

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

**CWP-14676-2014 (O&M)
Date of decision : 12.11.2018**

Ramji Dass

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sharwan Sehgal, Advocate,
for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant writ petition filed under Article 226 of the Constitution of India is for quashing of order dated 23.05.2014 (Annexure P-6) passed by respondent No.2, and directing the respondents to treat the ad hoc service rendered by the petitioner from 04.06.1981 to 31.01.1992 as qualifying service for pensionary benefits.

It is the case of the petitioner that he was appointed as Beldar on ad hoc basis w.e.f. 04.06.1981 through the Employment Exchange. His services were regularised as such w.e.f. 31.01.1992. He retired from service on attaining the age of superannuation on 31.01.2011.

The grouse of the petitioner is that he has been paid the retiral benefits only in respect of his regular service, while the ad hoc services rendered by him was not counted. Feeling aggrieved, the petitioner served a legal notice to the respondents dated 29.09.2013 (Annexure P-4), but to no

availe. Thereafter, he preferred CWP No.1404 of 2014 which was disposed of by this Court vide order dated 27.01.2014 (Annexure P-5) with a directed to the respondents to decide legal notice (Annexure P-4). In compliance thereof, respondent No.2, vide order dated 23.05.2014 (Annexure P-6), has rejected to claim of the petitioner.

It is contended that the ad hoc service put in by the petitioner ought to have been counted for the purposes of pension and other retiral benefits. In support of his assertions, learned counsel has placed reliance on ***Krishna Devi Vs. State of Haryana and others (P&H)(DB), 2008(6) SLR 600; Bhakra Beas Management Board and others Vs. Hari Chand (P&H)(DB), 2012(2) SLR 404; and Megh Raj Vs. State of Haryana and another (P&H), 2014(6) SLR 162.***

On the other hand, learned State counsel submits that the petitioner was appointed as Beldar on temporary basis out of the Amalgamated fund of the concerned college on fixed salary. His salary had not been drawn from the Government exchequer. She refers to Instructions dated 26.10.1995 issued by the Department of Finance to counted that the ad hoc service rendered by the petitioner prior to 31.01.1992 is not countable towards retiral benefits including pension.

Heard.

The benefits sought by the petitioner have been denied to him on account of two objections i.e. firstly, the petitioner was not appointed on ad hoc basis, rather his appointment was out of the amalgamated fund of the college on fixed salary and secondly, he was not appointed against a regular post/vacancy. The question with regard counting of past service on work-

charged basis towards pensionary benefits was dealt with by Hon'ble the Supreme Court in ***Kesar Chand vs State Of Punjab And Ors., AIR 1988 P H 265***, by holding thus:-

“19. In the light of the above, let us examine the validity of rule 3.17(ii) of the Punjab Civil Services Rules, Vol. II. This rule says that the period of service in a work-charged establishment shall not be taken into account in calculating the qualifying service. After the services of a work-charged employee have been regularised he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1, 1972, between the workmen and the Chief Engineer, P.W.D. (B. & R), Establishment Branch, Punjab, Patiala, which was published in the Government Gazette dated July 14, 1972. Even otherwise. the matter was settled by the Punjab Government Memo No. 14095-BRI(3)-72/5383 dated 6th February, 1973(Annexure P7) where it was stated that all those work charged employees who had put in ten years of service or more as on 15th August, 1972, their services would be deemed to have been regularised. Once the services of a work-charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. [Article 14](#) strikes at arbitrariness because a provision which is arbitrary involves the negation equality. Even the temporary or officiating service under the State Government has. to be reckoned for determining the qualifying service. It looks to be

illogical that the period of service spent by an employee in a work-charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who eligible for pension and those who started work-charged employees and their services regularised subsequently, and the others is based on any intelligible criteria and, before, is not sustainable at law. After the services of a work-charged employee have n regularised, he is a public servant like other servant. To deprive him of the pension is not only unjust and inequitable is hit by the vice of arbitrariness, and for se reasons the provisions of sub-rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of [Article 14](#) of the Constitution.”

Similar controversy became subject matter for determination by this Court in ***Hari Chand's case (supra)***, wherein, it has been laid down as under:-

“4. We have heard learned counsel for the parties at length and perused the paper books of these appeals/petitions with their able assistance. The only question which is involved in these appeals/petitions is whether daily wager employee would be entitled to reckon their service as qualifying service for the purposes of pension if it is followed by regularisation.

