

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CWP No. 23382 of 2014
Date of Decision: 18.03.2017**

Jagjit Singh

...Petitioner

Versus

State of Punjab & Others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R. S. Ahluwalia, Advocate
for the petitioner.

Mr. L. S. Virk, Additional Advocate General, Punjab
for the respondents-State.

JAISHREE THAKUR, J. (Oral)

The instant writ petition has been filed for issuance of a writ in the nature of Mandamus directing the respondents to count the service rendered by the petitioner w.e.f. 05.05.1989 to 20.06.1990 with Punjab Roadway, Chandigarh towards qualifying service for the purpose of retiral benefits.

2. The petitioner herein was appointed to the post of Driver after a due process of selection by the Transport Department on a regular basis by an appointment letter dated 12.04.1989 issued by the Divisional Manager, Transport Department, Punjab, Chandigarh. Thereafter, he submitted his joining report on 05.05.1989 and was sent for training to the Drivers Training School, Chandigarh w.e.f. 04.12.1989 to 22.01.1990 for a period of six weeks. He was re-allocated from Punjab Roadways, Chandigarh to Punjab Roadway, Ludhiana by an order dated 26.02.1991 issued by the

Divisional Manager, Transport Department, Punjab, Chandigarh. As the petitioner was due to retire, he noticed that entries regarding services rendered by him with Punjab Roadways, Chandigarh had not been made in his service book.

3. The petitioner herein made a representation to the General Manager, Punjab Roadways, Ludhiana (*respondent No. 4 herein*) to complete his service book by making entries of his service rendered in Punjab Roadways, Chandigarh by letter dated 04.07.2014, however, General Manager-respondent No. 4 refused to do the needful on the ground that the petitioner had not performed duties on regular basis and was only working against leave vacancies or during festivals that arose during that period. Aggrieved, the instant writ petition has been filed.

4. Learned counsel for the petitioner submits that the petitioner was selected as Driver after a due process of selection and he was allocated to work in the Punjab Roadways, Chandigarh. It is argued that the appointment of the petitioner was regular, therefore, he could not be denied the period of service rendered by him at Chandigarh to be counted as qualifying service for the purposes of his retiral benefits. In this regard, counsel for the petitioner would rely upon a judgment rendered by this Court in ***Harjit Kaur vs. State of Punjab and others, 2009(3) SCT 444*** to contend that for the purpose of pensionary benefits and qualifying service, the period of *ad hoc* service is to be counted.

5. Per contra, learned counsel appearing on behalf of the respondents-State submits that the period prior to 1991 could not be taken into consideration as the petitioner had been appointed against leave vacancy in the respondent-Department. It is further submitted that the

petitioner joined the Department against the drivers who were on leave and there was no regular employment and his services came only to be regularized w.e.f. 13.03.1991 and, therefore, on account of interrupted services, he could not be given the benefits as claimed by him.

6. I have heard learned counsel for the parties and have perused the record of the case.

7. Rule 3.17 of the Punjab Civil Services Rules deals with the counting of the *ad hoc* service as qualifying for the purposes of pensionary benefits and reads as under:

“ 3.17: If an employee was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Govt. followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of:-

(i) periods of temporary or officiating service in non-pensionable establishments.

(ii) periods of service in work-charged establishment; and

(iii) periods of service paid from contingencies.

3.17-A(1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-

(i) Service rendered in work-charged establishment.

(ii) Service paid from contingencies. Provided that after the 1st January, 1973 half of the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following condition:-

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

(b) Service paid from contingencies should have been in a type of work or job for which regular post could have

been sanctioned e.g. Mails, chowkidars, khalasis etc.

(c) The service should have been one 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 relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishment.

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

(iii) Casual or daily rated service.

(iv) Suspension adjudged as a specific penalty.

3.17-A(2) An interruption in the service of a Govt. employee caused by willful absence from duty or unauthorized absence without leave, shall entail forfeiture of the past service.”

8. Rule 4.23 also deals with the counting of interrupted spells of service and reads as under:-

“ 4.23 In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered under the State Govt. shall be treated as automatically condoned, and the pre-interruption service shall be treated as qualifying service for pension purposes, except where the interruption has been caused by resignation, dismissal or removal from service or due to participation in a strike, but the period of interruption itself shall under no circumstances, be reckoned as qualifying service for pension.”

9. Rule 3.23 entitles the Government servant to have the benefit of the continued *ad hoc* service on regularizations. Rule 4.23 provides for automatic condonation of interruption within two spells of service rendered under the Government unless the interruption has been caused by resignation, dismissal or removal from service or due to participation in

strike. This rule, however, excludes the periods of interruption from reckoning the qualifying service for pension.

10. A similar matter came up for hearing in this Court in the matter of *Harjit Kaur (supra)*, wherein, it was held as under:

“8. A conjoint reading of the aforesaid rules categorically provides for counting of ad hoc service even spreading over different spells with interruption as qualifying service for the purpose of pension by excluding the interruptions caused without resignation, dismissal, removal or participation in strike. The rule does not make any distinction between ad hoc service rendered against leave arrangement or against the vacant post and in view of the clear mandate of rule 4.23 even the different spells of ad hoc service are to be counted except in the situations mentioned therein.”

xxx xxxx xxxx xxxx xxxx

11. In view of the mandate of rule 4.23 while giving the benefit of ad hoc/temporary service the period of interruption shall be excluded. This petition is accordingly allowed and respondents are directed to take into consideration all spells of ad hoc service rendered by the petitioner whether against leave vacancy or against vacant post as qualifying service for purpose of pension. However, the period of interruptions shall be excluded from reckoning. The period of qualifying service shall be redetermined by the respondents in the above manner and pensionary benefits shall be settled within a period of three months from the date certified copy of this order is served upon the competent authority.”

(emphasis supplied)

11. In view of the fact that it has been held that services rendered against the leave vacancy have to be taken into consideration towards qualifying service for the purpose of rendering the length of service in a department, the argument raised by the respondents-State that the petitioner would not be entitled to the benefits as claimed is unsustainable. The case in

hand is squarely covered by the judgment rendered in ***Harjit Kaur's*** case (supra).

12. Therefore, placing reliance upon the judgment rendered in ***Harjit Kaur's*** case (supra), the instant writ petition is allowed while directing the respondents to take into consideration of spells of ad hoc service rendered by the petitioner whether against leave vacancy or otherwise or against a vacant post, as qualifying service for the purpose of pension benefits. However, the period of interruption shall be excluded from the reckoning. The period of qualifying service be redetermined by the respondents in the above manner and the pensionary benefits shall be settled within a period of three months from the date of receipt of a certified copy of this order.

13. Writ petition stands allowed.

March 18, 2017

Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No