

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

LPA No.1821 of 2016 (O&M)

Date of Decision: 24.09.2018

Atam Khan (*through LRs*)

...Appellant

VS.

State of Haryana & Ors.

... Respondents

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

Present: Mr. Vinod S. Bhardwaj, Advocate for the appellant
Mr. Ravi Dutt Sharma, DAG Haryana

SURYA KANT J. (Oral)

(1) This Letters Patent Appeal is directed against the order dated 16.08.2016 whereby learned Single Judge has dismissed the appellant's writ petition in which he sought a direction to count the past service rendered by him before his 'voluntary retirement' along with the service which he rendered after his fresh appointment, towards 'qualifying service' for the purpose of pension and other retiral benefits.

(2) The facts as such are not in dispute.

(3) The appellant joined as a Pump Attendant (Class IV post) in Public Health Department in the year 1990 and his services were subsequently regularized under the Government policy. He sought and was granted 'voluntary retirement' w.e.f. 30.09.2009. Soon thereafter, the appellant changed his mind and wanted to continue in service. He made a representation to allow him to withdraw his request for voluntary retirement. The Superintending Engineer, PHED Mewat Project Circle vide order dated 31.08.2010 (P11) rejected the appellant's request for withdrawal of request for 'voluntary retirement' but at the same time allowed the appellant "*to join his duty as a fresh entrant because the previous service stands forfeited under*

Rule 4.19 (b) of CSR Vol. 2". It was further stipulated that the appellant's previous service would not count for any purpose.

(4) Pursuant to the above-stated order, the appellant joined and served till he retired on attaining the age of superannuation w.e.f. 31.08.2013. Thereafter, the appellant represented in the year 2013 that the service rendered by him from the year 1990 to 2009 may be counted towards 'qualifying service' for the purpose of pension and other retiral benefits. His request was turned down in view of the conditions imposed in the letter of fresh appointment dated 31.08.2010. He unsuccessfully challenged the order of rejection of his claim before the learned Single Judge, who has viewed that having served the Department for 19 years, the appellant was bound to know the Rules governing his service and he ought not have either taken voluntary retirement or accepted the fresh appointment.

(5) Still aggrieved, the appellant has filed this intra-Court appeal.

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

(7) The appellant in his writ petition has specifically challenged the order dated 31.08.2010 (P11) partially to the extent it stipulates that his past service will not be counted for any purpose. Learned Single Judge has relied upon Rule 4.23 of CSR Vol.-II which says that if there is interruption in service between two spells of permanent or temporary service, such interruption may be condoned by the competent authority provided that the interruption should have been caused by reasons beyond the control of Government employee or that the service preceding the interruption should not be less than five years 'duration'. The Rule further provides that the

interruption should not be of more than one year duration. Rule 4.23 reads as follows:-

“4.23. Interruption in service (either between two spells of permanent, or temporary service or between a spell of temporary service and permanent service or vice versa) in the case of an officer retiring on or after the 5th January, 1961, may be condoned, subject to the following conditions, namely:-

(1) The interruption should have been caused by reasons beyond the control of Government employee concerned.

(2) Service preceding the interruption should not be less than five years 'duration'. In cases where there are two or more interruption, the total service, pensionary benefits in respect of which shall be lost if the interruption are not condoned should not be less than five years.

(3) The interruption should not be of more than one year's duration. In cases where there are two or more interruption, the total period of all interruptions to be condoned should not exceed one year.”

(8) What it appears is that instead of challenging the condition imposed in the order dated 31.08.2010, the appellant ought to have applied to the competent authority for condonation of 'interruption of service' under Rule 4.23 *ibid*. It deserves mention that the appellant, in all circumstances, fulfilled two out of three conditions mentioned in the said Rule, namely, the service

rendered by him before interruption was more than five years i.e. 19 years and secondly, the interruption period is also less than one year.

(9) The third condition, namely, *“interruption should have been caused by reasons beyond the control of Government employee concerned”* may be a debatable issue.

(10) True it is that the appellant himself sought and was granted ‘voluntary retirement’ but soon thereafter he withdrew his request for voluntary retirement. It was not within his control to command the competent authority to accept his later request. The interruption though is partially attributable to the appellant but after the withdrawal of request for ‘voluntary retirement’ the fact-situation was beyond his control.

(11) The competent authority, if satisfied with the mitigating circumstances pleaded by the appellant, would have been well within its right to condone the break and club both the spells of services so as to enable the appellant to earn pension and other retiral benefits, more-so when there is nothing on record to suggest him ineligible for post retiral benefits.

(12) Learned Single Judge ought to have appreciated that the appellant belongs to one of the most backward areas of State i.e. Mewat and was a semi-literate Class-IV employee. It will be too far-fetched to infer that the appellant was aware of future implications of the Rules or of his hasty decision in seeking ‘voluntary retirement’.

(13) In the light of the above discussion, we are satisfied that the appellant’s request to condone break/interruption in service between two spells of service requires dispassionate, objective and sympathetic consideration by the competent authority.

(14) The appeal is accordingly allowed in part; the order under appeal dated 16.08.2016 is set aside and the appellant's writ petition is accepted in part, with a direction to the Principal Secretary, Department of PWD (Public Health), Haryana to consider the appellant's request for condoning the interruption in two spells of his service and unless there are compelling reasons of grave nature, let the break be condoned and consequential benefits be granted to the appellant.

(15) Appropriate decision shall be taken within a period of three months from the date of receipt of certified copy of this order.

(16) It is clarified that if the competent authority accepts the claim of the appellant, his pay shall be fixed on notional basis only and no arrears of pay shall be paid except the arrears of pension without interest, which shall be paid before 31.03.2019. As an abundant precaution, it is further clarified that in case the State Government does not accept the claim of the appellant in the above-directed terms, he shall be at liberty to re-agitate the matter before this Court.

(17) Ordered accordingly.

(Surya Kant)
Judge

24.09.2018

vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
Yes