

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 31.1.2017

CWP No. 13153 of 2015 (O/M)

Mukhtyari Devi

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

CWP No. 13180 of 2015 (O/M)

Sarupi

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

CWP No. 13186 of 2015 (O/M)

Dhoopa

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sandeep Singal, Advocate, for the petitioners
in all the cases.
Mr. Keshav Gupta, Assistant Advocate General, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

By this single judgment, I shall dispose of the abovementioned writ petitions as similar questions of law and facts are involved in the same. In all the cases, the petitioners were working as part time Water Carrier for fetching water to students of the school and they were paid from the contingency fund of the school. For brevity, the facts are extracted from CWP-13153-2015.

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The prayer of the petitioners in the present writ petitions is for computing their daily wage service as qualifying service for pension and other retiral benefits. The petitioners rely upon Rule 3.17-A of the Punjab Civil Services Rules, Volume-II, Part-1 (as applicable to Haryana).

Both the parties have been heard.

The reply of respondents, which was not controverted by way of rejoinder, goes to show that the petitioners were not workcharge employees. Rather, they worked as part time Water Carrier for fetching water to the students of the school. They used to work for one hour daily on the working days and worked for 10 months in a year. They were paid from the contingency fund of school at rates, as fixed by the Deputy Commissioner concerned. Therefore, they are not covered under Rule 3.17-A of the Punjab Civil Services Rules, Volume-II, Part-1 (as applicable to Haryana). Rule 3.17 of the Punjab Civil Services Rules, Volume-II, Part-1 (as applicable to Haryana) is reproduced as under :-

“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

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Punjab Civil Service Rules Volume-II.

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

[Explanation.—The wilful refusal to perform duties by a Government employee by any means including pen down strike shall be deemed to be wilful absence from duty.]

(f) Employees retiring from Government service without confirmation (as temporary employees) in any post on or after 5 February, 1969 will be entitled to invalid/retiring/superannuation pension and death-cum-retirement gratuity on the same basis as admissible to permanent employees. In case of death of employees in service his family will also be entitled to similar benefits as are admissible to the families of permanent employees. This concession will, however, not apply to:

(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 subject to the following conditions :-

(a) Service paid from contingencies should have been in a job involving whole time employment and not part time for a portion of day,

(b) Service paid from contingencies should be in a type of work or job for which regular post should have been sanctioned e.g. Malis, Chowkidars, Khalasis etc.

(c) The service should have been such for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relations in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments; and

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment

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without a break.

Note.— While bringing contingent paid employee to the regular establishment an entry for verification of contingent service should be made at the appropriate place in his service book, preferably before making any entry regarding his regular service in the following manner :-

"Service from ----- to ----- paid out of contingencies verified from acquittance rolls and office copies of contingent bills". This entry should be signed by the Head of Office with date.

(ii) [Deleted].

(iii) Casual Labour;

(iv) Contract Officer; and

(v) Persons born on Contributory Provident Fund Establishment.

(g) The entire service rendered by an employee as work charged shall be reckoned towards retirement benefits provided—

(i) such service is followed by regular employment;

(ii) there is no interruption in the two or more spells of service or the interruptions fall within condonable limits; and

(iii) such service is a whole time employment and not part-time or portion of day.]”

The perusal of the above rule shows that under Rule 3.17-A (f)

(i) (a) of the Punjab Civil Services Rules, Volume-II, Part-1 (as applicable to Haryana) shows that in case a person, who is paid from the contingency fund and is on a part time job for a portion of the day, is not entitled to the benefit of said rule. Similarly, sub-rule (g) clause (iii) also excludes part time employees. The reading of the rule as a whole shows that the whole time employment is to be computed towards qualifying period for pension and in case a part time employee, who is paid from the contingency fund, he is not entitled to the said benefit.

In the present cases, the petitioners were working as part time

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Water Carrier for one hour in a day and used to work for 10 months in a year and they were paid from the contingency fund of the school. Therefore, their services as part time Water Carrier for one hour in a day is not to be computed as qualifying service for the purpose of pension.

The learned counsel for the petitioners relies upon the authority of this Court in RSA-2070-2005, titled as State of Haryana and another Versus Smt. Kishan Devi, decided on 17.2.2009. The perusal of the said authority shows that it was a regular second appeal and it was not clear from the said case whether in the said case, the employee was working for one hour and was paid from the contingency fund. The learned counsel for the petitioners has also referred to the authority of this Court in CWP No. 626-2015, titled as Zile Singh Versus State of Haryana and others, decided on 17.3.2015, wherein also it is not clear that for how much time, he used to work during the day and whether he was paid from the contingency fund of the school. The judgment of this Court in Kesar Chand Versus State of Punjab and others, is regarding calculating the service of the workcharge employee.

In view of the above, the present writ petitions fail and the same are dismissed.

(KULDIP SINGH)
JUDGE

31.1.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes