

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

**CWP No. 14014 of 2012
Date of decision : 05.02.2016**

Satish Kumar

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jasbir Singh, Advocate
for the petitioner.

Mr. J.S. Bedi, Addl.A.G. Haryana

Mr S.K. Monga, Advocate
for respondent Nos. 2 and 3.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest? Yes

RITU BAHRI , J.

The present petition is for issuance of writ in the nature of certiorari quashing order dated 08.03.2011 (P-9) passed by respondent No. 3 to the extent it has denied the benefit of fixation of pay and other consequential benefits and letter dated 19.12.2011 vide which Accountant General (A&E) Haryana, has declined to allot the GPF No to the petitioner.

Initially, petitioner was serving as Steno-Typist in Sessions Divn. Bathinda w.e.f 01.10.1999 and applied for the post of Stenographer Grade III in the office of District and Sessions Judge, Sirsa through proper channel, vide application dated 09.04.2010 and this application form was forwarded by the learned District and Sessions Division, Bathinda.

Petitioner cleared the examination and was appointed to the post of Stenographer Grade-III in the pay band of Rs.5200-20200+2400 Grade Pay plus usual allowances etc, vide letter dated 06.05.2010 (P-2) and subsequently, he applied on 08.05.2010 (P-3) with the office of learned District and Sessions Division, Bathinda for relieving him from the post, as per Rules, so as to enable him to join his new department.

Thereafter, learned District and Sessions Division, Bathinda vide order dated 12.05.2010 (P-4) accepted the resignation of the petitioner by accepting one month's salary of the petitioner to the tune of Rs.17748/- and Civil Judge (Sr. Divn) vide his office letter dated 12.05.2010 reported that nothing is due towards the petitioner and petitioner was thus relieved w.e.f 12.05.2010 (A/N) from his post after handing over the charge of his post to Sh. Bant Singh, Stenographer Grade II of the aforesaid Court..

Petitioner then joined the services in the office of learned District and Sessions Division, Sirsa on 13.05.2010. Copy of joining report is Annexure P-5.

Thereafter, petitioner came to know from his service book which contains the entry about the resignation of the petitioner and he immediately filed an application dated 09.06.2010 (P-6) with the office of learned District and Sessions Division, Bathinda for rectification in the service book entry. This application was forwarded through proper channel and the necessary permissions were granted by learned District and Sessions Division, Bathinda.

Vide order dated 23.06.2010, learned District and Sessions Judge, Bathinda passed order on this application and observed that the petitioner was appointed vide order dated 20.09.1999 and has been relieved vide order dated 12.05.2010 after acceptance of his resignation and returned the service book of the petitioner to the office of District and Sessions Judge, Sirsa.

Finding no alternative, petitioner filed an application (P-8) with learned District and Sessions Judge, Sirsa to count his past service as Stenographer Grade -III from 01.10.1999 to 12.05.2010 in the office of learned District and Sessions Judge, Bathinda and give him pensionary benefits, fixation of pay and consequential benefits etc.

Respondent No. 3 then vide order dated 08.03.2011 (P-9) ordered that past service of the petitioner will be counted for pensionary benefits only but denied the pay fixation or pay protection of the petitioner and other consequential benefits.

Further the Accountant General (A&E) Haryana vide letter dated 19.12.2011 has declined to allot the GPF No to the petitioner on the ground that as per new pension scheme, GPF No cannot be allotted to him and he was entitled to pension in his previous department under the same High Court.

Learned counsel for the petitioner contends that the services of the petitioner is governed by Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 (for short 'Rules 1997') and in terms of Rule 11 of the above Rules, he is entitled to pay protection and other consequential benefits.

On the other hand, learned counsel for respondent No. 2 and 3 has submitted that once the petitioner has given an affidavit (R-1) that he will claim no lien of his post and has tendered his resignation, thereafter, petitioner cannot seek benefit of past service and other consequential benefits. His resignation was duly accepted by learned District and Sessions Division, Bathinda by accepting one

month's salary from the petitioner.

Further his application for counting of past service, pension and other consequential benefit, was sent by the office of learned District and Sessions Division, Sirsa to this Hon'ble Court, but the same was sent back with a request to take action in the matter at own level in view of instructions of State of Haryana and thus, vide order dated 08.03.2011 (P-9), respondent No. 3 has rightly ordered that past service of the petitioner will be counted for pensionary benefits only.

