

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.5837 OF 2013
DECIDED ON: FEBRUARY 20, 2018

ISHWAR SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Umesh Narang, Advocate,
for the petitioner.

Mr. C.S. Bakshi, Additional Advocate General, Haryana.

JASPAL SINGH, J (Oral)

Challenge in this writ petition is to the order dated 08.01.2013 (Annexure P-9) passed by respondent No.2-Director General, Prisons Department, Haryana whereby prayer of the petitioner for counting his past service rendered in Education Department of State of Haryana prior to the joining of Prisons Department has been rejected.

2. The only ground on which, the relief claimed by the petitioner for counting his past service in Government of Haryana has been declined, is that his case falls within the ambit of Rule 3.17-Note 3(b) of Punjab Civil Services Rules Volume II (*for short, "Services Rules"*). For the proper appreciation of the matter in controversy, it would be desirable to reflect the said provision, it reads as under:-

“ Rule 3.17-Note 3(b):- Those employees who while holding temporary posts under Central/State Governments apply for post under Central/State Government direct without permission and resign their previous post to join the new appointment under Central/State Government will not be entitled to count their previous service for pension.”

3. A glance at the aforesaid provision transpires that an employee, who while holding temporary post under Central/State Government apply for the post under the Central/State Government directly, that too, without permission and resign his/her previous post to join new appointment, he is not entitled to count his previous service towards pension.

4. Here in the case in hand, there is nothing on the record to suggest that petitioner was holding a temporary post when he applied for post of Assistant Superintendent Prisons Haryana or that he has applied directly without permission of the concerned officer where he was earlier working and resigned. The aforesaid provision makes it obligatory upon the employer to satisfy himself that the requisite documentary evidence is available in this regard before declining or rejecting the claim to count the previous service rendered by an employee in any department of Central/State Government. The relief to the petitioner has been declined by the Director General of Prisons, Haryana vide impugned order dated 08.01.2013 simply on the ground of non-availability of the record in his office or in the office of the Principal Government Senior Secondary School, Duzana, District Jhajjar and further that there is no entry in the service book of the employee suggesting his proper relievement from the service by the Education Department.

5. Here, it would be pertinent to mention that it is incumbent upon the appointing and punishing authority right from the advertisement of post, selection of the candidates retirement of the employees but in the case in hand not only the Education Department, the Prisons Department has also utterly failed to do it. For the lapse and omission on the part of the appointing and punishing authority i.e. Prison Department, Haryana, the petitioner cannot be made to suffer particularly when it is evident from the contents of the Service Book (Annexure P-1) that the petitioner joined the services on 14.11.1972 on temporary basis as SS Master and his services as such were regularized vide DPI order No.8/17-78-E-II(1) dated 29.11.1978 w.e.f. 01.01.1979. The petitioner tendered his resignation in the office of District Education, Rohtak on 19.06.1983 and joined the new post as Assistant Superintendent (Prisons) on the next day i.e. 20.06.1983 and these facts are evident from documents (Annexures P-2 and P-3). There was no break after the resignation tendered by petitioner in the Education Department and the joining to the new post as Assistant Superintendent (Prisons) Haryana.

6. Thus, in the above referred circumstances, the provision contained in Services Rules which has already been reproduced above in paragraph No. 2 is not attracted in the facts and circumstances of the instant case and by applying the said provision, the petitioner cannot be debarred from the benefit of counting his previous service rendered in the Education Department.

7. In the light of what has been discussed above, impugned order dated 08.01.2013 (Annexure P-9) is not sustainable in the eyes of law. As such, it stands quashed and mandamus is issued to the respondents to count the

service rendered by the petitioner in the Education Department towards pensionary benefits as per Service Rules. The respondents are further directed to refix the pension and calculate the same to pay the difference of pension as well as other benefits which have accrued on account of inclusion of service earlier rendered by him in Education Department, within a period of three months from the date of receipt of certified copy of this order. In case of failure, petitioner shall be entitled to interest @ 9% per annum, from 38 months prior to the date of institution of instant petition till actual payment.

8. No order as to costs.

FEBRUARY 20, 2018
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes*
Whether reportable *Yes/No*