

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

CWP No. 12456 of 2012 (O & M)

Date of Decision: 25.01.2019

Avneet Saini

.....Petitioner

vs.

Panjab University and another

.....Respondents

CORAM HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. M.S. Longia, Advocate, for the petitioner.
Mr. Suvir Sidhu, Advocate, for respondent No.1
Mr. Rohit Dheer, Advocate, for respondent No.2

ARUN MONGA, J. (Oral) :

1. The present petition has been filed, inter alia, seeking issuance of a writ in the nature of mandamus directing respondent No.1/Panjab University to give benefit of the past service of 3 years rendered by the petitioner at Goswami Ganesh Dutta Sanatan Dharma College, Chandigarh (respondent No.2).

2. The petitioner has pleaded that her case is squarely covered by Regulation 10 of the University Grants Commission Regulations, 2010, particularly, sub Clause (c) and sub clause (f) (iii) of Clause 10.1 thereof.

The relevant portion is extracted herein below :-

“10.0 Counting of past services for direct recruitment and promotion under CAS (Career Advancement Schemes)

10.1 Previous regular service, whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/professional organisations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR, DBT, etc. should be counted

for direct recruitment and promotion under CAS of a teacher as Assistant Professor, Associate Professor, Professor or any other nomenclature these posts are described as per Appendix III-Table No. II provided that

(a) & (b) xxxx xxxx xxxx

(c) The candidate for direct recruitment has applied through proper channel only.

(d), (e) xxxx xxxx xxxx

(f) The previous appointment was not as guest lecturer for any duration, or an ad hoc or in a leave vacancy of less than one year duration. Ad hoc or temporary service of more than one year duration can be counted provided that :

(i) & (ii) xxxx xxxx xxxx

(iii) the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break.”

3. Succinctly, the factual background is that the petitioner while working in the college/respondent No.2 applied for the post of Assistant Professor in the Department of Biophysics in Panjab University, Chandigarh (respondent No.1), which had been so advertised, vide advertisement No. 1/2010 dated 29.01.2010 (Annexure P-4). Prior thereto, she had been working as Assistant Professor for a continuous period of 3 years w.e.f. 02.07.2007 until the date of her resignation i.e. 02.07.2010 in Goswami Ganesh Dutta Sanatan Dharma College, Chandigarh

4. After undergoing the selection process, the petitioner was duly selected which was later on duly approved by the Syndicate and also by the Senate of Panjab University. Pursuant thereto, appointment letter dated 21.07.2010 (Annexure P-7) was issued. The appointment letter clearly envisaged that her appointment was strictly subject to UGC Guidelines and it further stated as below :

“In case you are employed, you are also required to bring relieving order from your present employer, failing which you will not be allowed to join.”

5. In anticipation of her appointment, the petitioner had already submitted her resignation vide her letter dated 02.07.2010 (Annexure R-2/3). Accepting her resignation, on the very same day respondent No.2-College issued her relieving letter/certificate (Annexure R-3), which states as below :-

“This is to certify that Ms. Avneet Saini has served this institution as a Lecturer/Asstt. Professor in the Department of Bio-informatics from 2.7.2007 to 2.7.2010. She has left this job on her own on 2.7.2010.

During this period, her work and conduct has been satisfactory.

I wish her all success in life.

Sd/-
Principal
GGDSD College,
Chandigarh.”

6. As per the terms mentioned in the appointment letter (Annexure P-7), the said relieving certificate was duly submitted by the petitioner to respondent No.1 and pursuant thereto, she joined on the very next day of issuance of her appointment letter.

7. It is thereafter, that the petitioner has been pursuing her cause for grant of benefit of continuity of her past service, which, for no fault of her, has not been given to her. The petitioner states that she submitted representations dated 09.09.2010 (Annexure P-8) followed by another one dated 07.12.2010 (Annexure P-9) for mitigation of her grievance. However, the same were rejected vide impugned order dated 03.05.2011 (Annexure P-10), in a very cryptic and non speaking manner, in the following terms :-

“I am to inform you that the Registrar after looking into the case has not acceded to her request for counting of past services rendered at GGDSD College, Sector 32, Chandigarh, as her request is not covered under UGC Regulation, 2010.”

8. Apropos the above non-speaking order, the petitioner once again submitted an elaborate representation dated 12.05.2011 (Annexure P-11), giving the entire background of her selection process, as also relying on Regulation 10 of UGC Regulations 2010, *ibid*. Taking due cognizance of it, respondent No.1 replied vide letter dated 23.05.2011 (Annexure P-12), asking her to provide a certificate from her previous employer, clarifying, whether she had applied through the proper channel. The same was also provided by the petitioner. Her previous employer issued a letter dated 30.07.2011 (Annexure P-13). Qua the application through proper channel, her previous employer stated, as below :-

“(iii) Not applicable as the nature of her appointment was temporary but likely to continue basis.”

9. As respondent No.1 did not respond after information being so provided, the petitioner made another representation dated 02.02.2012 (Annexure P-14). Vide impugned order dated 10.04.2012 (Annexure P-15), she was informed that her request had again been declined by the Vice Chancellor, as she had neither applied through proper channel nor has continuous past service as per UGC Regulations. However, being sanguine, she once again submitted a representation dated 17.04.2012 (Anexure P-16). Once again vide impugned order dated 04.05.2012 (Annexure P-17), her request was declined by a cryptic and non-speaking order. It stated that her request for counting of past service and pay protection had not been

accepted by the Registrar, as, neither had she applied through proper channel, nor her past service fell under the UGC Regulations, 2010. Hence, the present writ petition.

10. In the written statement, filed by the contesting respondent No.1, the same stand, as in the impugned orders, has been taken though with a little elaboration. It is curious to note that while the impugned orders are premised on the fact that she had not applied through proper channel, whereas the main thrust in the pleadings filed before this Court is that she was not entitled for the benefit owing to the fact that there was a gap of 20 days between the date of her resignation from the college and date of joining the service in the University.

11. Respondent No.2/college, a pro-forma party, filed its reply, even though no relief is claimed against it. Respondent No.2 opposes the claim of the petitioner on the ground, that since she had earlier approached the Education Tribunal, seeking payment of arrears of pay on account of revised pay scales as notified by UGC, she is, therefore, barred to file present petition. On merits, the claim of the petitioner is neither supported nor opposed by respondent No.2 other than the technical prayer that the writ petition may be dismissed.

12. I have gone through the pleadings and the record appended thereto and have also heard the rival contentions of the learned counsel for the respective parties.

13. The impugned orders dated 03.05.2011 (Annexure P-10), 10.04.2012 (Annexure P-15) and 04.05.2012 (Annexures P-17) are not only non-speaking and cryptic but are also based on the completely wrong

premise that the case of the petitioner is not covered by Regulation 10 of the UGC Regulations, 2010.

14. A perusal of Regulation 10 *ibid* leaves no manner of doubt that past service is to be counted as long as a candidate has applied through the proper channel, even if his/her previous service was on ad hoc or temporary basis for not less than one year duration and the candidate has been selected to a permanent post without any break in service. The respondents have failed to show as to how, when tested on any of the touch stones as envisaged in Regulation 10 *ibid* the petitioner does not qualify for benefit of counting her previous service.

15. The argument of the learned counsel for the respondents that the petitioner did not join without any break after her selection, as there was a gap of 20 days, is devoid of merit. The said gap of 20 days, even if assumed to be factually correct (though disputed by petitioner), cannot be construed as “break in service”. Joining period, taken between one job to another at the time of switch over, is “break between the service” and not “break in service.” Break in service has to be seen from the angle, if there was a break in continuous service during the previous service with the former employer/college.

16. I am also in respectful agreement with a Single Bench judgment rendered by this Court in **“Dr. Latika Sharma v. The Panjab University and others** bearing CWP No. 8417 of 2005 decided on 17.9.2014, on which a strong reliance has been placed by learned counsel for the petitioner. The said judgment has since attained finality, as no LPA was preferred by the University. Relevant part thereof is reproduced herein

below :

“ In service jurisprudence, reasonable joining time (atleast one week) is afforded even in a case of transfer of an employee from one place to the other within the State. Here is a lady teacher, who has come all the way from Mumbai to Panjab University at Chandigarh and availed 10 days joining time, which cannot by any stretch of reasoning or imagination be construed as unreasonable. Even the period of joining time availed is irrelevant, as the factor essential is that she joined her service within the extended time. That apart, once the respondent-University considered her to have joined within the granted/sanctioned extended time and protected her pay by counting her past service, it cannot turn around and assume a non existent basis for denying the claimed benefit under the Notification dated 24.12.1998.

*The said gap in service also cannot be construed as a “break in service” as contemplated in the Notification dated 24.12.1998 rendering a Lecturer ineligible for counting of past service, since it relates to break in the “previous service” and not break between the previous service at the former college and time taken for joining/adjusting/absorbing the petitioner in the subsequent colleges. The issue is no longer res integra. A Division Bench of this Court in a case reported as **2003 (1) RSJ 600** titled as **R.P. Chillar & Ors. v. State of Haryana & Ors.** in similar circumstances has already settled the issue.”*

17. The other ground on which respondent No.1 has sought to justify the denial of the benefit of pay protection and consequential benefits for the past service is that the petitioner had not applied for the post of Assistant Professor in University through proper channel. To my mind, the same is wholly untenable. In Dr. Latika Sharma’s case, *ibid*, it was also

observed/held as under :

