

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.29169 of 2017
Date of Decision: December 20, 2017

Director Higher Education, Chandigarh Administration, Sector 9,
Chandigarh.

...Petitioner

Versus

Central Administrative Tribunal, Chandigarh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL
HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.J.S.Toor, Advocate,
for the petitioner.

AMIT RAWAL, J.

1. Director Higher Education, Chandigarh Administration, Sector 9, Chandigarh has invoked the extraordinary writ jurisdiction of this Court under Articles 226/227 of the Constitution of India by challenging the order dated 3.3.2017 (Annexure P-1) rendered by the Central Administrative Tribunal, Chandigarh Bench (for short "CAT"), whereby O.A.No.060/00595/2016 preferred by respondent No.2, seeking following relief, has been allowed.

"1. Quashing of Order No.2254-DHE-UT-CI-12(5) 2002 dated 22.06.2010 passed by Respondent No.3 (Annexure A-1), whereby the period of service from 30.08.1966 to 29th March, 1967, 18th July, 1967 to 5th April, 1968; 27th July, 1968 to 19th September, 1969 rendered by the applicant as Temporary Lecturer against a vacancy and the period from

17.07.1971 to 07.07.1974 spent by the applicant for acquiring higher qualification, which was treated as Study Leave by the respondent-department, has been excluded for the purpose of qualifying service, thus depriving the applicant of full pension by treating her total service being less than 33 years and applying the prorata rule by paying lesser pension than her entitlement to full pension and quashing thereof.

(ii) For issuance of directions to the respondents to count the period of service from 30.08.1966 to 29th March, 1967, 18th July, 1967 to 5th April, 1968; 27th July, 1968 to 19th September, 1969 including period of artificial breaks on account of vacation rendered by the applicant as Temporary Lecturer against a vacancy and the period from 17.07.1971 to 07.07.1974 spent by the applicant for acquiring higher qualification, which was treated as Study Leave by the respondent-department, as qualifying service for all intents and purposes and grant her full pension and pensionary benefits from the date applicant retired from service on attaining the age of superannuation on 31.12.2002 with consequential benefits including arrears of pension and revised pension w.e.f. 01.01.2006 and as revised from time to time with interest @ 12% per annum from the date amount became due till actual payment.”

2. Mr.J.S.Toor, learned counsel appearing on behalf of the petitioner submitted that respondent No.2 worked as Lecturer in French in Government College for Girls, Sector-11, Chandigarh on temporary basis w.e.f. 30.8.1966 to 29.3.1967 (212 days). She again worked as Temporary Lecturer in French from 18.7.1967 to 5.4.1968 (263 days) and from 27.7.1968 to 19.9.1969 (420 days). Respondent No.2 was appointed as a Lecturer in French on regular basis w.e.f. 20.9.1969 and retired on attaining the age of superannuation on 31.12.2002 after rendering 34 years of service. Respondent No.2 availed leave from 1971 to 1974 for pursuing

M.A.in French from U.S.A., the details of which are given below:-

- “1. *Half Pay Leave* 17.07.1971 to 25.08.1971
2. *Extra Ordinary Leave* 26.08.1971 to 14.10.1971
3. *Extra Ordinary Leave* 15.10.1971 to 30.11.1972
4. *Extra Ordinary Leave* 01.12.1972 to 25.08.1973
5. *Extra Ordinary Leave* 26.08.1973 to 07.07.1974”

3. The Extra Ordinary Leave availed by respondent No.2 was excluded while counting the pensionary benefits and the total qualifying service was found to be of 30 years 06 months and 26 days. The leave aforementioned was granted as Extra Ordinary Leave and for that, a bond of ₹19,500/- was executed by respondent No.2. In the year 2005, respondent No.2 filed a Civil Suit bearing No.257 of 2005 before the Civil Judge (Senior Division), Chandigarh claiming pension at the rate of ₹8940/- as against the amount of ₹8263/-. The aforementioned civil suit was transferred to the CAT and registered as TA No.106/CH/2009. The CAT, vide order dated 31.3.2010, disposed of the matter by issuing directions to the respondents therein to re-consider the case of respondent No.2.

4. It was further argued that in compliance of the directions of the CAT issued vide order dated 31.3.2010, the case of respondent No.2 was considered. The competent authority, vide order dated 22.6.2010 (Annexure A-1) found that the services rendered by respondent No.2 on temporary basis could not be counted towards the pensionary benefits. In these circumstances, respondent No.2 filed O.A.No.060/00595/ 2016 before the CAT challenging the said order, claiming the benefits, *ibid*, which, according to the petitioner was barred by law of limitation, though an application seeking condonation of delay was filed. The CAT, vide order dated 3.3.2017, has erroneously allowed the Original Application directing

the respondents therein to count the period from 27.7.1968 to 19.9.1969 as qualifying service. The further period of leave availed during her period of sanctioned study leave w.e.f. 31.1.1983 to 2.11.1983 has also been directed to be counted as qualifying service and the pension to be computed afresh accordingly. It was urged that order is unsustainable as according to Rule 4.7 Vol.II and 4.9 (b)(ii) Vol-I Part I of the Punjab Civil Services Rules, the period spent by a Government employee on leave of all kinds except extraordinary leave can be counted towards the increment under Rule 4.9 (b) of Vol.I. According to the petitioner, the period availed by respondent No.2 on earlier leave could not be counted for qualifying service and, therefore, the pensionary benefits for such period had been rightly declined by the Department.

