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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20864-2015

Date of Decision : November 13 , 2018

Bir Singh

.... Petitioner.

Versus

State of Haryana and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Atul Yadav, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana
for respondent No.1.

Mr. Tarun Seth, Advocate,
for Mr. Sumit Jain, Advocate,
for respondents No. 2 to 4.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing order dated 16.7.2015 (Annexure P/9) passed by respondent No.3, whereby the claim of the petitioner to count the period of service rendered by him on adhoc basis for the purpose of pensionary benefits, has been rejected.

2. As per the petitioner, he joined the service as Driver on 20.11.1984 on ad hoc basis and he continued to work till 11.3.1986. On

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that date, his services were terminated. Industrial dispute was raised by the petitioner and learned Industrial Tribunal, Faridabad held the termination of the petitioner to be bad and ordered reinstatement of the petitioner vide award dated 22.12.1988 (Annexure P/2). As per the petitioner, though he was initially appointed as Driver, but under compelling circumstances, the respondents obtained an affidavit from the petitioner agreeing to join as Peon on the pretext that no post of Driver was available and the petitioner joined as Peon on 1.1.1991 and retired from service on 30.4.2011.

3. The grievance of the petitioner is that the service rendered by him from 20.11.1984 to 1.1.1991 was to be counted for pensionary benefits in view of judgment of this Court in CWP-15081-2011, **Shanno Devi Vs. State of Haryana and others, decided on 11.04.2013.**

4. In the reply, the respondents have taken the stand that the petitioner was not appointed as Driver on adhoc basis against sanctioned post and as per sanction having been granted by competent authority. The competent authority to appoint a Driver, which is a Class III post, was Board, whereas the appointment of the petitioner was made by the then Chairman of the Market Committee. The appointment of the petitioner as Driver was on D.C. rates. However, the details of the petitioner's service on daily wages as Peon-cum-Tractor Driver with various breaks, as detailed in Para No. 3 of the reply, are extracted below:-

“(i). 21.11.1984 to 31.03.1985
then with a break on 01.04.1985.

(ii). 02.04.1985 to 29.06.1985

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then with a break on 30.06.1985

- iii). 01.07.1985 to 27.09.1985
then with a break on 28.09.1985
- iv). 29.9.1985 to 11.03.1986.

5. The main contention of the respondents is that the petitioner was not employed on adhoc basis but he was working on daily-wages and that too on two different posts. As such, his services could not be considered as adhoc service.

6. The respondents had also taken the plea that the petitioner had joined as Peon on 1.1.1991 and rendered service for about 20 years and superannuated on 30.04.2011 and the benefits whichever were due towards said service have already been released to the petitioner. The present writ petition deserves to be dismissed.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on certain facts that the petitioner was initially appointed as a driver and thereafter his services continued with certain breaks. His termination was held to be bad and illegal as per award Annexure P/2. The main fact is not disputed that the petitioner had joined the post of Peon on 1.1.1991 and served the respondents for about 20 years as Peon and superannuated on 30.4.2011. During that period, he never raised any claim that he was to be appointed as Driver or his previous service was to be counted. This fact is also not disputed that the appointing authority, as per the relevant Regulations governing his service conditions, is the Board and the Board authorizes to sanction a post and

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approve the appointment to class III post which has not been done at any stage, meaning thereby that the appointment of the petitioner as a Driver was not against the sanctioned post and not approved at any stage. It is not established on the file that the petitioner was working on adhoc basis, rather he was working on daily wages.

8. In **Shanno Devi's case (supra)**, co-ordinate Bench of this Court observed in Para No. 7 as under:-

“7. A perusal of the impugned order dated 17.6.2011, Annexure P3, would reveal that the claim of the petitioner has been rejected in the light of Rule 4.23 of Punjab Civil Services Rules, Vol.II holding that interruption in service between two spells can be condoned if the service prior to interruption is not less than five years and interruption in service between two spells should not be more than one year's duration. In the light of Rule 4.23, a view has been taken that since the adhoc service of the petitioner prior to interruption is less than five years and the interruption itself between the two spells of service is more than one year, accordingly, the service rendered by the petitioner on adhoc basis for the period 21.2.1974 to 5.8.1978 cannot be considered as qualifying service for the purposes of pension and gratuity.”

9. The claim of the present petitioner is also liable to be rejected mainly on two grounds, firstly, that the appointment of the petitioner as Driver was never against sanctioned post and the appointment was not made by the competent authority. More so, the petitioner had served as Peon for pretty long period of about 20 years and he has already been paid whatever was due towards him for the said period. There is nothing wrong in the impugned order dated 16.7.2015 (Annexure P/9) passed by respondent No.3.

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10. In view of the above, there is no merit in the present writ petition and the same stands dismissed

(SHEKHER DHAWAN)
JUDGE

November 13, 2018
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes