# HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**LPA No.1095 of 2015 (O&M)**
**Date of Decision: 23.08.2018**

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Joginder Singh ...Appellant

VS.

State of Punjab & Ors. ... Respondents

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**Coram : Hon'ble Mr.Justice Surya Kant**
**Hon'ble Mr.Justice Sudip Ahluwalia**

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Present: Mr. PC Arora, Advocate for the appellant

Mr. Rajesh Bhardwaj, Sr.DAG Punjab

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## SURYA KANT J. (Oral)

(1) This Letters Patent Appeal is directed against the order dated 10.03.2015 whereby learned Single Judge has turned down the appellant's claim to count the service rendered by him on 'temporary basis' from 28.02.1979 to 31.03.1985 towards 'qualifying service' for the purpose of pension and other retiral benefits.

(2) The facts are not in dispute.

(3) The appellant was appointed on 28.02.1979 on the post of JBT in the pay scale of ₹ 150-300 with all admissible allowances on six month basis till he was to be replaced by a regular employee. The appointment was made on "purely temporary" basis and the appellant could be relieved any time without serving any notice. On such appointment, the appellant was posted against a 'leave vacancy' in Government Primary School, Banwala, Samana-I at Patran, District Patiala. The appellant continued to serve on the above-stated post uninterruptedly till his services were regularized w.e.f. 01.04.1985. Suffice it to mention that the regular incumbent against whose 'leave

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vacancy' the appellant was posted, never came back and resumed his duties. The appellant retired from service on attaining the age of superannuation on 31.08.2010. As the service rendered by him from 28.02.1979 to 31.03.1985 were not counted towards 'qualifying service' for the purpose of pension and other retiral benefits, the appellant filed writ petition seeking a direction to regularize his services retrospectively under the Government instructions dated 28.10.1980 and count the said service towards 'qualifying service'.

(4) Learned Single Judge has vide order under appeal declined the appellant's claim on the premise that as per the Circular issued by the Finance Department, service rendered against a 'leave vacancy' is not countable for pensionary benefits.

(5) We have heard learned counsel for the parties at a considerable length and gone through the record.

(6) It appears that the objection raised by the respondents is totally misdirected and misplaced and consequently, the entire service rendered by the appellant deserves to be counted towards 'qualifying service'. We say so for the reason that Rule 3.17-A of Punjab Civil Services Rules, Vol-II provides that "*all service rendered on establishment, interrupted or continuous, shall count as qualifying service*" and which shall include "*service rendered in work charged establishment*" as also "*service paid from contingencies*". The service rendered by the appellant fell in the 2$^{nd}$ category.

(7) Rule 3.30 further provides that a service which satisfies the conditions prescribed therein, namely, the remuneration of which are "(a) paid from the Government revenues; (b) paid from Funds in respect

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to which the Government hold the position of Trustee; and (c) paid by fees levied by law, or under the authority of the Government, or by Commission…". The 'service' paid from the 'revenues' qualifies under Rule 3.31 of the Rules *ibid.*

(8) Rule 3.17-A (before its amendment when "work charge service" was excluded from the definition of 'qualifying service') was subject matter of interpretation before a Full Bench of this Court in ***Kesar Chand vs. State of Punjab through the Secretary, PWD, B&R, Chandigarh & Ors., 1988 (2) PLR 223***, in which it was held that even work charged service rendered by an employee followed by his regular appointment shall count towards 'qualifying service' for the purpose of pension and other retiral benefits. The expression "service" contained in Rule 3.17-A has been well expanded in a catena of judgments laying down that *ad hoc* service followed by regular appointment, shall also count towards 'qualifying service' for the purpose of retiral benefits.

(9) It goes without saying that if the appellant was appointed on work charged or *ad hoc* basis, the service rendered by him from 28.02.1979 till 31.03.1985 would have been counted towards 'qualifying service'. The only objection raised by the respondents on the strength of an executive circular of Finance Department is that the service rendered against 'leave vacancy' would not be countable for the purpose of retiral benefits. Such an objection, with reference to the facts in the case in hand, appears to be totally illogical. The appellant was actually appointed on 'temporary basis' for a period of six months till he was to be replaced by regular appointee. Such appointment no less inferior than *ad hoc* appointment. After appointment, he was merely

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posted against a 'leave vacancy' where the regular incumbent had proceeded on leave. That regular incumbent did not turn up and consequently, the appellant continued to serve against the leave vacancy till his own services were regularized w.e.f. 01.04.1985. It was not a case of arrangement for a short duration of leave period which can be ignored for the purpose of retiral benefits. The appellant uninterruptedly served for six years without any break. The expression "temporary" recites in the appointment order of appellant connotes a definite meaning that the appellant's appointment was co-terminus with the joining of Teacher on regular basis and not on the joining of the teacher who had gone on leave. Had the teacher come back from leave, the appellant would have continued against any other vacancy till regular appointments were made. That being the import terms and conditions of his appointment letter, the view taken by learned Single Judge that the appellant was appointed against a 'leave vacancy' does not carry any weight. The appointment was on temporary basis for six months though the appellant was posted against a leave vacancy. That being the case, the wider interpretation of Rule 3.17-A *ibid* given by this Court from time to time would encompass the service rendered by the appellant on temporary basis within the meaning of 'qualifying service' for the purpose of retiral benefits.

(10) For the reasons afore-stated, the appeal is allowed; the order of learned Single Judge is set aside and the writ petition is accepted. It is directed that the pension of the appellant be re-fixed after counting the 'qualifying service' from 28.02.1979 till he retired from service. The arrears of pension shall be paid to the appellant within a

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period of *four months* from the date of receipt of certified copy of this order but without any interest.

**CM-3416-LPA-2018**

Reply filed by respondents No.1&4 is taken on record.

CM stands disposed of.

**(Surya Kant)**
**Judge**

**23.08.2018**
*vishal shonkar*

**(Sudip Ahluwalia)**
**Judge**

*1. Whether speaking/reasoned?* ***Yes***
*2. Whether reportable?* ***No***

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