

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 2501 of 2013 (O&M)

Date of decision: 27.08.2015

Rama Shankar and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Amrindra Pratap Singh, Advocate, for
Mr. Gurnam Singh, Advocate,
for the petitioners.

Ms.Monica Chhibber Sharma, DAG, Punjab.

Mr.Suvir Kumar, Advocate,
for the applicant-respondent no.3.

AMOL RATTAN SINGH, J.(Oral)

CM-11131-CWP-201

CM application is allowed.

In compliance of the order dated 23.02.2015, lists of period of
breaks, as shown in the muster rolls of the petitioners, have been annexed as
Annexures, R3/3 to R3/8. The annexures are taken on record.

CWP No.2501 of 2013

The petitioners were appointed on *ad hoc*/daily wage basis as
Beldars, on various dates as given in paras no.2 and 3 of the writ petition.
Their services were regularized on different dates as given in paras 2 and 6
thereof.

By this petition, they seek the benefit of service that they

rendered on *ad hoc*/daily wage basis with the respondent-Municipal Council.

2. Mr. Amrindra Pratap Singh, learned counsel for the petitioners submitted that, earlier, petitioners no.8, 5, 7, 4 and 1, i.e. Darbara Singh, Girja Shankar, Jagjit Singh, Prakash Singh and Rama Shankar respectively, alongwith 11 others Beldars/Labourers, had filed CWP No.9475 of 1998, seeking regularisation of their services, on the ground that they had served the Municipal Council for more than 5 to 6 years on *ad hoc*/daily wage basis. Subsequently, pursuant to Court orders in identical writ petitions, the services of the aforesaid petitioners of this writ petition, i.e. Darbara Singh, Girja Shankar, Jagjit Singh, Prakash Singh, Rama Shankar and 11 others, were regularized vide order dated 04.10.1993, a copy of which has been annexed as Annexure P-2 with the present petition.

3. The petitioners made representations to the Administrative Officer of the respondent Municipal Council on 23.04.2012, for counting their *ad hoc*/daily wages service towards pensionary benefits but no action has been taken by the respondents.

4. Learned counsel further submitted that one Hari Chand filed CWP No.7378 of 2003, impleading the Bhakra Beas Management Board and the State of Punjab therein, seeking similar benefit, which was allowed on 22.03.2011, vide order Annexure P-4, by a co-ordinate Bench. Similarly, CWP No.1389 of 2011 was also allowed and the SLP filed by the State Government, bearing No.13952 of 2011, against these judgments, was dismissed with the following order:-

“We have heard learned counsel for the petitioners at length and carefully perused the record. In our view, the order passed in Civil Writ Petition No.7378 of 2003 is based on correct interpretation of the rules and instructions issued by the State

Govt. and the direction given by the learned Single Judge for counting the daily wage service of the respondents as part of qualifying service of the purpose of fixation of pension and grant of other retiral benefits, does not suffer from any legal infirmity.”

Learned counsel has also relied upon the judgment of a Full Bench of this Court in **Kesar Chand v. State of Punjab and others** (AIR 1988 P&H 265), wherein while interpreting Rule 3.17-A of the Punjab Civil Services Rules, Vol.II, it was held that the period of work charged service, prior to regularization of the services of an employee, would count towards his pensionary benefits.

5. A short reply has been filed on behalf of the State of Punjab (respondents no.1 and 2) stating that the post of Beldar is a non-provincialized post and as such the matter falls squarely in the lap of respondent no.3, i.e. the Municipal Council, Mandi Gobindgarh.

6. In the reply filed on behalf of the Municipal Council, though the facts have not been denied, it has been stated that the services of petitioner no.3 were regularized against a post that was created in the year 2000-01, after he was re-inducted into service as a daily wager, upon a compromise arrived at before the Labour Officer, wherein the said petitioner had stated that, upon regularization, he would not claim any arrears of pay/wages. As regards the other petitioners, it has been admitted that they joined on *ad hoc* basis at various points of time and their services were also regularized at different points of time. No substantive reason for denying them benefit of services rendered towards *ad hoc* and daily wage basis has been given in the written statement.

In the affidavit filed in Court today, counting of the services

rendered by the petitioners, prior to regularization, has been denied towards pension and other benefits, on the ground that they have interrupted periods of service, with various breaks, as shown in Annexures R3/3 to R3/8, annexed alongwith the affidavit.

A perusal of these annexures, shows that the periods of breaks range from 6 days in a year to 63 days in a year and are not in continuum in any year, but spread over different months, or a few days in each month, except in some years where the absence is of 25 days or more in the case of some petitioners.

In other words, the absences, even if not taken to be notional in the months that they were there for more than 10 to 15 days, are spread over a period of 7 years.

Mr. Suvir Kumar, learned counsel for the Municipal Council, further submitted that there was no condition in the orders by which the services of the petitioners had been regularized, that the periods spent in temporary service would be countable towards pensionary benefits.

7. Having considered the pleadings and the arguments raised on both sides, in order to appreciate the right of the petitioners, it would first be necessary to look at Rule 3.17-A of the Punjab Civil Services Rules (Vol.II), which reads as follows:-

“3.17-A (1) Subject to the provision of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-

- (i) Service rendered in work-charged establishment.*
- (ii) Service paid from contingencies :*

Provided that after the 1st January, 1973 half of the service paid from contingencies will

be allowed to court towards pension at the time of absorption in regular employment subject to the following conditions:-

(a) Service paid from contingencies should have been in a job involving whole-time employment (and not part-time or for a portion of the day).

(b) Service paid from contingencies should have in a type of work or job for which regular post could have been sanctioned e.g. Malis, Chowkidars, Khalasis, etc.

(c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishment.

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

(iii) Casual or daily rated service.

(i) Suspension adjudged as a specific penalty.

Note. –*In case where an officer dies or is permitted to retire while under suspension will not be treated as an interruption.*

(ii) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government where service qualifies for pension.

(iii) Joining time for which no allowances are admissible under rules 9.1 and 9.15 of C.S.R., Volume I, Part I.

(iv) If any unauthorized leave of absence occurs in continuation of authorised leave of absence and if the post

of the absentee has been substantively filled up, the past service of the absentee is forfeited.

(v) Transfer to a non-qualifying service in an establishment not under Government control or if such transfer is not made by the competent authority and transfer to service in a grant-in-aid school.

(A Government employee, who voluntarily resigns qualifying service, cannot claim the benefit under this clause.)

(vi) Removal from public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of past service.

(2) An interruption in the service of a Government employee caused by willful absence from duty or unauthorized absence without leave, shall entail forfeiture of the past service.

(3) Willful absence from performing duties by a Government employee by resort to pen down strike shall be deemed to be willful absence from duty and shall also entail forfeiture of the past service;

Note. *—In the case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, the pensionary benefits admissible for service under Central Government would be that admissible under the Government of India rules and the liability for such benefits shall be allocated in accordance with the prevalent orders.*

Clarification (I) . *—Even after the introduction of rule 3.17 (A) and deletion of rule 4.21, the following cases do not entail forfeiture of past service :-*

(a) authorized leave of absence;

(b) abolition of post or loss of appointment owing to reduction in establishment.

(“Post” or “appointment” means a post or appointment service in which qualifies for pension).

(2) While counting such qualifying service for working out aggregate service, the period of break in service shall be omitted.”

8. Thus, as per sub-clause ('d') of the proviso to clause 1 of the aforesaid rule, service paid from contingencies is also countable as qualifying service for pension of an employee if it is followed by absorption in regular employment, without a break.

It is not the case of the respondents that there was any break in service between the periods of services rendered by the petitioners on *ad hoc*/daily wage basis and the date of their regularization, except perhaps, a notional break of a few days in the case of some petitioners, (even though that it is not specifically pleaded, as regards break between the period of *ad hoc*/daily wage service and date of regular appointment).

As regards the breaks in service on *ad hoc*/daily wage basis, in Clarification (2) to Rule 3.17-A, it is specifically stipulated that even while counting such qualifying service for working out aggregate service, the period of break in service shall be omitted. Hence, it is obvious that breaks in service rendered on *ad hoc*/daily wage basis, are to be omitted but the rest of the service, as is spent on duty, is to count as qualifying service towards grant of pension.

