

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

CWP No.13986 of 2013.

Date of Decision: 26.11.2018.

Prem Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. S.K. Rattan, Advocate,
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

Mr. Naveen Chopra, Advocate,
for respondent No.4.

JITENDRA CHAUHAN.J.

The petitioner seeks quashing of order dated 03.04.2013 (Annexure P-13) vide which claim of the petitioner for counting his regular service with effect from 05.09.1986 to 03.01.1997 and consequential benefits arising therefrom has been rejected by respondent No.3.

The facts of the case are that the petitioner was appointed as Language Teacher (Punjabi) on regular basis in Punjab Government High Secondary School, Beas Sutlej Link Project, Slapper, Sunder Nagar vide order No. 92-E/Teach./Part-17/AC-5/7554-56 dated 21.08.1986. The said school later on was taken over by BBMB which is a joint venture of State of Punjab and other States

and the services of the petitioner were regularised as Language Teacher (Punjabi) vide order dated 01.12.1987. The petitioner was also a subscriber of contributory provident fund. Thereafter, posts of Punjabi Masters/Mistresses were advertised by State of Punjab. The petitioner had applied through proper channel. The petitioner was selected as Punjabi Master vide letter dated 17.12.1996 (Annexure P-5). Thereafter, he submitted resignation to the previous department so as to join the education department and also deposited one month salary in lieu of the notice. Thereafter, the petitioner made representation to respondent No.2 for counting his past service i.e. service rendered under BSL Project and BBMB for the purpose of increments, pay protection, pension and other benefits. The resignation of the petitioner was accepted vide order dated 24.01.1997 (Annexure P-7). The petitioner had filed CWP No. 7631 of 2010 which was disposed of with directions and in pursuance of the directions issued by this Court, the representation moved by the petitioner was decided. The claim of the petitioner has been rejected vide impugned order dated 03.04.2013 (Annexure P-13) on the ground that according to rule 7.5(1)(2) of Punjab CSR Vol.-I, an employee who tenders resignation, his past service would stand forfeited.

The same stand has been taken by the learned counsel for respondent Nos. 1 to 3 while she submits that once an employee tenders resignation, the prior service stands forfeited.

Heard.

It is to be noticed that the petitioner was employed in the Beas Sutlej Link Project, Slapper Sunder Nagar since 21.08.1986. The said school was subsequently taken over by the BBMB which is a joint venture of Government of Punjab and other States. Thereafter, the petitioner was appointed as Punjabi Master in the State of Punjab vide letter dated 17.12.1996 (Annexure P-5). Now the petitioner seeks to count his service rendered with effect from 05.09.1986 to 03.01.1997. As regards the contention raised by the respondents that since the petitioner has tendered his resignation, he is not entitled to the relief, this Court feels that since the petitioner had routed his application through the education department and adopted the proper channel hence the department can be said to have the notice of the same. In this regard, reliance can be placed on Rule 7.5(2) of the Civil Services Rules Vol.1, which reads as under:-

“Rule 7.5(2):- A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension.”

Further, in **CWP No. 11986 titled as “Kiran Saini vs. State of Haryana and others” decided on 27.11.2009,** it was held as under:-

“xxx Thus, the plea that the service rendered by the petitioner can not be counted towards pension or other benefits, can not be accepted as the resignation with permission to join the post can not be treated as a resignation from the Government service.”

Further, The resignation of an appointment to take up

another appointment is not a resignation of public service. The same

can be termed as technical resignation in order to enable the petitioner to join his subsequent department which shall not entail forfeiture of past service.

So far as the second limb of the argument is concerned, the respondent-department in the reply has itself referred to the instructions dated 14.05.1986 (Annexure R-1) which are reproduced as under:-

*“The employees of the autonomous bodies or Central or State government, as the case may be, who have already been sanctioned or have received pro rata retirement benefits or other terminal benefits for their past service have the option either:-
(a) to retain such benefits (in that event their past service will not qualify for pension under the new organization); or
(b) to have the past service counted as qualifying service for pension under the new organization in which case the pro rata retirement or other terminal benefits, if already received by them, will have to be deposited along with interest thereon from the date of receipt of those benefits till the date of deposit with the autonomous body of the Central/State Government, as the case may be. The right to count previous service as qualifying service shall not revive until the whole amount has been refunded. In other words, where pro rata retirement benefits have already been sanctioned but have not yet become payable the concerned authorities shall cancel the sanction as soon as the individual concerned opts for counting of his previous service for pension and inform the individual in writing about accepting his option and cancellation of the sanction.”*

Faced with the above situation, learned counsel for the petitioner has submitted that the petitioner is ready to deposit the entire amount withdrawn by him from the previous department.

Keeping in view the same, the Court feels that the petition deserved to be allowed and respondents are directed to count the past service

rendered with Government High Secondary School, Beas Sutlej Link Project, subject to deposit of the amount so withdrawn.

In view of above, the present civil writ petition is allowed. The impugned order 03.04.2013 (Annexure P-13) is hereby set aside. The respondents are directed to count the service rendered by the petitioner from 05.09.1986 to 03.01.1997 for all intents and purposes subject to the petitioner depositing the amount withdrawn by him from the previous department. The necessary exercise be done within a period of two months from the date of receipt of copy of the judgment.

26.11.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No