Further the request of the petitioner for repatriation/reversion to his parent department was also declined, vide memo dated 30.03.2012 by observing that upon the selection of the petitioner in Sessions Division Sirsa, petitioner resigned from the department by depositing one month's salary and his resignation was duly accepted.

Learned State counsel has also stated that as per Haryana Government Finance Letter dated 15.02.2010, cases where Government employees who are re-appointed on or after 01.01.2006 in the same or any other Government department and apply through proper channel will be covered under Punjab CSR Volume-I (Old Pension Scheme) and petitioner who was Punjab Government employee was thus not allotted GPF No.

Heard learned counsel for the parties at length.

The only point for consideration before this Court is as to whether the petitioner is entitled for counting of his service and other benefits, in lieu of the service rendered by him in District and Sessions Division, Bathinda prior to his joining the service of District and Sessions Division, Sirsa as Stenographer-III, keeping in view the fact that he had resigned from his earlier department, as per order dated 12.05.2010 (P-4).

Petitioner is seeking protection of his pay in terms of the below mentioned Rule:-

3. The petitioner for his pay protection in particular with regard to special pay of Rs. 200/- that he was getting for nearly seven years on the post of District Attorney mainly relies upon Rule 4.4 of the Punjab Civil Services Rules Volume I Part I and note 9 which runs as follows :-

"4.4. The initial substantive pay of a Government employee who is appointed substantively to post on a time-scale of pay is regulated as follows :-

xxx xxx xxxx

xxx xxx xxxx

(c)(i) Notwithstanding anything contained in the rules, where a Government employee holding a post in a temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above his pay drawn by him in the lower post provided it is certified by the Head of the Department in which the Government employee was holding the lower post that he would have continued to officiate in the lower post but for his promotion/appointment to the higher post.

xxx xxx xxx

xxx xxx xxx"

Reference at this stage can be made to a judgment of this Court in a case of ***M.M. Lal Bareja vs. State of Haryana, 1995(2) P.L.R 75*** wherein it has been held that pension is payable to such employee who was holding temporary post under the State Government and who may have subsequently resigned from the same in order to join another service under the Central Government or State Government and also to a person who resigned from service in order to take another appointment. Such resignation is not to be treated as resignation from public service. In para 5, 6 and 7, it has been observed as under:-

"5. Chapter III of the Punjab Civil Services Rules (Volume II) specifies the service which qualifies for pension. Section II deals with conditions of qualification. Rule 3.12 lays down that service of a Government servant does not qualify for pension unless it conforms to the three conditions, namely, (i) the service is under the Government; (ii) the employment is substantive and permanent; and (iii) the service is paid by Government. Rules 3.13 and 3.14 confer power upon the competent authority to declare a particular service to be qualifying service. Rule 3.15 contains social provisions regarding the police department. Rules 3.16 and 3.17 and other rules which find place in this Chapter deals with various conditions enumerated in Rule 3.12. Chapter IV contains different provisions for reckoning of service for the purpose of pension. Rule 4.19 of this Chapter deals with resignation and dismissal. Chapter V deals with different kinds of pension and conditions for their grant. Chapter VI deals with amount of pension. For the purpose of this petition, provisions of Rules 3.17 and 4.19(b) are relevant and, therefore, they are reproduced below :-

"3.17 In the case of an officer retiring on or after 5th January, 1961, if he was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of:-

(i) Period of temporary or officiating service in non-pensionable

establishment;

(ii) Deleted

(iii) Period of service paid from contingencies.

Note-1 : *In the case of a Central Government employee who is permanently transferred to Haryana Government and becomes subject to these rules under Rule 1.1(b) of these rules, the terms 'continuous temporary service or continuous officiating service', shall include such service rendered under Central Government.*

Note-2 : *In case of a purely temporary Central Government employee who is permanently transferred to Haryana Government and becomes subject to these rules, the term 'continuous temporary service' includes the temporary service under the Central Government. The pensionary liability in respect of such cases shall be allocated on the length of service.*

Note-3 : *(a) In respect of temporary employees of the following categories who render service under the Central/State Governments prior to securing posts under the Central/State Governments on their own violation in response to advertisements or circulars, including those by Union/State Public Service Commission and who are eventually confirmed in their new posts, the proportionate pensionary liability in respect of temporary service rendered under the Central/State Governments to the extent such service would have qualified for grant of pension under the rules of the respective Government, will be shared by the concerned Governments on a service share basis:-*

(1) Those who having been retrenched from the service of Central/State Governments secured on their own employment under State/Central Government either with or without interruption between the date of retrenchments and date of new appointment.

