

CWP-23738-2016

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

CWP-23738-2016

Date of Decision: 25.01.2019

Rani

... Petitioner

vs.

State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.P.S.Sandhu, Advocate, for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J

In the present writ petition, the prayer is to quash the order dated 23.09.2014 (Annexure P3) by which the respondents have declined to count the *ad hoc* service rendered by the petitioner from 18.07.1974 till 17.11.1978 as a qualifying service.

The facts which have been enumerated in the present writ petition are that the petitioner joined as a Clerk in the office of Commanding 1 Punjab Girls Battalion, NCC, Amritsar on 18.07.1974 through employment exchange and he served there upto 13.12.1976. Thereafter, the petitioner joined as a Clerk in the office of the Assistant Registrar Cooperative Society, Amritsar and he continued to serve there from 14.02.1977 till 14.06.1977. There is no break between the service of the petitioner as a Clerk in the office of Commanding 1 Punjab Girls Battalion, NCC, Amritsar and the office of the Assistant Registrar Cooperative Society, Amritsar. Thereafter, the petitioner served in the office of Executive Engineer, Punjab Water Supply and Sewerage Division No-II, Amritsar from 18.11.1977 till 14.11.1978. Thereafter, the petitioner joined as a Clerak in the office of Labour and Conciliation Officer-II, Amritsar on 03.02.1979. This appointment was also through the employment exchange and the petitioner continued working there till he superannuated on 31.07.2008.

As per the averments made in the writ petition, the petitioner has been given the benefit of service which she had rendered prior to the joining as Clerk in the office of the Labour and Conciliation Officer-II, Amritsar and the pay of the petitioner was protected by counting the said period while fixing the pay in the Department of Labour & Conciliation Officer-II, Amritsar.

The relevant order passed is as under

“Labour Department, Punjab
OFFICE OF THE LABOUR COMMISSIONER, PUNJAB,
CHANDIGARH
OFFICE ORDER

The pay of Smt. Rani, Clerk of the o/o Labour-cum-Conciliation Officer, circle-I, Amritsar is fixed under rule 4.4 (b) read with rule 4.9 of the Punjab Civil Services Rules, Vol-I, Part-I, after allowing him the benefit of previous service rendered by him in the identical scale in the o/o Officer Commanding, Punjab girls, Battalion, N.C.C., Amritsar from 18.7.74 to 13.12.76 o/o Assistant Registrar Cooperative Societies, Amritsar from 14.2.77 to 14.6.77 and in the office of Executive Engineer, Punjab, Punjab Water supply and Sewerage Division-II, Amritsar from 18.11.77 to 17.11.78 (3 years 8 months and 28 days):-

<i>Date</i>	<i>Scale of Pay</i>	<i>Initial pay of appointment</i>	<i>Period of previous service countable for increment</i>	<i>Pay after counting previous service.</i>	<i>Date of next increment</i>
13.2.79	400-10-450/15-525/15-600	Rs.400/-	18.7.74 to Y-M-D 13.12.76 2-4-27 14.2.77 to 0-4-1 14.6.77 18.11.77 1-0-0 to 17.11.78 Total 3-8-28	Rs.430/-	15.5.80
1.5.80	-do-	-	-	440/-	Annual increment
1.5.81	-do-	-	-	450/-	-do-

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<i>Date</i>	<i>Scale of Pay</i>	<i>Initial pay of appointment</i>	<i>Period of previous service countable for increment</i>	<i>Pay after counting previous service.</i>	<i>Date of next increment</i>
1.5.82	-do-	-	-	465/-	-do-
1.5.83	-do-	-	-	480/-	-do-
1.5.84	-do-	-	-	495/-	-do-
1.5.85	-do-	-	-	510/-	-do-
1.5.86	-do-	-	-	525/-	-do-
1.5.87	-do-	-	-	540/-	-do-
1.5.87	-do-	-	-	555/-	-do-

Sanction is also hereby accorded to the crossing of efficiency bar by Smt. Rani, Clerk in the pay scale of Rs.400-600 raising her pay from Rs.450/- to Rs.465/- w.e.f. 1.5.82 and Rs.525/- to Rs.540/- w.e.f 1.5.87 under rule 4.8 of Punjab Civil Services Rules, Volume-I, Part-I.

