

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

RSA No.3424 of 2014 (O&M)

Date of Decision: 03. 12.2015

PUNJAB STATE TH ITS SECY IRRGATION DEPT
CHANDIGARH AND ORS

.....Appellants

Versus

PIARA LAL

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. N.K. Verma, Sr. DAG, Punjab.

Mr. Jasdev Singh Thind, Advocate for
Mr. Anupam Bhardwaj, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Punjab State and others have come in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration filed by the plaintiff Piara Lal to the effect that plaintiff is entitled to the service rendered by him in the Department as work charge employee w.e.f. 16.10.1969 except the period of interruption w.e.f. 04.09.1980 to 31.03.1981 as qualifying service towards pensionary benefits i.e. pension, commuted pension, leave encashment, DCRG etc. Mandatory injunction was also sought

to the effect that defendants be directed to include the service rendered by the plaintiff as work charge employee for fixing his pay and allowance and release the pensionary benefits along with arrears and interest @ 18% per annum from due date till the date of actual realization.

[2]. The suit was contested by the defendants on the ground that the services of the plaintiff were terminated w.e.f. 04.09.1980, when the work was completed after giving due notice of one month before termination and his services were terminated in accordance with law. Thereafter, plaintiff was appointed as Work Charge Welder on 01.04.1981. Therefore, plaintiff was not entitled to get pensionary benefits and computation of his past services rendered by him from 16.10.1969 to 03.09.1980. No rule or instructions of the Department prescribes such an instruction wherein the service rendered could be counted towards the pensionary benefit prior to the date of termination of services on 03.09.1980. Defendants pleaded that plaintiff was not entitled for computation of service from 16.10.1969 to 31.03.1981 for the purpose of pensionary benefits.

[3]. From the pleadings of the parties following issues were framed by the trial Court:-

“1. Whether plaintiff is entitled for declaration

as prayed for? OPP

2. Whether plaintiff is entitled for mandatory injunction as prayed for? OPP

3. Whether suit of the plaintiff is not maintainable? OPD

4. Whether plaintiff has not come to the Court with clean hands? OPD

5. Relief.”

[4]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[5]. Trial Court decreed the suit for declaration to the effect that plaintiff is entitled for his service rendered with the Department as work charge w.e.f.16.10.1969 except the period of interruption from 04.09.1980 to 31.03.1981 as qualifying services towards pensionary benefits (i.e. pension, commuted pension, leave encashment, DCRG etc. for release of all retiral/pensionary benefits) with relief of mandatory injunction directing the defendants to include the service rendered as work charge for fixing/refixing his pay and for releasing pensionary benefits along with arrears of interest @ 18% per annum from due date till the date of actual realization of the amount with cost. However, period of interruption from 04.09.1980 to 31.03.1981 was ordered to be excluded for the purpose of pensionary benefits.

[6]. Feeling aggrieved against the aforesaid judgment and decree, defendants filed appeal before lower Appellate Court which was dismissed by the lower Appellate Court vide judgment and decree dated 01.04.2014. That is how the present second appeal came to be filed in this Court.

[7]. At the time of filing of the appeal following substantial questions of law have been framed in para No.13 of the grounds of appeal:-

“i) Whether the Ld. Court below are justified to hold the plaintiff-respondent entitled for grant of pensionary benefits for the period of service as work charge employee w.e.f.16.10.1969 to 04.09.1980?

ii) Whether the suit filed by the respondent-plaintiff was time barred?

iii) Whether the plaintiff-respondent is entitled for the benefits of service rendered from the period 16.10.1969 to 04.09.1980 and his re-employment after his termination from service on dated 04.09.1980?

iv) Whether the Ld. Courts below are justified to grant such heavy rate of interest to the plaintiff-respondent?

v) Whether the plaintiff-respondent is entitled for the benefits under Rule 3.17 of the Punjab Civil Services Rules Volume-II and Rule 4.23 of the Punjab Civil Services Rules?”

[8]. I have considered the arguments of both the sides and have also perused the relevant material on record.

[9]. Admittedly, the termination of services for want of work cannot entail any forfeiture of the past service. Forfeiture of service can only be presumed in case of dismissal and removal. The interruption in period of work charge service was required to be condoned in view of provision laid down in Rule 3.23 of Punjab Civil Services Rules Volume-II. If such a condonation is preceded by protection in terms of day before regular service, the period for which the plaintiff rendered his service in the Department, has to be counted as qualifying service according to rules.

