

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-259-2015 (O&M)

Date of Decision: September 06, 2016

R.N.KOSLIA

.....Appellant

Versus

THE STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr.S.K.Yadav, Advocate
for the appellant.

Mr.R.D.Sharma, DAG, Haryana.

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SURYA KANT, J.

[1] This intra-Court Appeal is directed against the order dated 07.08.2014 whereby learned Single Judge has dismissed the appellant's writ petition in-limine on the ground of delay and laches. The appellant was questioning the communication whereby his claim to count *ad hoc* service towards 'Qualifying Service' for the purpose of pension and retiral benefits was rejected. He thus sought a direction for inclusion of such service towards 'Qualifying Service'.

[2] Brief reference to the facts are as under:-

[3] The appellant started his career as a Lecturer in the Government College for Women, Gurgaon on ad hoc basis on 14.08.1969. He served there for short duration and after a break of about 1½ months joined as S.S.Master in Government Middle School, Mundi, Nangal. He continued to

serve as S.S.Master at different stations in three spells and thereafter again joined as Lecturer, but in 'School Cadre' from 14.08.1970 to 22.03.1972 in five spells with permissible breaks. His last appointment in Education Department was as S.S.Master from 03.04.1972 to 12.06.1972.

[4] The appellant left the Education Department as he was selected by Haryana Public Service Commission for the post of Excise and Taxation Officer which he joined on 13.06.1972. The appellant retired on attaining the age of superannuation from the post of Additional Excise and Taxation Commissioner on 30.11.2002. Before his retirement he represented that *ad hoc* service rendered by him in the Education Department be counted towards 'Qualifying Service' for the purpose of pension and other retiral benefits, however the same was rejected. The appellant again represented on 2-3 occasions but every time his claim was turned down. In 2013 also his representation was rejected, when he finally decided to approach this Court and filed writ petition in the year 2014.

[5] Learned Single Judge has, in this factual backdrop, viewed that since the appellant chose to approach the Court after eleven years of retirement the writ petition suffered from delay and laches.

[6] We have heard learned counsel for the parties and gone through the record.

[7] In our considered view, wrong fixation of pay or pension is not a one time cause of action which can be abandoned, acquiesced or given up by long silence. Such wrong fixation affects the retiree every month. Hence, it would give rise to a continuous cause of action.

[8] True it is that in a case of one time cause of action, nothing

precludes the writ Court to take notice of inordinate delay and laches and if so warranted, refuse to exercise its discretionary jurisdiction. The writ Court however is not handmade of procedural technicalities and is free to evolve its own procedure and practice to do complete justice to the parties so that the legal rights are effectively enforced without any undue advantage or windfall for a person who allowed the grass to grow under his feet. To say it differently, the writ Court can always liberate itself from the technicalities and draw balance between rights of both the parties.

[9] With reference to the belated claim of a retired senior citizen, it appears to us that the learned Single Judge ought not to have turned down the appellant's claim only on the ground of delay and laches when the cause of action is indisputably continuous and accrues every month when he suffers monetary loss while drawing pension. The appropriate recourse in such a case could be to deprive the party of consequential arrears and grant the benefit notionally as it would amount to legitimate denial of relief to the extent it is attributable to the party. We are inclined to follow the later course, namely, if the claim of the appellant is found worth acceptance he may not be denied the same completely though the consequential arrears of pension cannot be ordered to be paid.

[10] Let us see whether the appellant is entitled to the benefit of *ad hoc* service towards 'Qualifying Service' for the purpose of pension and other retiral benefits?

[11] It is undeniable that the service conditions as well as retiral benefits of the appellant are governed under the Statutory Rules known as Punjab Civil Service Rules as applicable to State of Haryana (for short,

`CSR'). Rule 3.17-A of CSR Volume II Chapter 3 deals with the nature of service which are countable towards `Qualifying Service'. It would be useful to extract the following relevant parts of CSR:-

“3.17-A (a) All service interrupted or continuous followed by confirmation shall be treated as qualifying service; the period of break shall be omitted while working out aggregate service.

b) Extraordinary leave counted towards increments under rule 4.9 (b) (ii) of Punjab Civil Services Rules, Volume-I, Part-I, will be accounted towards service qualifying for pension.

c) Periods of suspension, dismissal, removal, compulsory retirement followed by re-instatement will count for pension to the extent permissible under rule 4.17 of Punjab Civil Services Rules Volume-II read with rule 7.3 of the Punjab Civil Services Rules, Volume-I, Part-I.

d) Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of rule 4.19 (a) of Punjab Civil Service Rules Volume-II.

e) An interruption in the service of a Government employee caused by willful absence from duty and unauthorised absence without leave will as hitherto entail forfeiture of past service.

(Explanation:- The willful refusal to perform duties by a Government employee by any means including pendown strike shall be deemed to be willful absence from duty.)

f) xxx xxxxx xxxxx

i) Persons paid from contingencies; provided that half of the period of service of such persons paid from contingencies rendered from 1st January, 1973 onwards for which authentic records of service is available will count as qualifying service

(a) to (d) xx xxx xxxx

- [12] On a plain reading of the above reproduced Rule makes out that all services, interrupted or continuous, followed by confirmation are to be treated as 'Qualifying Service' after omitting the period of break. Even extraordinary leave, period of suspension etc. is to count towards 'Qualifying Service' subject to fulfilment of given conditions. Even the persons who are paid from contingencies, namely, not appointed against regular posts, are also entitled to get such service counted towards 'Qualifying Service'. Also the services rendered as a casual labour, contract as well as the work-charged are to be reckoned with for the purpose of retiral benefits provided that such services are followed by regular appointment and further provided that such services are to be rendered on whole –time basis.

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Employment Exchange and against regular sanctioned posts in the Education Department though he served as a temporary/ *ad hoc* appointee for 790 days excluding the break period. There are catena of decisions of this Court interpreting Rule 3.17-A to hold that the contractual, *ad hoc* and work charged services followed by regular appointment are to be counted for the purpose of pensionary benefits. In the instant case though there were breaks and the *ad hoc* service of the appellant is in different spells, but such breaks are not attributable to him. There is no break between the *ad hoc* and the regular service and it is apparent that the appellant resigned from *ad hoc* service to join as Excise and Taxation Officer on regular basis the very next day. The nature and status of the service rendered by him in Education Department was far far superior than the service rendered by an employee who is paid out of contingencies or on work charged basis. The appellant thus fulfills the ingredients of Rule 3.17-A of CSR *ibid* and such service, subject to its verification from the Education Department, deserves to be counted as 'Qualifying Service' for the purpose of pension. We order accordingly.

[14] It is not necessary to burden this order with repeated citations except Union of India and others vs Tarsem Singh(2008) 8 Supreme Court Cases 648 to fortify our conclusion.

[15] We,thus, hold that the *ad hoc* service rendered by the appellant excluding the break period has to be added towards 'Qualifying Service' for pensionary benefits and denial of such benefit to the appellant is not only contrary to the Rule, it is *per se* discriminatory also.

[16] Having held so the question that arises is whether the appellant is entitled to the refixation of his pension alongwith consequential arrears from

the date of his retirement?

[17] Here comes the applicability of the principles discussed in the first part of this order. Even if the authorities had erroneously rejected the claim of appellant, the fact of the matter is that such rejection took place in the year 2002-03. The appellant could possibly re-agitate the matter once again but not repeatedly. He chose to approach the Court in the year 2014 only. The appellant is not a person who was suffering with any social or financial disability which could impede his timely approach to the Court. The appellant having failed to do so, must suffer on account of the delay which is solely attributable to him. Consequently, we hold that the appellant is entitled to only notional fixation of his pension from the date of retirement and consequential arrears thereupon shall be admissible only from the date he filed the writ petition.

[18] Ordered accordingly.

[19] Needful shall be done within three months from the date of receipt of a certified copy of this order.

(SURYA KANT)
JUDGE

September 06, 2016

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Whether speaking/reasoned

Whether Reportable

(SUDIP AHLUWALIA)
JUDGE

: Yes/No

: Yes/No