5. It is undisputed that the controversy in hand has already travelled up to Hon'ble the Supreme Court and the same was remanded back vide order dated 10.12.2009. Pursuant thereto various appeals/petitions including LPA No.189 of 2004 (State of Punjab and

others Vs. Mukhtiar Singh decided on 19.4.2011) came to be listed before the Letters Patent Bench of this Court (of which one of us M.M. Kumar, J. was also a member). After noticing the provisions of Rule 3.17-A; substantive difference between a 'work-charged' employee and a 'daily rated' employee; Full Bench judgment of this Court rendered in the case of Kesar Chand (supra) and various other judgments of Hon'ble the Supreme Court the Letters Patent Bench concluded that for the purposes of seniority, promotion or some other benefits the service rendered on work-charge basis, ad hoc basis or daily rate basis may not be countable but the same could be counted as qualifying service for the purpose of pensionary benefits.”

In Punjab State Electricity Board Vs. Narata Singh, 2010 (4)

SCC 317, it has been held as under:-

“5. The short question which arises for determination of this Court is whether the work charged service rendered by the respondent No.1 under the Government of Punjab prior to securing employment with the Board would qualify for grant of pension under the Punjab Civil Services Rules. This dispute deserves to be determined because the contention of the appellant is that the High Court was neither justified in referring to the definition of "temporary post" as given in Regulation 3.17 (ii) of Punjab Civil Services Rules nor the Full Bench decision in Kesar Chand (supra) but the High Court should have taken into consideration the definition of "temporary post" as per Regulation 2.58 of PSEB MSR Vol.I Part-I, 1972. As noticed earlier, by memo dated 25.11.1985, the Board adopted letter dated 20.5.1982 of the Department

of Finance, Government of Punjab in order to allocate liability of pension in respect of temporary service rendered under the State Government. A bare glance at letter dated 20.5.1982 makes it very clear that allocation of pensionary liability in respect of temporary service rendered under the Government of India and the State Government was agreed upon on certain conditions being fulfilled, one of which was that the period of temporary service rendered under the Central/State Government should be such which could be taken into consideration for determining qualifying service for grant of pension under the Rules of respective government. In order to determine whether work charged service rendered by the respondent No.1 under the State Government could have been taken into consideration for the purpose of calculating qualifying service, one has to refer to definition of "temporary post" as defined in Punjab Civil Services Rules and not to the Rule referred to by the Board. Rule 3.17(ii) of the Punjab Civil Services Rules reads as under:

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

(i)

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

A bare reading of the above-quoted rule makes it clear that periods of service in work charged establishments were not counted as qualifying service. Therefore, the work charged employees had challenged validity of the said Rule. The matter was considered by the Full Bench of Punjab and Haryana High Court. In [Kesar Chand vs. State of Punjab & Ors.](#) [1988 (5) SLR 27], the Full Bench held that Rule 3.17(ii) of the Punjab Civil Services Rules was violative of [Article 14](#) of the Constitution of India. The Full Bench decision was challenged before this Court by filing a special leave petition which was dismissed. Thus, the ratio laid down by the Full Bench judgment that any rule which excludes the counting of work charged service of an employee whose services have been regularized subsequently, must be held to be bad in law was not disturbed by this Court. The distinction made between an employee who was in temporary or officiating service and who was in work charged service as mentioned in Rule 3.17(ii) of the Punjab Civil Services Rules disappeared when the said rule was struck down by the Full Bench. The effect was that an employee holding substantively a permanent post on the date of his retirement was entitled to count in full as qualifying service the periods of service in work charged establishments.

In view of this settled position, there is no manner of doubt that the work charged service rendered by the respondent No.1 under the Government of Punjab was qualified for grant of pension under the rules of Government of Punjab and, therefore, the Board was not correct in rejecting the claim of the respondent for inclusion of period of work charged service rendered by

him with the State Government for grant of pension, on the ground that service rendered by him in the work charged capacity outside PSEB and in the departments of the State Government was a non-pensionable service.”

In view of the above judicial pronouncements, it is abundantly clear that the respondents committed an error in law while denying the benefit of the past service i.e. ad hoc service rendered by him before regularisation. Accordingly, the instant petition is allowed; impugned order Annexure P-6 is hereby quashed; and the respondents are directed to calculate the pension of the petitioner afresh by taking into account the whole service rendered by the petitioner. However, in view of the law laid down by Hon'ble the Supreme Court in ***S.K. Mastan Bee vs. General Manager, South Central Railway, (2003) 1 SCC 184***, the arrears are restricted to the period of 38 months preceding the date of filing earlier petition i.e. CWP No.1404 of 2014. The needful be done within a period of two months from the date of receipt of a certified copy of this judgment.

Allowed in the above terms.

12.11.2018
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No