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Government through proper channel/with proper permission of the administrative authority concerned.

Explanation:- *Where an employee in category (2) is required for administrative reasons for satisfying technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement to join with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement. The gratuity, if any, received by the Government employee for temporary service under the Central/State Governments will, however, have to be refunded by him to the Government concerned.*

(b) Those employees, who while holding temporary posts under Central/State Governments apply for post under Central/State Governments direct without permission and resign their previous posts to join the new appointment under the Central/State Governments will not be entitled to count their previous service for pension.

4.19(b): Resignation of an appointment to take up with proper permission, another appointment, whether permanent or temporary, service is which counts in full or in part, is not a resignation of public service.

In cases where an interruption in service is inevitable due to the two appointments being at different stations, such interruptions, not exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the Government employee on the date of relief or by formal condonation under Rule 4.23 to the extent to which the period is not covered by leave due to the Government employee.

Note: *The previous service of a Government employee who is transferred to a temporary appointment is forfeited by his resigning the temporary appointment and taking up another temporary appointment of his own accord."*

6. A look at the above-quoted rules shows that the pension is payable even to such an employee who was holding temporary post under the State Government and who may have subsequently resigned from the previous post in order to join another service under the Central or the State Government. These Rules also comprehend the grant of pension to a person who has resigned from service in order to take up another appointment and such resignation is not to be treated as resignation from public service.

7. The facts which have come on record of this case clearly show that the petitioner was permanent employee in the service of the Government of Haryana. He had applied for recruitment as Senior Stenographer in the National Mineral Development Corporation Ltd. through proper channel. After his selection, he resigned from service because the Government declined to give him the benefit of extraordinary leave. By the time he was relieved after resignation, the petitioner had rendered over 15 years of service with the Government of Haryana. In terms of Rule 4.19(b) read with Rule 3.17 his resignation cannot be treated as a resignation from public service. His service with the National Mineral Development Corporation was a service in an undertaking of Government of India and, therefore, he cannot be deprived of his right to get pension in lieu of service rendered by him under the Government of Haryana. By denying him this benefit, the respondents have clearly violated his legal rights. He is, therefore, entitled to issue a writ of mandamus.

Further this Court in ***State of Punjab and another vs.***

Balwant Rai, 1991(2) SCT 256 was examining a case of protection of pay of Assistant Advocate General who was appointed as District Judge and held that he is entitled to protection of pay and mere non-issuance of certificate by the Advocate General will not undo the right.

In para 10 of the judgment, it has been observed as under:-

10. In our considered view, providing for eligibility conditions for a post has no nexus with the rules and regulations for fixing the pay of a person. There can be no gainsaying that Rule 13(2) of the Punjab Superior Judicial Service Rules, 1963 provides for fixation of the pay of the members of Service who are admittedly the direct recruits from the bar and were not previously in the service of the State. There is no rule under the 1963 Rules, nor the learned Additional Advocate-General has been able to point out anything to show that the pay of a member of service like Assistant Advocate-General on joining the Superior Judicial Service as Additional District and Sessions Judge is to be fixed like direct recruits, though for his eligibility the condition of being an Advocate or a member of the bar for a particular number of years might have been applied to find out his figment for the cadre post. Rule 21 of the Punjab Superior Judicial Rules, 1963 provides that in case of there being no-express rule, the members of the Service shall be governed by such general rules as the authority competent under Article 309 of the Constitution of India, might have framed or would frame from time to time. In this situation, the respondent shall be squarely governed by Rule 4.4(c)(i) of the Punjab Civil Services Rules, Volume I, Part I.

Further this Court in a case of **B.L. Gulati vs. State of Haryana, 1992(2) SCT 105** was examining a case of petitioner who was holding permanent post of District Attorney and was posted in the office of A.G. Haryana. He was getting a basic pay fixed at Rs.1930/- plus special pay fixed Rs.200 besides other allowances in the grade of Rs.1200-2000/-. On selection, he was appointed as Addl. District Judge and Sessions Judge. His pay was not rightly protected. The writ petition

was allowed and in para 8 and 9 of the judgment, it has been observed

as under:-

"8. In so far as the merits of the case are concerned, I find that the matter is squarely covered in favour of the petitioner by a Division Bench judgment of this Court in **State of Punjab and another v. Balwant Rai, 1991(2) Service Cases Today 256**. The facts of above cited case would reveal that Balwant Rai, the petitioner of the said case was appointed as Additional District and Sessions Judge on October 16, 1979 while he was working as Assistant Advocate General, Punjab. The State of Punjab vide letter dated August 26, 1987 fixed the pay of petitioner in the time scale of Additional District and Sessions Judge at the rate of Rs. 1530/- per month in the pay scale of Rs. 1580-2400 with effect from November 21, 1979. The fixation of pay resulted in reduction of pay of the petitioner by Rs. 420/- per month. The High Court intimated to the Punjab State that the duties and responsibilities of the Additional District and Sessions Judge are higher than those of Assistant Advocate General. The petitioner claimed protection of his pay in view of Rule 4.4(c)(i) of the Punjab Civil Services Rule, Volume I Part I.

"9. The State of Punjab defended fixing of pay on the ground that the petitioner was holding the post of Assistant Advocate General in a temporary capacity and the Head of the Department where he was holding the post of Assistant Advocate General did not issue a certificate to the effect that he would have continued to hold the post of Assistant Advocate General but for his appointment as Additional District and Sessions Judge and therefore the benefit of Rules for pay protection cannot be granted. It was further urged that the Rule 4.4 was not applicable to the facts of the case of the petitioner and it is Rule 13(2) of the Punjab Superior Judicial Service Rules which would govern the field. In so far as first objection, as has been noticed above is concerned, the same was dealt with by the Division Bench of this Court in **Balwant Rai case (supra)** and the same need not detain me any further for that is not applicable to the facts of the present case. A reading of Rule 4.4 as has been reproduced above would leave no manner of doubt that the Government employee holding post on temporary or officiating capacity when promoted in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those held by him, has to have his initial pay in the time scale of the higher post and his initial pay, therefore has to be fixed at the stages next above his pay drawn by him in the lower post. In so far as the certification of the department in which the Government employee was holding the lower post is concerned, the same in my considered view is applicable only to a temporary employee and not to the permanent employee as is clear from note 9 reproduced above. In so far as the other question that has been raised to the present case, the same was dealt with by the Division Bench by observing "In our considered

view, providing for eligibility conditions for a post has no nexus with the rules and regulations for fixing the pay of a person. There can be no gainsaying that Rule 13(2) of the Punjab Superior Judicial Service Rules, 1963, provides for fixation of the pay of the members of service who are admittedly the direct recruits from the bar and were not previously in the service of the State. There is no rule under the 1963 Rules, nor the learned Additional Advocate-General has been able to point out anything to show that the pay of a member of service like Assistant Advocate-General on joining the Superior Judicial Service as Additional District and Sessions Judge is to be fixed like direct recruits, though for his eligibility the condition of being an Advocate or a member of the bar for a particular number of years might have been applied to find out his fitness for the cadre post. Rule 21 of the Punjab Superior Judicial Rules, 1963 provides that in case of there being no express rule, the members of the Service shall be governed by such general rules as the authority competent under Article 309 of the Constitution of India, might have framed or would frame time to time. In this situation, the respondent shall be squarely governed by Rule 4.4(c)(i) of the Punjab Civil Services Rules, Volume I, Part I."

The above said judgments are directly applicable to the facts of the present case where petitioner had joined as Stenographer Grade III in the office of District and Sessions Judge, Sirsa through proper channel, vide his application dated 09.04.2010. Respondent No. 3 then vide order dated 08.03.2011 (P-9) ordered that past service of the petitioner will be counted for pensionary benefits only but denied the pay fixation or pay protection of the petitioner and other consequential benefits. His pay should have been protected in terms of Rule 4.4(c)(i) of PCS Rules.

Accordingly, the present petition stands allowed to the extent of pay protection of the petitioner and order dated 08.03.2011 (P-9) passed by respondent No. 3 is hereby quashed. Petitioner is

entitled to protect his pay in the scale in which he was serving during his last employment and other consequential benefits as well. The above said exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

05.02.2016

G Arora