

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

CWP No.14914 of 2018
Date of decision : 07.05.2019

Dr. Sunil Gambhir

...Petitioner

Vs.

The State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Chopra, Senior Advocate,
with Mr. Gaurav Sharma, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Ritu Bahri, J. (oral)

Petitioner is seeking quashing of the order dated 16.05.2018 (Annexure P-9), vide which, his claim for counting of the service rendered on contract basis from 21.11.1997 to 14.07.1999 as qualifying service for the purpose of pension and other benefits has been rejected.

Initially, petitioner had filed CWP No.4557 of 2018 seeking direction to the respondents to count his contractual service w.e.f. 21.11.1997 to 14.07.1999 as qualifying service for pension and other pensionary benefits. This petition was disposed of vide order dated 26.02.2018 (Annexure P-8) by giving direction to the respondents to decide his representations dated 14.07.2017 and 18.01.2018. In compliance with the said order passed by this Court, the respondents have passed the impugned order dated 16.05.2018 (Annexure P-9) and rejected his claim.

Upon notice, written statement on behalf of the respondents has been filed, wherein they have not disputed the fact that petitioner was

initially appointed as Medical Officer on contract basis on a fixed salary of Rs.8000/- per month vide appointment letter dated 06.11.1997 (Annexure P-1) and he joined on 21.11.1997 at Primary Health Centre, Gudha (Kurukshetra). Subsequently, the petitioner took part in the regular selection process initiated by the Haryana Public Service Commission. Pursuant to the recommendation made by HPSC, petitioner was offered fresh appointment for the post of Medical Officer vide appointment letter dated 10.07.1999 (Annexure P-2). Consequently, he joined on 14.07.1999 on regular basis at Primary Health Centre, Bilaspur (Yamunanagar).

Vide impugned order dated 16.05.2018 (Annexure P-9), claim of petitioner has been rejected keeping in view clause 10 and 11 of the appointment letter dated 06.11.1997 (Annexure P-1), which are reproduced as under:-

“10. The service rendered on contract basis shall not count towards the benefit of pension or gratuity etc.

11. This offer of appointment will not count as service and will not bestow upon you any claim for regular appointment against any post.”

Learned counsel for respondents as argued that the petitioner had accepted the above two conditions and he cannot be given benefit of this tenure of service towards pensionary and other benefits.

After hearing learned counsel for the parties, present petition deserves to be allowed. Reference, at this stage, can be made to a judgment passed by Full Bench of this Court in **Kesar Chand vs. State of Punjab through the Secretary, P.W.D. B&R, Chandigarh and others**, 1988 (5) SLR 27 (Annexure P-10). In that case, while considering Rule 3.17 (ii) of Punjab Civil Service Rules, Volume 2, the Full Bench has held that the services rendered on work-charge basis before an employee is regularized,

have to be counted as qualifying services for pension. In para 19 of the judgment, it was observed as under:-

“19. In the light of the above, let us examine the validity of rule 3.17 (ii) of the Punjab Civil Services rules, Vol. II. This rule says that the period of service in a work-charged establishment shall not be taken into account in calculating the qualifying service. After the services of work-charged employee have been regularised, he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1, 1972, between the workmen and the Chief Engineer, P.W.D. (B&R), Establishment Branch, Punjab, Patiala, which was published in the Government Gazette dated July 14, 1972. Even otherwise, the matter was settled by the Punjab Government Memo No.14095-ERI (3) -72/5383 dated 6th February, 1973 (Annexure P7), where it was stated that all those work charged employees who had put in ten years of service or more as on 15th August, 1972, their service would be deemed to have been regularised. Once the service of a work charged employee have been regularised, there appears to be hardly any logic to deprive him of the Pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strike at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government had to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for lesion and those who started as work-charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work – charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub rule (ii) of rule 3.17 of the rules have to be struck down being violative of Article 14 of the Constitution.”

The aforesaid judgment had been followed by this Court in **Rai**

No.2246 of 2008, decided on 18.08.2008 (Annexure P-11). In this case, the petitioners were appointed on daily wages and their nomenclature was changed to Securitymen on contract basis. After their services were regularized, they were held entitled for pension, if they had 10 years of qualifying service. However, period spent on contract basis was not counted as qualifying service. By applying the ratio of Full Bench judgment in **Kesar Chand's** case (supra), the writ petition was allowed and the contractual employees, who had rendered continuous service (ignoring nominal breaks) followed by regularization in a pensionable establishment, were held entitled to be treated at par with adhoc employees in such establishments, for counting their qualifying service for pension.

Further reference can be made to a judgment passed in **Dr. Dharampal Singh vs. Punjab Agricultural University, Ludhiana and another,** CWP No.13528-2001, decided on 03.12.2008 (Annexure P-12). In this case, petitioner was appointed as Research Fellow on contract basis and subsequently, he was regularly selected as Assistant Animal Geneticist in the scale of Rs.700-1600. Later on, he was promoted to the post of Associate Professor on 16.03.1996 w.e.f. 18.03.1996 in the scale of Rs.3700-5700. The aforesaid writ petition was allowed taking into account the service rendered by the petitioner (therein) from 25.01.1978 to 17.03.1982 when he was working as Research Fellow on fixed salary, without any break to be counted towards pension. The aforesaid period was to be considered for pensionary benefits keeping in view the Division Bench judgment of this Court in **Rai Singh's** case (supra).

Ratio of the aforesaid judgments (Annexures P-10 to P-12) is directly applicable on the facts of the present case. In this case, the

petitioner was initially appointed as Medical Officer on contract basis on a fixed salary of Rs.8000/- per month vide appointment letter dated 06.11.1997 (Annexure P-1) and he joined on 21.11.1997 at Primary Health Centre, Gudha (Kurukshetra). Thereafter, he was appointed on regular basis after his name was recommended by the Haryana Public Service Commission vide appointment letter dated 10.07.1999 (Annexure P-2). He joined on the said post on 14.07.1999 on regular basis at Primary Health Centre, Bilaspur (Yamunanagar). The period from 21.11.1997 to 14.07.1999 has to be counted as qualifying service for pension under Rule 3.17 (ii) of Punjab Civil Service Rules, Volume 2, as held by the Full Bench in **Kesar Chand's** case (supra).

Resultantly, the present petition is allowed, impugned order dated 6.05.2018 (Annexure P-9) is set aside and the respondents are directed to consider the case of petitioner by including the contractual period from 21.11.1997 to 14.07.1999 as qualifying service for the purpose of pension. This exercise be completed within a period of four weeks from the date of receipt of certified copy of this order.

07.05.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No