

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

**CWP No.20636 of 2014 (O&M)
Date of decision:16.08.2016.**

Atam Khan

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR JUSTICE KULDIP SINGH

Present: Mr. Arun Singal, Advocate
for the petitioner.

Mr. Gaurav Goel, Assistant A.G., Haryana.

KULDIP SINGH, J. (ORAL)

The petitioner seeks the quashing of order dated 31.08.2010 (Annexure P-11) vide which his past service was not taken into account while qualifying service for grant of pension. The undisputed facts are that the petitioner joined as Pump Attendant in Public Health Engineering, Division No.2, Palwal, on regular basis in 1990. On 01.07.2009, he moved an application seeking voluntary retirement w.e.f. 30.09.2009. The department accepted the request and the petitioner was voluntary retired from service w.e.f. 30.09.2009. As the pension case of the petitioner was not being sanctioned because his service was less than 20 years, petitioner made a representation on 06.04.2010 whereby he sought as to whether he can be allowed to re-join his duty and also sought to withdraw his request for voluntary retirement. However, the request for withdraw of voluntary retirement was not allowed but the petitioner was allowed to join as a fresh entrant vide letter dated 31.08.2010 (Annexure P-11). He was also directed to file an affidavit before joining

that he will not claim the benefits of previous service. The petitioner accordingly, submitted the joining report on 08.11.2010 (Annexure P-12) without furnishing the affidavit demanded from him. The said factual position is not disputed. Now the petitioner's claim is that interruption in his service which is about 11 months be condoned under Rule 4.23 the Punjab Civil Services Rules (Haryana), Vol.II which were applicable in the case of the petitioner.

Rule 4.23 is reproduced as under:

“4.23. Interruption in service (either between two spells of permanent, or temporary service or between a spell of temporary service and permanent service or vice versa) in the case of an officer retiring on or after the 5th January, 1961, may be condoned, subject to the following conditions, namely:-

(1) The interruption should have been caused by reasons beyond the control of Government employee concerned.

(2) Service preceding the interruption should not be less than five years 'duration'. In cases where there are two or more interruption, the total service, pensionary benefits in respect of which shall be lost if the interruption are not condoned should not be less than five years.

(3) The interruption should not be of more than one years duration. In cases where there are two or more interruption the total period of all interruptions to be condoned should not exceed one year.”

It shows that the competent authority can condone two spells of permanent or temporary interruption in service subject to certain conditions. The first condition is that the interruption has been caused by reason beyond the control of Government employee concerned.

I am of the view that in the present case, first condition is not satisfied. Petitioner was in service for about 19 years. He is bound to know about the rules governing his service. He himself sought the voluntary retirement after giving three months notice. During the said period, he did not withdraw the notice of voluntary retirement. Ultimately, his request for voluntary retirement was accepted. Therefore it cannot be said that the interruption in his service was beyond the control of the government employee i.e. petitioner in this case. Later on, when the petitioner realised that he is not entitled to pension, he moved an application for permission to re-join his service. However, he was allowed to join as a fresh entrant and the said offer was accepted by the petitioner. Therefore, now under Rule 4.23 in petition cannot claim the benefit of the past service.

Accordingly, the petition stands dismissed.

August 16, 2016
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(KULDIP SINGH)
JUDGE

Whether speaking /reasoned:

Yes / No

Whether reportable:

Yes / No