

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

CWP No.14504 of 2013
Date of Decision: 10.03.2015

Sh. Joginder Singh

. . . .Petitioner

Versus

The State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Puran Chand Arora, Advocate,
for the petitioner.

Mr.Ashish Sharma, Addl. A.G. Punjab.

RAKESH KUMAR JAIN, J.

The petitioner has challenged the order dated 8.10.2012 on the basis of policy instructions dated 29.5.2006 and an order passed by this Court on 21.2.2013 and has prayed that service rendered by him against leave vacancy from 28.2.1979 to 31.3.1985 be counted towards pension and other retiral benefits.

In short, the petitioner, who belongs to the Scheduled Caste category, was appointed as JBT teacher against leave vacancy on six months basis vide letter No.EP-1(1)79/SPL-6 dated 27.2.1979. His services were regularized w.e.f. 1.4.1985. The petitioner retired on 31.8.2010 and his case for the grant of pension and other retiral benefits was submitted to respondent No.5, who returned his case vide letter dated 11.8.2010 pointing out that the entry in the service book of the petitioner, made in the year 1979,

indicates that he was appointed against a leave vacancy and as such the service rendered by him from the year 1979 till his regularization in the year 1985 i.e. for a period of above 6 years should not be counted for pension and retiral benefits. The petitioner served a legal notice on 23.2.2012 raising the objection for not counting his service for the purpose of pension and retiral benefits. Thereafter, he filed CWP No.12436 of 2012 which was disposed of on 5.7.2012 for deciding the legal notice/representation of the petitioner. The order of this Court passed in the said writ petition on 5.7.2012 was not complied with by the respondent and the impugned order dated 8.10.2012 was passed, declining the prayer made by the petitioner, who has now challenged the said order dated 8.10.2012 (Annexure P-1) on the basis of instructions dated 29.5.2006 (Annexure P-4) and an order passed by this Court in RSA No.3835 of 2010 (Annexure P-5).

It is submitted by learned counsel for the petitioner that as per instructions/letter dated 29.5.2006, on the subject of counting of *ad hoc* service towards pension, it has been decided by the Government that there has been a wrong perception at various levels of hierarchy that any gap of more than 30 days between two spells of service rendered, the earlier spell would be irrelevant for counting of service for calculation of pension. It is also submitted that in RSA No.3835 of 2010, this Court, while relying upon the judgment of Full Bench of this Court in the case of **“Kesar Chand Vs. State of Punjab through the Secretary, PWD, B&R, Chandigarh and others”**, 1988 (2) PLR 223, has held that service

rendered by work-charged employee/ad hoc employee would be counted for retiral and pension benefits.

On the other hand, learned counsel for the respondents has submitted that as per Annexure P-6, the petitioner was appointed on temporary basis against a leave vacancy. It is further submitted that as per circular issued by the Government of Punjab, Department of Personal and Administrative Reforms dated 28.10.1980, the breaks in *ad hoc* service would be ignored in case of leave arrangement. The relevant portion of the said circular is as under: -

“In supersession of this Department Order No.6/234/78-3PP, dated the 2nd May, 1980, It has been decided by the Governor of Punjab that the services of all ad hoc employees holding the posts carrying an initial pay of ₹325 to ₹699 P.M. (both inclusive) in various Government Departments/Offices shall be regularized subjects to the following conditions:-

(i) That the ad hoc employees should have completed a minimum of one year’s service on the 30th September, 1980. While calculating the period of service, any break of notional nature falling between ad hoc appointments in the same category of posts and in the same Department may be ignored. In other words, the breaks in ad hoc service would not be ignored in case where: -

(a) The employee concerned left service of his own volition whether to join some other department or for some other reasons; or

(b) The ad hoc appointment was against a post/vacancy for which no regular recruitment was intended/required to be made, e.g., leave arrangements or filling of other short term vacancies.”

VIVEK PAHWA
2015.03.20 11:43
I attest to the accuracy and
authenticity of this document

It is further submitted that there is further amendment by the Department of Finance (Finance Pension Policy & Coordination Branch) dated 10.9.2007, regarding counting of *ad hoc* service, rendered by an employee against a leave vacancy, countable for pensionary benefits. It is submitted that no case has been noticed in the Department of Finance where pensionary benefits for *ad hoc* service rendered against a leave vacancy have been sought. The relevant portion of the said circular is reproduced as under:-

“Subject: Amendment relating to Punjab Civil Services Rules Volume II regarding retiral benefits for the State Government employees.”

I am directed to refer to your letter No.Pen I/Amendment/07-08/4758, dated the 15th June, 2007 on the subject noted above and to send clarification on the points raised by you as under:-

<i>Points</i>	<i>Clarification</i>
<i>(a) Whether ad hoc service rendered by an employee against a leave vacancy countable for pensionary benefits or not?</i>	<i>(a) No case has been noticed in the Department of Finance where pensionary benefits for ad hoc service rendered against a leave vacancy have been sought. Generally ad hoc appointments are made against vacant permanent/regular/temporary posts. Service rendered against leave vacancy is not countable towards pension. Therefore, such a case would be dealt accordingly and there appears no necessity to issue further clarification on this point.</i>

I have heard both the learned counsel for the parties and after examining the record, am of the considered opinion that the impugned order dated 8.10.2012 (Annexure P-1) is without any blemish as it is based upon the Government instructions which categorically provides that break in *ad hoc* service would not be ignored in case of appointment against leave vacancy and no such matter has been dealt with by the Finance Department for the purpose of counting service rendered against leave vacancy for the purpose of pension and other retiral benefits. As far as the letter/instructions dated 29.5.2006 is concerned, it only says that if there is a gap of more than 30 days between two spells of service rendered, the earlier spell would not become irrelevant for the purpose of counting service for the purpose of pension. Thus, it has not dealt with the situation as noticed in the present case. Similarly, the judgment in RSA No.3835 of 2010 also does not help the petitioner because the substantial question of law, decided by this Court is “*as to whether the ad hoc service of an employee could be counted while extending pensionary benefits?*”

There is no dispute about the preposition of law laid down by this Court in the aforesaid appeal where the *ad hoc* service was counted towards pension and other retiral benefits on the basis of a decision of this Court in the case of **Kesar Chand (Supra)** but no question was decided by this Court as to whether the service rendered against a leave vacancy would be considered for the purpose of pension and retiral benefits.

Thus the petitioner has failed to prove that the appointment against the leave vacancy would also be counted for the purpose of pension or other retiral benefits.

In view of the above, present petition is hereby dismissed.

10.03.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE