

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

**CWP No. 3563 of 2015
DECIDED ON: OCTOBER 26, 2017**

B.D. SHARMA

.....PETITIONER

VERSUS

STATE OF HARYANA & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Munish Mittal, Advocate
for the petitioner.

Mr. Charanjit Singh Bakshi, Addl. AG, Haryana.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Articles 226 of the Constitution of India, petitioner has sought for the issuance of a writ in the nature of certiorari seeking quashing/setting aside of the order dated 30.12.2014 (P-2) passed by the respondents AS WELL AS for the issuance of mandamus directing the respondents to count the past service rendered by him w.e.f. 18.10.1978 to 24.01.1983 in Haryana Civil Secretariat, Chandigarh as 'Clerk' for the purpose of gratuity.

2. Undisputably, petitioner served as Clerk in Haryana Civil Secretariat, Chandigarh w.e.f 18.10.1978 to 24.01.1983. Subsequently, he resigned from the post of Clerk on 24.01.1983 after having been selected as Inspector, Food and Supply Department, Haryana and accordingly, he joined as Inspector in District Bhiwani on the next day i.e. 25.01.1983. Though, the service rendered by the petitioner as Clerk in Haryana Civil Secretariat, Chandigarh for the period referred to above, has been counted for the pensionary benefits. Yet the said relief has been declined so far as the gratuity is concerned.

3. The contention of learned State counsel is that petitioner did not approach the Court with clean hands and has suppressed the real and material facts and further that the real facts are that petitioner has not applied for the post of Inspector in Food and Supplies Department before Staff Selection Board, Haryana through proper channel, as has been alleged by him in the instant petition and further that he resigned from his previous post of Clerk. Thus, in view of Rule 3.17 with note 3(b) of Civil Service Rule Vol-II, petitioner is not entitled to the benefit of past service rendered by him in Haryana Civil Secretariat towards qualifying service for pensionary benefits. But this contention of learned State counsel does not find favour and is liable to be ignored and disbelieved for the simple reason that petitioner has already given the pensionary benefits by counting the service rendered by him in Haryana Civil Secretariat, Chandigarh as Clerk but it has been declined in respect of gratuity only. Otherwise also, petitioner served the Haryana Government as

Clerk for the period referred to above and also joined the department of Food and Supplies at Bhiwani under the Government of Haryana. For the simply reason that petitioner did not apply for the post of Inspector in the Food and Supplies before Staff Selection Board, Haryana through proper channel does not *ipso facto* mean that he is debarred from claiming this benefit that too, under the beneficial provisions of service rules.

4. An identical controversy came up for hearing before this Court in the case of **M.M. Lal Bareja v. State of Haryana; 1995 (2) SCT 178** in which it was categorically observed while examining the similar issue in the light of Rules 3.17 and 4.19 (b) contained in chapter III of the Punjab Civil Service Rules (Vol.II) as applicable to the State of Haryana, it was held that pension is payable even to such an employee who was holding a temporary post under the State Government and who may have subsequently resigned from the previous post in order to join another service under the Central or the State Government. Not only this even the Court has further held that the rules contemplate the grant of pension to a person who was resigned from service in order to take up another appointment and such resignation is not to be treated as resignation from public service but only to facilitate the joining of another service/assignment. The afore-said judgment was subsequently relied upon by this Court in the case of **Bhagat Ram Aggarwal vs. State of Haryana and others; 2013 (4) SCT 619**. Moreover when the past service rendered by the petitioner for the period referred to above has already been taken into consideration and counted by the respondents for the grant of pension, there is

no reason to decline the said relief for the grant of benefit towards gratuity. Here, it would also be pertinent to mention that though it has been disputed by the respondents that petitioner did not apply for the post of Inspector in Food and Supplies before the Staff Selection Board, Haryana through proper channel but this omission on the part of the petitioner cannot take away the right of counting the previous service rendered by him in Haryana Civil Secretariat towards pension and other benefits.

5. As an upshot of afore-said discussion, this Court is of the considered view that the impugned order dated 30.12.2014 (P-2) is not sustainable in the eyes of law and is liable to be set aside/quashed particularly being against the settled canons of law. Accordingly, instant petition is allowed and the impugned order dated 30.12.2014 (P-2) stands quashed and respondents are directed to calculate the amount of gratuity towards the petitioner by counting his service rendered by him as Clerk in Haryana Civil Secretariat, Chandigarh w.e.f. 18.10.1978 to 24.01.1983 and the difference if any be paid to him within a period of two months from the date of receipt of certified copy of this order. On failure to do the needful within a period specified above, petitioner shall be entitled to interest @9% per annum from the date of filing of instant petition till its actual realization.

OCTOBER 26, 2017
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>