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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2462-2015.

Date of Decision : November 15 , 2018

Brahmu Ram

.... Petitioner.

Versus

Registrar, Panjab University.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Rajeshwar Singh Thakur, Advocate
for the petitioner.

Mr. Baltej K. Sandhu, Advocate,
for the respondent-University.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of direction to the respondent-University to count the entire service rendered by the petitioner on temporary/ad hoc basis followed by regular service for the purpose of pension and other benefits. Petitioner has also claimed that a sum of Rs.57,056/- plus interest of Rs.1,937/- has been illegally recovered by the University and the petitioner is entitled to get refund of the same along with interest.

2. As per the petitioner, he was initially appointed as a Peon on temporary basis and the details of service rendered by the petitioner are as under:-

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S.No.	Designation	From	To	Period of service	Period of break.
1	Temp. Peon	16.08.86	26.08.86	11 days	
2	Temp. Peon	01/12/86	07/01/87	1 month 7 days	3 month 5 days
3	Temp. Peon	12/01/87	13.3.1987	2 months 3 days	4 days
4	Temp. Peon	20.04.1987	19.08.87	4 months	01 month 07 days
5	Temp. Peon	21.08.1987	20.02.1988	6 month 01day	01 day
6	Temp. Peon	22.02.88	21.08.1988	5 months 29 days	01 day
7	Temp. Peon	08/09/88	21.08.1989	11 months 14 days	17 days
8	Temp. Peon	22.08.1989	16.12.1990		
9	Lab Attendant	17.12.1990	28.02.2014		

3. However, the petitioner continued to work with the respondent-University and was appointed as Laboratory Attendant on regular basis and he joined as such on 27.12.1990 and performed satisfactory service. The petitioner finally retired from service on 28.2.2014. The service rendered by the petitioner from 16.8.1986 to 16.08.1989 was temporary and was followed by regular service. There was no break in service except the notional breaks given by the respondent-University. As such the petitioner is entitled for pension on the basis of total length of service rendered by the petitioner with the respondent-University. The respondent-University has not taken into consideration the period spent on adhoc/temporary basis for the purpose of computing pension which was followed by regular service.

4. As regard to refund of Rs.57,056/- plus interest having been recovered by the respondent-University, it is submitted that the

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respondent-University has not issued any show cause notice before effecting the recovery. The said recovery cannot be effected as the same is on account of wrong fixation of pay.

5. At the time of arguments, learned counsel for the petitioner contended that as per view taken by Hon`ble Apex Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) RSJ 177**, no recovery could be ordered from employees belonging to Class-III and Class-IV service. Moreso, the petitioner has already retired from service and he is entitled to refund of the said amount alongwith interest.

6. The respondents contested the writ petition on the ground that Regulation 3.4 of the Punjab University Employees (Pension) Regulations, 1991 (for short, “**University Regulations**”) provides that for grant of all retirement benefits, the temporary employees shall be treated at par with permanent employees provided that temporary service rendered by the incumbent is followed without any interruption, but in the present case, the petitioner was initially appointed as Peon on temporary basis against leave vacancy w.e.f. 16.08.1986 till 16.12.1990 with intermittent breaks. Regulation 3.4 of the University Regulations is extracted below:-

“3.4 The temporary employees shall be treated at par with permanent employees in respect of all retirement benefits viz : Retiring, Superannuation, Compensation and invalid pension, Service gratuity, Death gratuity and Retirement gratuity, provided that temporary service is following without any interruption.”

7. Learned counsel for the respondent-University contended that

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as per Regulation 3.4 of the University Regulations, service rendered by the petitioner from 16.08.1986 till 21.08.1989 was with intermittent breaks and the same cannot be counted towards 'qualifying service' for grant of benefits being claimed by the petitioner.

8. As regards to recovery of Rs.57,056/- and refund thereof, learned counsel for the respondent-University contended that the said amount was ordered to be recovered as per the order issued by Establishment Branch as it was a case of withdrawal of one increment of 4 years ACP and the respondents were well within their rights to recover the same amount and the present writ petition be dismissed.

9. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that most of the facts and period of employment are not disputed in this case. The respondent-University has simply denied to count the service having been rendered by the petitioner from 16.08.1986 till 21.08.1989 on the ground that the same was with interruption and as per Regulation 3.4 of the University Regulations, reproduced above, the same could not be counted. However, as per Regulation 3.6 of the University Regulations, the following period is to be counted as 'qualifying service' for pension purpose even if the same is without interruption or continuous. For ready reference Regulation 3.6 is extracted hereunder:-

“3.6 Following periods qualify for pension:

- (i). all duty whether interrupted or continuous;
- ii). all periods of leave when leave salary is paid;
- iii). joining time during which pay and allowances are paid;

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- iv). all periods of extraordinary leave which count for increment under the service rules;
- v). extraordinary leave granted to except a teaching/administrative post, or fellowship, or research-cum-teaching post, or an assignment of technical/administrative, or academic work;
- vi). periods of training if so ordered by the competent authority;
- vii). service during the period of probation if followed by confirmation on the same or another post.
- Viii). an employee who is dismissed, or removed from service, but reinstated on appeal or revision is entitled to count his past service for pension, however, the period of break in service between the date of dismissal, or removal and the date of reinstatement, shall not count, unless regularized as duty, or leave by a specific order of the authority which passed the order of reinstatement;
- ix). period of suspension, if the employee is fully exonerated of the charges; in other cases, where the employee is not fully exonerated and is reinstated for other reasons, the period of suspension will count only if so decided by the authority which ordered his reinstatement;
- x). period spent on foreign service in, or outside India, if contributions towards pension are paid to the University by the foreign employer or the employee himself."

10. The above regulation makes it ample clear that the petitioner was well within his right to claim benefit of period of employment from 16.08.1986 till 21.08.1989 as the same was followed without any interruption and respondent-University has wrongly denied the said benefit to the petitioner.

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11. As regard to recovery of Rs.57,056/-, there is no dispute on the fact that the benefit was given to the petitioner by the respondent-University on account of grant of increment and the petitioner used to draw the same during the period of his employment with the respondent-University. More so, he has already superannuated. Similar matter was before Hon`ble Apex Court in **Rafiq Masih's case (supra)**, and while dealing with the issue of recovery, Hon`ble Apex Court summarized the following few situations, wherein recoveries by the employers, would be impermissible in law:-

- “(i). Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

12. In the light of that, the respondent-University could not effect recovery of the aforesaid amount from the petitioner because, the benefit of increment was given to the petitioner and it was not a case of misrepresentation of facts or fraud having been played by the petitioner. The said amount of Rs.57,056/- alongwith interest has been deducted from the

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petitioner at the time of his superannuation and petitioner is entitled to seek refund of the same alongwith interest.

13. In view of the above, the present writ petition is accepted and the respondents are directed to count the service rendered by the petitioner on temporary/adhoc basis followed by regular service for the purpose of pension and other benefits. The petitioner is also held entitled to refund of Rs.57,056/- along with interest @ 9% per annum from the date of deduction till the date of actual payment to the petitioner. The needful be done within three months from the date of receipt of copy of this order.

14. Resultantly, the writ petition is allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

November 15, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes