

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

CWP No.10709 of 2016

Date of decision: 26.5.2016

Sukhwinder Kaur

... Petitioner

Versus

State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

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

RAJIV NARAIN RAINA, J.(Oral)

1. When this Court rendered judgment in Harjit Kaur vs. State of Punjab & ors., 2009(4) RSJ 557, it considered *inter alia* Rule 4.23 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, Volume II (for short 'the PCS Rules'), which deals with counting of interrupted spells of service. The Rule prescribes as under:-

“4.23. 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 Govt. 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.”

2. In para. 8 of the judgment, the learned Single Judge

expressed the following views:-

“A conjoint reading of the aforesaid rules categorically provides for counting of ad hoc service even spreading over different spells with interruption as qualifying service for the purpose of pension by excluding the interruptions caused without resignation, dismissal, removal or participation in strike. The rule does not make any distinction between ad hoc service rendered against leave arrangement or against the vacant post and in view of the clear mandate of rule 4.23 even the different spells of ad hoc service are to be counted except in the situations mentioned therein.”

3. In view of silence in Rule 4.23 of the PCS Rules on the issue involved, the learned Single Judge construed interruption in ad hoc service or service against leave vacancy to be counted towards qualifying service for pension. However, in the present case, the State has admittedly counted ad hoc service of the petitioner towards pensionary benefits vide Office C & R letter dated November 20, 2007 [Annex. P-2] that is in the year the petitioner retired from service. However, the Accounts Officer in his impugned order dated April 4, 2016 has declined to count period of service spent on leave vacancy and expressed his opinion that those periods are not countable for pensionary benefits as per Government letter dated September 10, 2007. The request of the petitioner for award of pension by counting short spells of service rendered against leave vacancies in a school as a teacher has to be declined. While the Government in the PCS Rules do not speak specifically of how leave vacancies are to be dealt with but by letter dated

September 10, 2007, Government answered by way of clarification on the subject points raised by some department in the Government on whether ad hoc service rendered by employee against a leave vacancy is counted for pensionary benefits or not. The answer to the query was thus stated:-

“(a) No case has been noticed in the Department of Finance where pensionary benefits for ad hoc service rendered against 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.”

4. The clarification issued by the Government at Annex P-7 was not brought to the notice of the learned Single Judge, when the judgment was rendered in *Harjit Kaur's case(supra)*. Since the field is occupied by a clarification, then the clarification has to be given effect to by the functionaries of the State Government since it is their duty to adhere to instructions, rules and clarifications issued by the competent authority. It is in these circumstances, that the decision in *Harjit Kaur's case* is distinguishable from the facts of this case. It may be recorded that the judgment was rendered on April 21, 2009. It may also be noted that the clarification dated September 10, 2007 arises from previous letter issued by the Government dated June 15, 2007 which circular this Court has not had the profit of reading since it had not been placed on the record nor was brought to the notice of the Court. However, it would not be necessary delve any further since the clarification is self explanatory

and is an independent decision of the Government declaring the rights of the employees working against leave vacancies maybe continuously, sporadically and intermittently with breaks in service. Moreover, there is no document placed on record admitting the periods of working on leave vacancies as claimed by the petitioner which were spent before he was appointed to Government on regular basis and that record is of remote past and therefore, the long delay in approaching the Court a presumption can arise and be drawn that the petitioner waited for destruction of old record which is the normal course of business of weeding out of record which rules authorise. Government cannot be expected after passage of decades to still maintain leave vacancy accounts to be shown to court. The writ court would not make a fishing inquiry in this direction unless solid evidence was placed in the petition to ignite its jurisdiction. Moreover, the claim is stale and afflicted by laches and equally barred by time. If a suit were brought on the cause of action it would fail.

5. In view of above, I do not find any error in the impugned order and would hereby dismiss the petition.

(RAJIV NARAIN RAINA)
JUDGE

26.5.2016
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