9. Further, though this is not the stand taken by the respondents in their reply, however, since there is a stipulation in the rule to that effect, it needs to be dealt with by this Court, i.e. that the aforesaid proviso to clause 1 of Rule 3.17-A, lays down that after 01.01.1973, only half of the service paid from contingencies will be allowed to count towards pension, at the time of absorption in regular employment.

Thus, as a matter of fact, even as per the rule as it stands, the respondents were bound to count at least half of the service rendered by the petitioners on *ad hoc*/daily wage basis, prior to their 'regularization', as qualifying service for pensionary benefits. As such, the stand in the written statement is wholly untenable.

10. However, even the condition of counting only half the service paid from contingencies, prior to regular service, is a condition which can no longer be made applicable to such employees, in view of what was held by a co-ordinate Bench in **Joginder Singh v. State of Haryana** 1998(1) SCT 795 and **Nathi Ram v. State of Haryana** 1999 (1) SCT 338.

Though those cases pertain to the State of Haryana, and Rule 3.17-A, in Haryana, stands substituted w.e.f. 04.02.1992 (with an amendment in the Punjab Civil Services Rules, Vol.II, as applicable to Haryana), the provision even in the amended rule in Haryana, is *pari materia* to the clause in the proviso to Rule 3.17-A(1), as it stands in Punjab.

The rule, in Haryana, runs as follows:-

- “3.17-A (a) All service interrupted or continuous followed by confirmation shall be treated as qualifying service; the period of break shall be omitted while working out aggregate service.
- b) Extraordinary leave counted towards increments under rule 4.9 (b)(ii) of Punjab Civil Services Rules, Volume-I, Part-I, will be accounted towards service qualifying for pension.
- c) Periods of suspension, dismissal, removal, compulsory retirement followed by reinstatement will count for pension to the extent permissible under rule 4.17 of Punjab Civil Services Rules Volume-II read with rule 7.3 of the Punjab Civil Services Rules, Volume-I, Part-I.
- d) Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to

age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of rule 4.19(a) of Punjab Civil Service Rules Volume-II.

- e) An interruption in the service of a Government employee caused by wilful absence from duty and unauthorised absence without leave will as hitherto entail forfeiture of past service.

[Explanation:-The willful refusal to perform duties by a Government employee by any means including pen down strike shall be deemed to be willful absence from duty:]

- f) Employees retiring from Government service without confirmation (as temporary employees) in any post on or after 5th February, 1969 will be entitled to invalid/retiring/superannuation pension and death-cum-retirement-gratuity on the same basis as admissible to permanent employees. In case of death of temporary employee in service his family will also be entitled to similar benefits as are admissible to the families of permanent employees. This concession will, however, not apply to:
- (i) Persons paid from contingencies; provided that half of the period of service of such persons paid from contingencies rendered from 1st January, 1973 onwards for which authentic records of service is available will count as qualifying service subject to the following conditions:-
- a) Service paid from contingencies should have been in a job involving whole time employment and not part time for a portion of day,
- b) Service paid from contingencies should be in a type of work or job for which regular post should have been sanctioned e.g. malis, chowkidars, khalasis etc.,
- c) The service should have been such for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relations in the matter of pay to those being paid for similar jobs being performed

by staff in regular establishments; and

- d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

Note.- While bringing contingent paid employee to the regular establishment an entry for verification of contingent service should be made at the appropriate place in his service book, preferably before making any entry regarding his regular service in the following manner:-

“Service from -----to -----paid out of contingencies verified from acquittance rolls and office copies of contingent bills”. This entry should be signed by the Head of-Office with date.

(ii) [Deleted.]

(iii) Casual Labour;

(iv) Contract Officers; and

[(v) Persons borne on Contributory Provident Fund Establishment.]

[(g) The entire service rendered by an employee as work charged shall be reckoned towards retirement benefits provided-

(i) such service is followed by regular employment;

(ii) there is no interruption in the two or more spells of service or the interruptions fall within condonable limits; and

(iii) such service is a whole time employment and not part-time or portion of day.]”

11. Thus, Rule 3.17-A (f)(i), in Haryana, stipulates that employees who retired from service in a temporary capacity, without confirmation, and were paid from contingencies, would also be entitled to pension but only by counting half the service which is paid from contingencies.

In *Joginder Singhs' case* (supra), while dealing with the

aforesaid condition, that only half the period of service paid from contingencies would count as qualifying service towards pension, it was held as follows:-

“I am also of the opinion that the stipulation in sub-clause (i) of clause (f) of Rule 3.17-A that only half the period of service is to be counted as qualifying service is arbitrary and no logic or reason can be spelt out in it. In Kesar Chand v. State of Punjab and others, 1988(5) SLR 27, this Court while considering Rule 3.17 of the Punjab Civil Service Rules Vol.II which provided that if work-charged service was followed by regular employment, the period of work-charged service could not be taken into account for the purpose of determining the qualifying service was quashed being arbitrary and unjust. It was observed as under:-

“Once the services of a work-charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged establishment before his regularization has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work-charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work-charged employee have been regularised, he is a public servant like

any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub-rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.”

I am, therefore, of the opinion that the words “half the period of service of such persons paid from contingency” occurring in sub-clause (i) of clause (f) of Rule 3.17-A are bad in law and are accordingly struck down.”

The aforesaid judgment was followed in *Nathi Rams' case* (supra), with both of which this Court is in respectful agreement.

Firstly, in the case of Haryana, half of such service as is paid from contingencies, was stipulated in the rule to count as qualifying service for pension, only where such service was not followed by absorption into regular service. In the present case (of the State of Punjab), it is the admitted position that the services of the petitioners were “regularised” after they had spent considerable time in service on *ad hoc*/daily wage basis. Thus, when the present petitioners retired, or shall retire, they would have retired/shall retire from regular posts, not from service paid from contingencies.

Secondly, when it was found by this Court, in the aforesaid two cases, that omitting half the service paid from contingencies, as qualifying service towards pension, was wholly irrational, obviously the same rationale would apply to such service which is followed by regular service.

12. Further, the present case is also covered by the judgment of another co-ordinate Bench in the case of *Hari Chand* (supra) (CWP No.7378 of 2003, decided on 22.03.2011), affirmed by the Supreme Court, wherein the rules applicable were of the State of Punjab.

13. In view of the above, this writ petition is allowed. The

respondent-Municipal Committee is directed to calculate the pensionary benefits of the petitioners taking their services to be continuous from the date of initial induction into service on daily wages, followed by regularization from various dates, deducting however, the number of days of each break, during the period of services rendered on *ad hoc*/daily wage basis. Those breaks shall be excluded while calculating the total period of service countable towards pensionary benefits.

The pensionary benefits so calculated be paid to the petitioners who have retired, within a period of two months from the date of receipt of a certified copy of this order.

Since, even without the above interpretation given by this Court in the case of the State of Punjab, the proviso to Rule 3.17-A(1), in any case, stipulated that half the period of service paid from contingencies, followed by regular service, would count as qualifying service towards pension and despite the above stipulation, even *de hors* any judgment pertaining to Haryana or the Bhakra Beas Management Board, the respondents were required to calculate pension according to the said rule, interest @ 7% per annum shall be payable to those petitioners as have retired and have not been paid pension according to the aforesaid proviso to Rule 3.17-A (1) of the Punjab Civil Services Rules Vol.II. However, since the rule, prior to the interpretation given above, envisaged counting of only half the service paid from contingencies as qualifying service, the interest would be payable only on the amount as accrues to each retired petitioner, after counting half of such service paid from contingencies, as qualifying service towards pension.

It is made clear that this clarification is only with regard to interest payable to the petitioners; otherwise, the entire period of service

rendered by them in service paid from contingencies, minus the breaks in such service, would be treated as qualifying service countable towards pension and other such benefits.

No order as to costs.

[AMOL RATTAN SINGH]
JUDGE

27.08.2015
nitin/dinesh