5. Learned counsel for the petitioner next argued that respondent No.2 had worked from 30.8.1966 to 29.3.1967 (212 days) on temporary basis and after vacation period, again worked as Temporary Lecturer in French from 18.7.1967 to 5.4.1968 (263 days) and from 27.7.1968 to 19.9.1969 (420 days), but not on adhoc basis and, therefore, the temporary service rendered by her could not be counted in view of the rules aforementioned.

6. It was also contended that the copy of the impugned order dated 22.6.2010 was sent to respondent No.2 by registered post on 24.6.2010, but the Original Application was preferred on 8.7.2015, i.e., after the prescribed limitation. The grounds stated in the application seeking condonation did not suffice the requirement of sufficient reasons and explanation and, thus, the Original Application was liable to be dismissed on the ground of delay and laches, in view of limitation prescribed under Section 21 of the

Administrative Tribunals Act, 1985 as one year. The applicant-respondent No.2 failed to place sufficient material on record to show that the impugned order was never received by him and, thus, he was not entitled to any relief from the CAT vide order under challenge in this writ petition.

7. We have heard the learned counsel for the petitioner and appraised the paper book.

8. In order to appreciate the arguments of Mr.Toor, it would be apt to reproduce the relevant rules relied in support of the averments made in the Original Application. The same read thus:-

“Punjab Civil Services Rules Vol.II.

Section IV

Periods of Leave and other Authorised Absence from Duty

A-period of Leave

4.7 The time passed by a Government employee on leave of all kinds except extraordinary leave, other than that extraordinary leave counted towards increment under rule 4.9 (b) of Volume I, shall count as service qualifying for pension.”

“PUNJAB CIVIL SERVICES RULES (Vol.I part I)

4.9 The following provisions prescribe the conditions on which service counts for increments in a time-scale.

(b) (i) Service in another post other than post carrying less pay referred to in clause (a) of rule 3.17, whether in a substantive or officiating capacity, service on deputation out of India and leave except extraordinary leave taken otherwise than on medical certificate count for increments in the time-scale applicable to the post on which the Government employee holds a lien, as well as in the time-scale applicable to the post or posts, if any, on which he would hold a lien had his lien not been suspended.

(ii) All leave except extraordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time-

scale applicable to a post in which a Government employee was officiating at the time he proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of India:

Provided that the competent authority may in any case in which it is satisfied that the extraordinary leave was taken for any cause beyond the Government employee's control or for prosecuting higher scientific and technical studies, direct that extraordinary leave shall be counted for increments under clause (i) or (ii)."

9. No doubt, the period of extraordinary leave would be counted towards the extra leave or towards the increment, but since respondent No.2 had sought sanction of the authorities for obtaining higher qualification from 17.7.1971 to 7.7.1974, the benefit thereof could not be denied to him. On a specific query put to learned counsel about the financial implication involved in the matter, it was candidly admitted that the financial implication for the petitioner was even less than ₹1.00 lac. Be that as it may, the CAT, after noticing the rival contentions of the parties and the material brought on record, found that the order dated 22.6.2010 was never served upon respondent No.2 passed by the petitioner-non-applicant in compliance to CAT order dated 31.3.2010. On the failure of the petitioner to comply with order dated 31.3.2010, respondent No.2 was constrained to file a Contempt Petition bearing No.060/00196/2015 before the CAT. It was in reply to contempt petition, for the first time, impugned order was also annexed. In the absence of any proof of service of order dated 22.6.2010 on the applicant-respondent No.2, it could not be claimed by the petitioner that the applicant-respondent No.2 had approached the CAT belatedly.

10. The finding of the CAT that the adhoc service rendered by the employee in continuity with regular service has to be counted towards the

qualifying service for pensionary benefits and counting the period from 27.7.1968 to 19.9.1969 as qualifying service cannot be said to be erroneous or capricious.

11. Adverting to leave availed by the applicant-respondent No.2 during her period of sanctioned study leave had also been ordered to be treated to be qualifying service, confining the payment of arrears only for a period of 18 months prior to the date from 8.7.2015 when the Original Application was filed. No error or fault could be demonstrated in the aforesaid approach of the CAT which may warrant interference by this Court.

12. For the reasons stated above, we do not find any illegality or perversity in the findings rendered by the CAT on facts and as well as in equity. No ground for interference is made out.

Writ petition stands dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**December 20, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No