“ The fourth alternative argument that the petitioner has not pleaded that she had “applied through proper channel “at the time of her selection and appointment to the present University and thus, does not fulfill one of the requirements of clause/para 8.3.0 (reproduced in para 9 here above) of the notification dated 24.12.1998 (Annexure P-8), therefore not entitled to counting of her past service for placement in the Senior Scale/Grade, also cannot be accepted. It is not the case of the respondent –University that the petitioner did not fulfill the requirement, if any, of “applying through proper channel”. The said term has not been statutorily or otherwise defined anywhere, however, in common parlance it is well understood to mean to apply through a hierarchical channel, so as to protect the interest of the previous institution as also serve the interest of the applicant as well as the succeeding institution. The previous institution gets prior knowledge of the applicant employee seeking employment elsewhere, as also an opportunity to express its opinion on the employee which may benefit the succeeding institution and, perhaps, the employee. The fulfillment of the said condition in the normal course of events is directory and mandatory in nature. The fact that the petitioner had submitted her “relieving order” from her previous college, in terms of her appointment letter, before permitting to join the respondent – University indicates that there was nothing due or against the petitioner and respondent – University having accepted the same would, in the opinion of this court, give rise to an inevitable inference that there is substantial compliance of the said condition. Thus, the argument is rejected.”

I am in respectful agreement with these observations of and the view taken by the Co-ordinate Bench of this Court. The same are fully applicable to the instant analogous case. That itself is enough to repel this

plea of respondent No. 1 seeking to justify refusal of the petitioner's claim.

18. Besides, the relevant advertisement (Annexure P/4), issued by respondent No.1, nowhere says that it was mandatory that the candidates already in service could apply for the advertised post only through the previous employer. It is not the case of the respondents that, while applying for the advertised post, the petitioner had concealed the fact of her being already employed with respondent No.2. In fact the conceded position is that the previous appointment of the petitioner with respondent No.2 was made with approval of respondent No.1. Further, respondent No.1 University is supposed to be in possession of the petitioner's application for the advertised post of Assistant Professor in Biophysics. Curiously, the same has not been produced by respondent No.1. It is obvious that while selecting and appointing the petitioner, it was within the knowledge of respondent No.1 that the petitioner was already in the service of respondent No.2. In view of this, it seems unjust and unfair on the part of respondent No.1, after having entertained the petitioner's application and candidature, and having selected and appointed her on the advertised post, to reject her claim for the benefit of past service on the technical plea that her application for the advertised post under respondent No.1, was not submitted through proper channel.

19. Still further, the petitioner has specifically averred in her petition *"....It is pertinent to mention here that the petitioner applied through proper channel, however, the petitioner was informed by the Principal of respondent No.2 college, that she being a temporary employee, has to apply for the aforesaid post independently in the normal course."*

Qua this averment, the only reply of respondent No.2 is that it is matter of record. While dealing with this aspect of the case, respondent No.1 has averred that *“the petitioner has not applied through proper channel as is envisaged from the application form through which she had applied for the post of Assistant Professor in Biophysics.”* As stated above, the relevant application has not been produced, giving rise to an inference against this stand taken by respondent No.1.

20. In view of the above discussion I am of the opinion that respondent No.1 University is not justified in rejecting the petitioner's claim for benefit of past service for pay protection, etc., on the ground that her application for the post of Assistant Professor in Biophysics was not submitted to respondent No.1 through proper channel. Accordingly, this plea of respondent No.1 is also rejected.

21. As far as the objection of respondent No.2 on maintainability of writ petition is concerned, the same is also not sustainable in view of para 6 of the judgment passed by the Education Tribunal pronounced on 01.08.2018, which for ready reference is reproduced herein below :-

“6. Before parting with this judgment it needs to be pointed out that in petition filed by appellant which is pending before Hon'ble High Court, she has prayed for directing Panjab University to count her past service rendered in the college, whereas in the present case arrears of revised pay scale (as revised from 1.1.2006) has been sought by her. The cause of action in both the cases is different.”

22. The Education Tribunal has rightly opined above and I find that the case filed before this Court is entirely on a separate cause of action and the relief sought herein is entirely different from the one which was

sought from the Education Tribunal.

23. In the circumstances, petition is allowed and orders dated 03.05.2011, 10.04.2012, 04.05.2012 (Annexures P-10, P-15 and P-17 respectively) are quashed, with a direction to respondent No.1 to give the benefit of petitioner's past service at Goswami Ganesh Dutta Sanatan Dharma College, Chandigarh with all consequential benefits, including pay protection, increments as also arrears of pay and increments etc. within three months from the date of receipt of certified copy of this order.

(ARUN MONGA)
JUDGE

25.01.2019
shalini

Speaking/Reasoned	Yes/No
Reportable	Yes/No