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

CWP No.8924 of 2009 (O&M)
Date of Decision: 08.09.2016

DEEPAK THUKRAL **.... Petitioner**

vs.

UNION OF INDIA AND OTHERS **.... Respondents**

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Rahul Sharma, Advocate for the petitioner
Mr.Ashwine Kumar Bansal, Advocate for respondent No.1
Mr.Subhash Ajuja, Advocate for respondents No.2 & 3

Kuldip Singh J.(Oral)

On 28.05.1973, the petitioner was appointed as Accounts clerk cum typist w.e.f. 29.05.1973 on ad-hoc basis for the period of six months in the Regional office of Indian Drugs & Pharmaceuticals Ltd. (A Govt. of India Enterprises). The period of appointment was extended from time to time. On 29.05.1975, the petitioner was not given extension but he was reappointed for a further period of six months in the Regional office. However, on 15.07.1975, he was appointed as Accounts clerk cum typist on regular basis.

It comes out that a V.R.S Scheme was floated in the year 1992 for voluntary retirement and another similar scheme was floated in the year 2002. The petitioner exercised the option for voluntary retirement under the said Scheme of 2002 and accordingly he was relieved on 30.09.2004. The claim of the petitioner is that the service from 28.05.1973 till his regular appointment is not being counted on the ground that there was one day break in his service on 29.05.1975 and the retiral benefits are accordingly calculated w.e.f. 15.07.1975 instead of 28.05.1973.

In the written statement, the respondents have taken the stand that under the voluntary retiral Scheme of 20.09.2002, only continuous service was to be counted for the purpose of grant of retiral dues. Reliance has also been placed on Clause 15 of the Scheme, which requires that the service must be permanent, without any break. It has been contended that there was break in service between 28.05.1975 and 30.05.1975, as such service prior to the break cannot be counted for the purpose of retiral dues.

I have heard learned counsel for the parties and have also carefully gone through the files.

Admittedly, the petitioner was granted voluntary retirement under the Scheme floated on 20.09.2002. Clause 2-A of the Scheme is reproduced as under :-

> *"Employee would be paid compensation which consists of salary (Basic Pay + DA) of 35 days for each completed years of service and 25 days for the balance of service left till superannuation. The compensation will be subject to a minimum of Rs. 25,000/- or 250 days salary which is higher. However, this compensation shall not exceed the sum of the salary that the employee would draw at prevailing level for the balance of period left before the superannuation.*
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> *The salary for VRS shall be calculated on the basis of 30 days in a month. The method of calculation of ex-gratia for VRS shall be similar to the specimen attached."*

Now, the dispute is only regarding one day break in service. Learned counsel for the petitioner has stated that he gives up the dues payable to him on account of gratuity by counting his service from adhoc appointment but he presses the petition for other benefits, including compensation after counting his service from 28.05.1973. The admitted position is that the petitioner was initially appointed from 28.05.1973 on adhoc basis, he was granted various extensions until 29.05.1975, when he was not given extension but reappointed w.e.f. 30.05.1975, thereby breaking the service by one day.

I am of the view that it is a notional break which has to be ignored for the purpose of counting the total length of service. When the appointment was given on 29.05.1975 and the petitioner was already working, there was no reason to give the appointment w.e.f. from the next date i.e. 30.05.1975. Therefore, the break was intentional and it is to be ignored. The net result will be that adhoc service of the petitioner from 28.05.1973 till his regular appointment is to be counted for the purpose of calculating the benefits under the VRS Scheme.

Learned counsel for the petitioner does not claim benefit of gratuity after counting service from 28.5.1973.

It being so, the petition is allowed and the benefits after counting his service from 28.05.1973, if not paid, (except the gratuity), shall be paid to him within a period of three months from the date of passing of this judgment. The arrears if any, shall carry interest @ 9 % per annum from the date it became due.

08.09.2016 **(Kuldip Singh)**
gk **Judge**

Whether speaking / reasoned Yes
Whether reportable Yes