

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 5782 of 2016

Date of Decision : 02.07.2019

Santosh Sehrawat

...Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Madan Pal, Advocate for the petitioner.

Mr. C.S. Bakhshi, Additional Advocate General, Haryana.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the claim of the petitioner is for the grant of pension in respect of the service, which she had rendered initially from 18.11.1980 till 30.05.1983 in the Department of Social Welfare, Haryana as a Supervisor and thereafter from 31.05.1983 till 30.06.1991 as Mukh Sewika in the Department of Development and Panchayat, Haryana.

The facts as mentioned in the present writ petition are that petitioner initially joined as a Supervisor on ad-hoc basis in the Department of Social Welfare, Haryana on 18.11.1980 and continuously worked there till 30.05.1983. While working in the Social Welfare Department, through a proper channel, the petitioner applied for the post of Mukh Sewika in the Department of Development and Panchayat, Haryana. After being selected as a Mukh Sewika, petitioner resigned from the post of Supervisor in the Social Welfare Department, Haryana in order to join the post of Mukh Sewika. The

said resignation was submitted on 30.05.1983, which was accepted and on

the very next day, petitioner joined as a Mukh Sewika in the Department of Development and Panchayat, Haryana on 31.05.1983. Thereafter, petitioner kept on working as Mukh Sewika till 18.11.1985. While working as a Mukh Sewika, petitioner was sent on deputation to the District Rural Development Agency, Narnaul on 18.11.1985 and kept on working there till 30.06.1991. Thereafter, petitioner was absorbed as Assistant Project Officer w.e.f. 01.07.1991 (Annexure P-4). She continued working there till 30.06.2012 when she retired from the service on attaining the age of superannuation. It has been admitted by learned counsel for the petitioner that the post of Assistant Project Officer/Project Officer in the District Rural Development Agency is not pensionable post and therefore in the present writ petition, the claim of the petitioner is that while working in the Department of Development and Panchayat, Haryana, petitioner had 10 years of service to her credit, which was good enough for the grant of pensionary benefits and, therefore, by taking her service from 18.11.1980 till 30.06.1991, petitioner had more than 10 years of service for which she is entitled for the benefit of pension from the Department of Development and Panchayat, Haryana. As the said benefit was not being extended to the petitioner, she filed Cwp No. 21178 of 2014, which was disposed of by this Court on 13.10.2014, asking the respondent-department to decide the legal notice which the petitioner had served upon the respondents claiming the benefit of pension. In pursuance to the order dated 13.10.2014, respondents passed an order dated 27.05.2015 (Annexure P-23) rejecting the claim of the petitioner for the grant of pension by counting the period from 18.11.1980 till 30.05.1983 as a qualifying service. The said order is under challenge in the present writ petition.

In pursuance to the notice of motion issued, the respondents have filed the reply where respondents have stated that keeping in view Rule 3.17 of the Civil Services Rules Volume-II, the period which the petitioner spent with the Department of Social Welfare Haryana from 18.11.1980 till 30.05.1983 as a Supervisor cannot be treated as a qualifying service. Further, an objection has been taken that the petitioner resigned from the post of Supervisor in order to join as a Mukh Sewika in the Department of Rural Development and Panchayat on 31.05.1983 and therefore, once the petitioner has resigned from the post of Supervisor, she cannot be granted any benefit for the said service.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present writ petition, it is not disputed that petitioner was working on ad-hoc basis as a Supervisor in the Department of Social Welfare, Haryana from 18.11.1980 till 30.05.1983. It is also not disputed by the respondents that petitioner resigned from the said post in order to join the post of Mukh Sewika on which post she was selected. It is also not disputed by the respondent-State that petitioner had applied through proper channel for the post of Mukh Sewika. Once, the petitioner had applied for the post of Mukh Sewika through proper channel and after being selected on the said post, petitioner resigned from the post of Supervisor, where she was working on ad-hoc basis in order to join on the newly selected post, the resignation submitted by the petitioner cannot come in her way and, therefore, the objection raised by the respondents that petitioner had resigned from the post of Supervisor to join the post of Mukh Sewika and, therefore, the resignation will take away all the service rendered by the

petitioner as Supervisor is contrary to the Rules. An employee, who resigns from a post in order to join on a newly selected post, the previous service is not forfeited. Rule 4.19(b) of the Punjab Civil Services Rules which deal with the said situations is reproduced hereunder:-

“4.19(b): Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.

In cases where an interruption in service is inevitable due to the two appointments being at different stations, such interruptions, not "exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the Government employee on the date of relief or by formal condonation under Rule 4.23 to the extent to which the period is not covered by leave due to the Government employee.

Note: The previous service of a Government employee who is transferred to a temporary appointment is forfeited by his resigning the temporary appointment and taking up another temporary appointment of his own accord."

Therefore the ground taken by the respondents that after resignation, no benefit of the service, which petitioner rendered from 18.11.1980 to 30.05.1983, is held to be bad as the same is contrary to Rule 4.19(b).

The next objection taken by the respondents is that Rule 3.17 of the Punjab Civil Services Rules prohibits the respondents for the grant of benefit by treating the service which the petitioner had rendered as a Supervisor in the Department of Social Welfare Haryana from 18.11.1980 till 30.05.1983 as a qualifying service. In order to examine the said

objection, Rule 3.17 is reproduced hereunder:-

"3.17 In the case of an officer retiring on or after 5th January, 1961, if he was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of:-

(i) Period of temporary or officiating service in non-pensionable establishment;

(ii) Deleted

(iii) period of service paid from contingencies.

Note-I : In the case of a Central Government employee who is permanently transferred to Haryana Government and becomes subject to these rules under Rule 1.1 (b) of these rules, the terms 'continuous temporary service or continuous officiating service', shall include such service rendered under Central Government.

Note-2 : In case of a purely temporary Central Government employee who is permanently transferred to Haryana Government and becomes subject to these rules, the term 'continuous temporary service' includes the temporary service under the Central Government. The pensionary liability in respect of such cases shall be allocated on the length of service.

Note-3 : (a) In respect of temporary employees of the following categories who render service under the Central/State Governments prior to securing posts under the Central/State Governments on their own violation in response to advertisements or circulars, including those by Union/State Public Service Commission and who are eventually confirmed in their new posts, the proportionate pensionary "liability in respect of temporary service rendered under the Central/State Governments to the extent such service would have qualified for grant of pension under the rules of the respective

Government, will be shared by the concerned Governments on a service share basis: -

(1) Those who having been retrenched from the service of Central/State Governments secured on their own employment under State/Central Government either with or without interruption between the date of retrenchments and date of new appointment.

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Government through proper channel/with proper permission of the administrative authority concerned.

Explanation:- Where an employee in category (2) is required for administrative reasons for satisfying technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement to join with proper permission, the new "posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement.

The gratuity, if any, received by the Government employee for temporary service under the Central/State Governments will, however, have to be refunded by him to the Government concerned.

(b) Those employees, who while holding temporary posts under Central/State Governments apply for post under Central/State Governments direct without permission and resign their previous posts to join the new appointment under the Central/State Governments will not be entitled to bount their previous service for pension.

A bare perusal of the above Rule would show that the service

which an employee had rendered though on ad-hoc basis, has to be counted

as a qualifying service for the grant of pensionary benefits. It is not disputed that the petitioner had rendered the service on ad-hoc basis and, therefore, she was appointed on a regular basis as Mukh Sewika on which post she continued working till 30.06.1991, therefore, the total period has to be treated as a qualifying service and there is no embargo which envisages that the period which the petitioner had spent as a Supervisor in the Department of Social Welfare Haryana from 18.11.1980 till 30.05.1983 cannot be taken as a qualifying service. The objection raised by the respondent is not born out of Rule 3.17 of the Civil Services Rules.

Further, in some what similar situation, wherein also an employee who was working on temporary basis was selected on regular basis on another post, had resigned in order to join the regular post, this Court held that service rendered on temporary basis is liable to be counted as a qualifying service for the grant of pensionary benefits. While deciding CWP No. 5115 of 1993, decided on 05.01.1995, titled as ***M.M. Lal Bareja Vs. State of Haryana***, this Court held that the service which an employee had rendered on temporary post before resigning from the said post is liable to be counted. While rendering the said judgment, this Court had taken into consideration provision of Rule 3.17. The relevant paragraph of the aforesaid judgment is as under:-

“3. Respondents have contested the writ petition on the ground of delay and also on the ground that the petitioner is not entitled to payment of pro-rata pension or death-cum-retirement gratuity. In their reply, the respondents have pleaded that the petitioner had not applied for appointment in a different organisation through proper channel and in any case when he had resigned from the service of the Government of Haryana, he has no right to claim benefit of pro-rata

pension or death-cum-retirement gratuity. In his replication, the petitioner has reiterated his claim for payment of pro-rata pension and other benefits on the ground that M/s. Hindustan Copper Ltd. is a Government of India undertaking and that there is no legal or other justification for not paying him the benefit of prorata pension and death-cum-retirement gratuity.

4. The only point which requires adjudication by the Court is as to whether the petitioner is entitled to be paid pension in lieu of the service rendered by him with the Government of Haryana prior to his joining the service of the National Mineral Development Corporation Ltd. While learned counsel for the petitioner has relied on Rule 6.1 and other rules contained in Chapter VI of the Punjab Civil Services Rules in support of the petitioner's case, learned Assistant Advocate General has relied on Rules 3.17, 5.1 and 5.2 of the Rules in support of her argument that the petitioner is not entitled to the benefit of pro-rata pension or death-cum-retirement gratuity.

5. Chapter III of the Punjab Civil Services Rules (Volume II) specifies the service which qualifies for pension. Section II deals with conditions of qualification. Rule 3.12 lays down that service of a Government servant does not qualify for pension unless it conforms to the three conditions, namely, (i) the service is under the Government; (ii) the employment is substantive and permanent; and (iii) the service is paid by Government. Rules 3.13 and 3.14 confer power upon the competent authority to declare a particular service to be qualifying service. Rule 3.15 contains special provisions regarding the police department. Rules 3.16, 3.17 and other rules which find place in this Chapter deals with various conditions enumerated in Rule 3.12. Chapter IV contains different provisions for reckoning of service for the purpose of pension. Rule 4.19 of this Chapter deals with resignation and dismissal. Chapter V deals with different kinds of pension and conditions for their grant. Chapter VI deals with amount of

pension. For the purpose of this petition, provisions of Rules 3.17 and 4.19(b) are relevant and, therefore, they are reproduced below:-

"3.17 In the case of an officer retiring on or after 5th January, 1961, if he was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of:-

(i) Period of temporary or officiating service in non-pensionable establishment;

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Governments to the extent such service would have qualified for grant of pension under the rules of the respective Government, will be shared by the concerned Governments on a service share basis: -

(1) Those who having been retrenched from the service of Central/State Governments secured on their own employment under State/Central Government either with or without interruption between the date of retrenchments and date of new appointment.

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Explanation:- Where an employee in category (2) is required for administrative reasons for satisfying technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement to join with proper permission, the new "posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement.

The gratuity, if any, received by the Government employee for temporary service under the Central/State Governments will, however, have to be refunded by him to the Government concerned.

(b) Those employees, who while holding temporary posts under Central/State Governments apply for post under Central/State Governments direct without permission and resign their previous posts to join the new appointment under the Central/State Governments will not be entitled to bount their previous service for pension.

4.19(b): Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.

In cases where an interruption in service is inevitable due to the two appointments being at different stations, such interruptions, not "exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the Government employee on the date of relief or by formal condonation under Rule 4.23 to the extent to which the period is not covered by leave due to the Government employee.

Note: The previous service of a Government employee who is transferred to a temporary appointment is forfeited by his resigning the temporary appointment and taking up another temporary appointment of his own accord."

6. A look at the above-quoted rules shows that the pension is payable even to such an employee who was holding temporary post under State Government and who may have subsequently resigned from the previous post in order to join another service under the Central or the State Government. These Rules also comprehend the grant of pension to a person who has resigned from service in order to take up another appointment and such resignation is not to be treated as resignation from public service.

7. The facts which have come on record of this case clearly show that the petitioner was permanent employee in the service of the Government of Haryana. He had applied for recruitment as Senior Stenographer in the National Mineral Development Corporation Ltd. through proper channel. After his selection, he resigned from service because the Government declined to give him the benefit of extraordinary leave. By the time he was relieved after resignation, the petitioner had rendered over 15 years of service with the Government of Haryana. In terms of

Rule 4.19(b) read with Rule 3.17 his resignation cannot be treated as a resignation from public service. His service with the National Mineral Development Corporation was a service in an undertaking of Government of India and, therefore, he cannot be deprived of his right to get pension in lieu of service rendered by him under the Government of Haryana. By denying him this benefit, the respondents have clearly violated his legal rights. He is, therefore, entitled to issue a writ of mandamus.”

Therefore, the case of the petitioner is also covered by the settled principle of law noticed above wherein, in somewhat similar situations, the benefit of service rendered on temporary basis has been directed to be treated as a qualifying service for the grant of pensionary benefits. Present writ petition is allowed. The petitioner's service which she had rendered from 18.11.1980 till 30.06.1991 is to be treated as a qualifying service for the grant of pensionary benefits. As the petitioner approached only in the year 2014 for the first time, she will not be entitled for any interest on the payments, which the petitioner will be found entitled for on account of grant of pensionary benefits.

Let, the respondents compute the pensionary benefits of the petitioner within a period of two months from the date of receipt of copy of this order and whatever the petitioner is found entitled for, will be released to her within a period of next one month.

Writ petition is allowed in above terms.

July 02, 2019
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*