[10]. According to the Government instructions, the pension case has to be initiated two years before the date of retirement of an employee. The delay in pension case may arise for the reasons of any deficiency in service book or record and for that, time is required to remove such deficiencies. The process is required to be completed within a reasonable time not beyond the period of eight months in advance of the date of retirement of the employee. Plaintiff supplied all the required documents for the purpose of pensionary benefits to the Department and thereafter, Department was under obligation to prepare the pension case within reasonable time of eight months prior to

retirement of the plaintiff. Even after the retirement, plaintiff received letter dated 28.01.2010 being addressed to Executive Engineer in reference to his office memo No.4902 dated 01.12.2009 whereby the pension case of the plaintiff was returned by the office of A.G. (A&E) Punjab with the observations that service verification certificate at serial No.6, 7 and 8 were to be complied with. The order vide which interruption in service was condoned, the entry in this regard in the service book was made. On receipt of said letter dated 28.01.2010, the plaintiff approached the office of Executive Engineer with a request to remove the objection and to send his pension case to the concerned authority without any delay. The office of A.G (A&E) issued certificate and report cum gratuity payment order in the name of the plaintiff vide letter dated 27.05.2010 but the plaintiff was surprised to know that his qualifying service for retiral benefit has been approved only for 58 and half years. The service rendered from original date of appointment i.e. w.e.f 16.10.1969 to 31.03.1981 has not been included as qualifying service for pensionary benefits. The remarks recorded itself shows that the Department has not supplied the required information thereby creating financial hardship to the plaintiff for the lapse of the Department. The retiree cannot be placed at the mercy of the employer and its

default. Retiral benefits are not bounty that can be paid by good attitude of the employee. It is an earned benefit which even does not attract limitation to claim the same. It is a recurring benefit after retirement and non-grant of the same pinches the plaintiff every moment.

[11]. In view of **Kesar Chand Vs. State of Punjab through the Secretary, P/W.D.B. & R. Chandigarh and others 1988(5) SLR 27**, once the services of work charge employees are regularised, they become public servant and the period spent on work charge basis is required to be counted towards qualifying service for the purpose of pension and gratuity. The benefits as available to public servant under Rule 3.17 are to be logically paid to work charge employees, therefore, on that premise also plaintiff is entitled to computation of work charge period except the interruption in service along with interest. In **Shanno Devi Vs. State of Haryana and others, CWP No.15081 of 2011** decided on 11.4.2013, this Court allowed the petition and gave direction to State of Haryana to count the period of *ad hoc* service towards qualifying service for pension and gratuity. Reference can be made to a Division Bench judgment of this Court in **Kesho Ram Vs. State of Haryana and others, 2006 (6) SLR 334** wherein following observations were made by the Division Bench:-

“.....The matter is no longer res-integra as unamended Rule 3.17 which confined the qualifying service only to the period of regular service was struck down by a Full Bench of this Court in the case of Kesar Chand V. State of Punjab 1988 (3) PLR 223. Rule 3.17 (ii) as applicable in the State of Punjab had specifically provided that the period of service in work charge establishment was not to be taken into account for determining qualifying service of an employee. The afore-mentioned rule was declared as ultra vires of Article 14 of the Constitution. The view of the Full Bench is discernible from para 19 of the judgment which reads 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 regularisation 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 regularized, 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.”

We further find that the aforementioned view taken by the Full Bench has been followed by a Division Bench of this Court in the case of Mangat Ram v. Haryana Vidyut Prasaran Nigam Ltd. and others, 2005 (5) SLR 793 wherein again it has been held that the services rendered by a daily wager followed by regularization of his service deserved to be considered as qualifying service for the purpose of pension and other retiral benefits. The view taken by this Court has led to addition of Rule 3.17 (a) of the Punjab Civil Service Rules, Volume II (as applicable to Haryana) which provides that all service interrupted or continuous followed by confirmation shall be treated as qualifying service and the period of break are to be omitted while working out the aggregate service. Accordingly we are of the considered view that this petition deserves to be allowed.”

[12]. The aforesaid dictum laid down by this Court was duly considered in a similarly situated case in **RSA No.837 of 2015 titled as Punjab State and others Vs. Karnail Singh**, wherein by relying upon aforesaid precedents, relief was given to the employee, thereby dismissing the appeal filed by the State. The facts of the present case are more or less similar to the aforesaid RSA No.837 of 2015.

[13]. Having considered the questions as formulated by the

appellant, this Court finds that none of the questions arises for consideration in view of legal position summed up in number of cases and ultimately decision rendered in RSA No.837 of 2015.

[14]. In view of aforesaid, this Court deems it appropriate to dismiss the appeal by affirming the judgments and decrees passed by the Courts below in decreeing the suit of the plaintiff in the manner as suggested above. Consequently, this appeal is dismissed.

December 03, 2015
Prince

(RAJ MOHAN SINGH)
JUDGE