

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3295-2011 (O&M)
Date of decision: 14.02.2017

Kashmiri Devi

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Virender Kumar, Advocate for the petitioner
Mr.Keshav Gupta, AAG Haryana

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Kashmiri Devi widow of late Nanak Chand has filed this writ petition for quashing the impugned order dated 23.7.2008 (Annexure P2) and the impugned letter dated 9.9.2010 (Annexure P3). Mandamus has also been sought for counting the ad hoc service rendered by the husband of petitioner for calculating the retiral / pensionary benefits of husband of the petitioner and after counting the ad hoc service arrears be paid accordingly along with interest @ 18% per annum on the delayed payment of Rs.5,30,398/- from 1.2.2007 till payment.

Facts emerging from the pleadings of the parties are that Nank Chand was initially appointed with the respondent department on ad hoc basis as Sub Inspector on 12.5.1967 in the regular pay scale. On account of abolition of the post, his services were terminated vide order dated 24.6.1972. He was again appointed on ad hoc basis as Sub Inspector in regular pay scale on 9.4.1973 and again on account of abolition of the post,

his services were terminated on 11.9.1978. In this way, Nanak Chand served the department on ad hoc basis for two spells i.e. from 12.5.1967 to 24.6.1972 and from 9.4.1973 to 11.9.1978, which comes to 10 years 6 months and 20 days. Later on, he was selected as Junior Analyst on the recommendations of Subordinate Services Selection Board Haryana on 6.5.1980 and superannuated on 31.1.2007. It also comes out that at the time of retirement, some disciplinary proceedings were pending against the petitioner and accordingly, the gratuity and commutation of pension were withheld. During the pendency of the inquiry, Nank Chand, husband of the petitioner died on 29.12.2009 and on account of his death, charge sheet was dropped on 30.3.2010.

Now, the respondents have refused to count the previous service of the petitioner from 12.5.1967 to 24.6.1972 and from 9.4.1973 to 10.9.1978 rendered as Sub Inspector on ad hoc basis on the ground that the gap between ad hoc service and regular service is more than one year and that such gap cannot be condoned as provided under Rule 4.23 of the Punjab Civil Services Rules, Volume II. Petitioner is aggrieved of the said action of the respondents.

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

The question before this Court is as to whether two spells of the ad hoc service rendered by the husband of the petitioner, as reproduced above, which are about 10 years 6 months and 20 days, are to be computed as a period qualifying for the pensionary service or not?

Rule 3.17A of the Punjab Civil Services Rules Volume II, Chapter III, which deals with the service qualifying for pension, 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 reinstatement 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 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.]²

(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 temporary employee 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 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.]

Under this Rule all the interrupted or continuous service followed by confirmation shall be treated as qualifying service for pensionary benefits. The period of break shall be omitted while working out the aggregate service.

Rule 4.23, which falls under the Chapter of Special Additions to Service Qualifying for Superannuation Pension and which deals with condonation of breaks and deficiencies in service is reproduced below:-

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 interruptions, 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 interruptions, the total period of all interruptions to be condoned should not exceed one year.

A perusal of Rule 4.23 shows that it primarily deals with condonation of interruptions in two spells of permanent and temporary service, which follows that in case the interruption is less than one year only then the said period can be condoned and ignoring that interruption the said

gap period is also to be treated as qualifying for pension. It is different from counting the ad hoc service itself. Rule 3.17A shows that all services interrupted or continuous followed by confirmation are to be treated as qualifying service. While counting the said period, the break shall be omitted while working out the aggregate service. It means that if the break is more than one year and is not condoned under Rule 4.23, same has to be excluded while computing aggregate service. A harmonious reading of both the provisions shows that in case the gap of ad hoc service and regular service is less than one year, the same can be condoned and even that interrupted period can be computed as qualifying service for the pension. If the gap is more than one year and is not condonable under Rule 4.23 then that period of interruption has to be excluded while computing the aggregate service qualified for pension. It will amount to be going too far to conclude as done by the State that if the interruption is more than one year the entire ad hoc service is to be excluded while computing the qualifying service for pension. This was exactly done by the State while passing the impugned order/ letter.

The matter was considered by a coordinate bench of this Court in Shanno Devi vs. State of Haryana and others, 2013 (2) PLR 773, wherein, while considering the said two Rules, it was observed as under:-

7. A perusal of the impugned order dated 17.6.2011, Annexure P3, would reveal that the claim of the petitioner has been rejected in the light of Rule 4.23 of Punjab Civil Services Rules, Vol.II holding that interruption in service between two spells can be condoned if the service prior to interruption is not less than five years and interruption in service between two spells should not be more than one year's duration. In the light of Rule 4.23, a view has been taken that since the adhoc service of the

petitioner prior to interruption is less than five years and the interruption itself between the two spells of service is more than one year, accordingly, the service rendered by the petitioner on adhoc basis for the period 21.2.1974 to 5.8.1978 cannot be considered as qualifying service for the purposes of pension and gratuity.

8. I find that the respondent-authorities while passing the impugned order dated 17.6.2011, Annexure P3, have clearly proceeded on an erroneous premise. Rule 4.23 contained in Punjab Civil Services Rules, Chapter IV, Vol.II regulates Condonation of Interruptions and Deficiencies. The interruption in service as regards the petitioner between the spell of adhoc service and permanent service was clearly not condonable as the adhoc service rendered by the petitioner preceding the interruption was less than five years duration and such interruption itself was more than a period of one year. Be that as it may, the claim of the petitioner was not as regards condonation of such interruption in service i.e. the period between the initial adhoc service and followed by permanent regular service. Rather the claim of the petitioner was to count the adhoc service rendered by her for the period 21.2.1974 to 5.8.1978 towards qualifying service and by omitting the period of break. Such claim of the petitioner stands squarely covered in the light of Rule 3.17-A of Punjab Civil Services Rules.

Undoubtedly, there was no fault on the part of husband of the petitioner because his earlier ad hoc services were terminated due to the abolition of the post. Therefore, he is not to be blamed for the same.

As a result of the foregoing discussion, the petition is allowed. Ad hoc service of husband of the petitioner rendered as Sub Inspector from 12.5.1967 to 24.6.1972 and from 9.4.1973 to 11.9.1978, only is to be computed as qualifying service for the pension. Two spells of gap between ad hoc service and permanent service are to be excluded while computing

qualifying service and only the said period of service shall be computed as qualifying for the pension. Consequently, the impugned order dated 23.7.2008 (Annexure P2) and the impugned letter dated 9.9.2010 (Annexure P3) are hereby quashed. Respondents are directed to re-calculate the retiral and pensionary benefits accordingly and release the same to the petitioner within three months from the date of receipt of a certified copy of this order.

So far as interest on the previous benefits released to her without computing the ad hoc service of husband of the petitioner is concerned, the petitioner shall be entitled to interest @ 9% per annum on the gratuity and commuted value of pension, starting three months from the date of death of her husband i.e. 1.4.2009 till the date of payment. So far as additional payment after computing the arrears is concerned, the same shall be released with interest @ 9% per annum starting three months from the date of retirement of husband of the petitioner till the date of payment.

14.02.2017*gk***(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes