at the time of regular appointment.
2. whether the suit of the plaintiff was barred by limitation.

After hearing learned counsel for the parties, the facts not in dispute are that at the time of initial appointment on adhoc basis vide letter dated 30.06.1971 (Ex.D2) and regular appointment vide Ex.D3, the plaintiff-appellant had been appointed in the time scale of Rs. Rs.400-30-700/40-1100. His services were dispensed with in terms of his initial appointment, which was on adhoc basis. It is not the case of defendants-

respondents that he had left the adhoc service after resigning the same. At this stage, reference can be made to Rule 4.21 of Punjab Civil Services Rules (Haryana) Vol-II (Annexure P-16) which pertains to interruption in the service of a Government employee. Sub clause (d) of Rule 4.21, which is relevant, is reproduced as under:-

“(d) Abolition of postor loss of appointment owing to reduction of establishment.

xx	xx	xx
xx	xx	xx

NOTE 4. A Government employee who is discharged on the abolition of an appointment is entitled to the benefit of clause (d) of this rule even though the appointment abolished may not have been that which he held or even one of the particular establishment on which he was actually serving.”

In the present case, the plaintiff-appellant had been appointed on adhoc basis on 30.06.1971 and his services were dispensed with as per terms of his appointment letter (Ex.D2). His case falls in exception (d) read with NOTE 4 of Rule 4.21. The conclusion would be that he had not left the service on account of resignation or on account of any other clause in the appointment letter (Ex.D2). Further, his services had not been dispensed with on account of any other clauses mentioned in his appointment letter (Ex.D2), except that it was not required.

In the written statement, no other reason has been given for dispensing with the service of plaintiff-appellant as set out in his appointment letter. Hence, for all intents and purposes, the benefit of adhoc service, as per Rule 4.21, cannot be curtailed once his services were dispensed with after he had served for 3-4 years with the department on adhoc basis. At this stage, Rule 4.23 would be relevant, which deals with condition of interruptions and deficiencies. The same is reproduced as under:-

“4.23. Interruption in service (either between two spells of permanent or temporary service or between a spell of temporary service and permanent service or vice versa) in the case of an officer retiring on or after the 5th January, 1961, may be condoned, subject to the following conditions, namely:-

(1) The interruption should have been caused by reasons beyond the control of Government employee concerned.

(2) Service preceding the interruption should not be less than five years 'duration'. In cases where there are two or more interruptions the total service, pensionary benefits in respect of which shall be lost, if the interruption are not condoned should not be less than five years.

(3) The interruption should not be of more than one years duration. In cases where there are two or more interruptions the total period of all interruptions to be condoned should not exceed one year.”

In the present case, services of the plaintiff-appellant had been dispensed with for the reasons beyond his control. Further, as per clause (3) of Rule 4.23, interruption in his service was not more than one year and after the services were dispensed with in June, 1974, his name had been cleared by the Haryana Public Service Commission in December, 1974. Hence, interruption as per clause (3) above, was not exceeding one year. After combined reading of Rule 4.21 and 4.23 above, the crux of the matter is that the plaintiff's services on adhoc basis were dispensed with as he was no longer required and his interruption was less than a period of one year and as per instructions (Annexure P-14) on regular appointment, his entire service w.e.f. 1971 to 1974 should have been counted for the purpose of increments etc., as initial appointment and subsequent regular appointment were on the same time scale. The benefit of past service is governed by instructions (Annexure P-14), Rule 4.9 and 4.21 (Annexures P-15 and P-16 respectively), which cover the case of the plaintiff-appellant as the break was less than one year. Moreover, the aforesaid interruption was caused by the reason, which was beyond the control of Government employee i.e.

plaintiff. A Division Bench of this Court in **Harbhajan Kaur Vs. State of Punjab and another**, 2004 (2) SCT 517, has considered the provision of Rule 4.23 of Punjab Civil Service Rules, Volume II and held that interruption between two spells of service rendered under the State Government is to be treated as automatically condoned except where it was caused by resignation, dismissal or removal from service. In para Nos.6 and 7 of the judgment, it was observed as under:-

“6. The question whether *ad hoc* service prior to appointment on regular basis is liable to be counted was raised before a Division Bench of this Court in the case titled **Hazura Singh v. State of Punjab and others, 2004 (1) SCT 695 (Civil Writ Petition No.19732 of 2001) decided on January 14, 2003.** It has been held therein that the period of *ad hoc* temporary service prior to regularisation of the service is liable to be counted for the purpose of gratuity and ***pension*** if the break in service is for a reason beyond the control of the employee.

7. Rule 4.23 of the Rules as amended reads as under:-

“In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered under the State Government shall be treated as automatically condoned, and the pre-interruption service shall be treated as qualifying service for ***pension*** purposes, except where the interruption has been caused by resignation, dismissal or removal from service or due to participation in a strike, but the period of interruption itself shall, under no circumstances, be reckoned as qualifying service for ***pension*** purposes.”

After going through the case file, there is nothing on record to show that services of the plaintiff-appellant had been dispensed with on account of any of the reasons mentioned in his appointment letter, except that the services were “no longer required.”

A Coordinate Bench of this Court in **Megh Raj Vs. State of Haryana and another**, 2014 (2) SCT 394, has examined Rule 4.9 of Punjab Civil Service Rules, Vol. I, Part-I and held that period of adhoc service

before joining on regular basis, has to be counted for the purpose of

increments. Similar view has been taken in **Hanumant Singh and others Vs. State of Haryana and others**, 2008 (4) SCT 427 and **Suresh Kumar Gupta and others Vs. State of Haryana and others**, 2008 (4) RSJ 756.

As regards the limitation in filing the present suit, the Hon'ble Supreme Court in **Sushil Kumar Yadunath Jha Vs. Union of India and another**, 1986 (3) SCC 325, held that when a representation with regard to claim made by an employee was pending between different levels of Government department and finally, the Government had turned down his request, that would be the appropriate time to approach the Court of law for redressal of his grievance. This judgment is directly applicable to the facts of the present case. After the request of the present plaintiff-appellant was declined vide letter dated 02.07.1981 (Annexure D-5), he made another representation, which was declined on 06.12.1985 and finally, vide letter dated 30.07.1986, he was informed that the benefits of adhoc services could not be given to him. Hence, it was in the year 1986 when he was finally informed about the aforesaid decision. Thereafter, the plaintiff filed the present suit in the year 1987. Hence, the suit was rightly held to be within limitation by the trial Court.

In view of the aforesaid discussion and the law laid down in various judgments passed by the Hon'ble Supreme Court as well as this Court, the present appeal deserves to be allowed. The break in the service of plaintiff-appellant after his ad hoc service was dispensed with did not exceed one year at the time when he joined on regular basis. Moreover, his service had been dispensed with in the circumstances beyond the control of the plaintiff-appellant. Hence, in view of the aforesaid judgments, his entire service which was rendered on adhoc basis was required to be considered

further for pension and gratuity etc.

Resultantly, the impugned judgment passed by the lower appellate Court is set aside and the defendants-respondents are directed to re-fix the pay of the plaintiff-appellant by counting/including the service, rendered on adhoc basis towards his regular service and grant him all the monetary benefits regarding increments, pension and gratuity etc. The entire arrears of pay and pension etc. will be paid to the legal heirs of the plaintiff-appellant along with interest at the rate of 9% from the date of filing of the suit till actual realization.

Allowed accordingly.

20.05.2015
ajp

(RITU BAHRI)
JUDGE