Sd/-

Labour Commissioner, Punjab

Endst No. Est28956-59,
Date, Chandigarh the 10.5.88”

After the retirement, the petitioner submitted a request that the period for which the pay protection was given to her, should also be treated as a qualifying service for computing the pensionary benefits.

As the benefit was not being granted to the petitioner, petitioner approached this Court by filing CWP-17069-2014, which was disposed of by this Court on 22.08.2014. A direction was issued to the respondents by this Court to decide the claim of the petitioner within a period of two months.

In view of the direction issued by this Court, the respondents passed an order 23.09.2014 rejecting the claim of the petitioner on the ground that in respect of the service which the petitioner rendered in other organization and wants to get computed as a qualifying service, it is not clear as to whether the said appointments were made through the employment exchange or not. It was further stated that as there is no documentary proof given that earlier appointments were made after

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following due process of law, the said service cannot be taken into count as a qualifying service for computing the pensionary benefits. This order is under challenge in the present writ petition.

Upon notice of motion, the respondents have filed the reply.

The service rendered by the petitioner from 18.07.1974 till 13.12.1976, 14.02.1977 to 14.06.1977 and 18.11.1977 till 17.11.1978 in other departments has been admitted. It has been also admitted that the petitioner had been granted the benefit of pay protection in respect of the service rendered for the abovesaid period. Again the same objection was raised that there is no proof as to whether the petitioner joined the said service through employment exchange or not, and in the absence of said proof, the petitioner is not entitled for any relief and claim.

I have heard learned counsel for the parties and gone through the record.

It is a matter of fact, which stands admitted by the respondents that the petitioner had served for the period mentioned above in different departments, for which she is seeking relief of computing the same as qualifying service for the grant of pensionary benefits. Further it is admitted by the respondents that for the above said period, even the pay protection has been granted to the petitioner. Once the pay protection has been granted to the petitioner for the above said period, after her appointment in the office of Labour and Conciliation Officer-II, Amritsar, it cannot be said that the earlier service rendered by the petitioner was not rendered after following due process of law. It is only for the service, which an employee has rendered after getting appointed with due process of law, the benefit of pay protection is given. Once the pay protection was given to the petitioner for the above said period, no further proof was required to be submitted as to how she got the appointments.

It is not disputed that under the Rules, the petitioner is entitled for the counting of the said service as a qualifying service. The only dispute is as to whether,

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the petitioner got the appointment of the said department after the posts were duly advertised. The said requirement, in the opinion of this Court, is not material. The Full Bench of this Court in **Kesar Chand vs. State of Punjab and others, AIR 1988 Punjab, 265** has held that *ad hoc* service/daily wage service rendered by an employee is to be counted for pensionary benefits. For daily wage service, no advertisement is issued but still this Court held that an employee is entitled for counting of the said service while computing the pensionary benefits. The petitioner, in the present case, is on better footing as the respondents themselves have granted the benefits of pay protection to her for the service rendered by her from 18.07.1974 till 17.11.1978. Once, the pay protection has been granted for a particular period, the said period needs to be counted as a qualifying service.

The writ petition stands allowed. The impugned order dated 23.09.2014 (Annexure P3) is set aside. The respondents are directed to compute the period of service rendered by the petitioner for which she was granted for the benefit of pay fixation, as reproduced above as qualifying service for the grant of pensionary benefits. Let re-calculation of the pensionary benefits of the petitioner be done within a period of two months from the receipt of certified copy of this order and the actual benefits for which the petitioner becomes entitled for should also be released to her within a period of next one month.

25.01.2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No