

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

Date of Decision:-20.09.2016

CWP No.17831 of 2015

Usha Gupta.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Vivek Sharma, Advocate for the Petitioner.

Mr. Vaibhav Sharma, Deputy Advocate General, Punjab.

JASWANT SINGH, J (ORAL)

Prayer in the present writ petition is for quashing the letter/order dated 07.07.2015 (P-3) issued by respondent no.3-Accountant General, Punjab vide which the services rendered by the petitioner against the leave vacancy and counted towards pensionary benefits has been held to be inadmissible.

It is case of the petitioner that she was appointed as Science Mistress against a leave vacancy on 25.09.1986 vide Annexure P-1 and subsequently the services of the petitioner were regularized on 22.03.1990. It is further submitted that from 25.09.1986 till 22.03.1990 the petitioner was working uninterruptedly against leave vacancy. Ultimately, the petitioner superannuated on 28.02.2014. However, the grievance of the petitioner is that respondents have calculated only 24 years of service

instead of 26 years of service, as is evident from the letter dated 7.7.2015 (P-3). By relying upon judgment passed in **Harjit Kaur Vs. State of Punjab & Ors. 2009(3) SCT 444**, learned Counsel for the petitioner has contended that the issue is covered under the judgment on all the fours wherein it has been held that the work charge period against the leave vacancy would count towards grant of pensionary benefits.

Upon notice separate replies have been filed on behalf of the the Employer State (respondent nos.1 & 2) and Accountant General, Punjab-respondent no.3. The stand of the State in its reply dated 11.2.2016 is that the petitioner is entitled to benefit claimed and sanction has been granted to count service against the leave vacancy from 25.09.1986 to 22.03.1990 for calculating pensionary benefits. Thus the writ petition may be dismissed as infructuous. However, the stand of the office of Accountant General, Punjab is that the claim of the petitioner for the benefit of adhoc service rendered against the leave vacancy towards qualifying service for grant of pensionary benefits is not tenable in view of the Finance Department, Government of Punjab vide letter dated 10.09.2007, which prohibits such counting.

After hearing learned Counsel for the parties and perusing the paper book, this Court is of the considered view that the present petition deserves to be allowed.

It is not in dispute that as per Rule 3.17 of the Punjab Civil Services Rules Vol-II dealing with counting of adhoc service towards pensionary benefits, the Rule does not make any distinction between Adhoc Service rendered against leave vacancy or against vacant post. All adhoc service is required to be counted towards calculating pension. In the cited

judgment of Harjit Kaur's case the relevant statutory provisions have been considered in detail and authoritatively held that any temporary/adhoc service rendered against the leave vacancy shall count towards pension keeping in view the spirit of provisions of Rule 3.17. Thus, the issue at hand is no longer *res integra* and is squarely covered by the decision of this case in Harjit Kaur's case. Nothing to the contrary has been shown by the State to rebut the same.

In view of the above, present petition is hereby allowed and order dated 07.07.2015 (P-3) issued by the respondent no.3 is quashed and respondent-State is directed to count the service rendered by the petitioner from 25.09.1986 to 22.03.1990 towards qualifying service while fixing her pension and retiral benefits including leave encashment with all consequential benefits. Needful shall be done within 04 months from the receipt of certified copy of this order.

(JASWANT SINGH)
JUDGE

September 20, 2016
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes / No</i>
<i>Whether Reportable</i>	<i>Yes / No</i>