

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

(234)

CWP-28903-2017

Date of Decision: November 28, 2019

Ved Parkash

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.K. Verma, Advocate, for the petitioner.

Ms. Safia Gupta, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the claim of the petitioner is that he is entitled for counting the service which he rendered from 01.10.1994 to 30.04.1988 on contractual basis, as a qualifying service for computing the pensionary benefits and the action of the respondents in declining the said claim vide order dated 20.03.2017 (Annexure P-8) is contrary to the settled principles of law.

As per the averments made in the writ petition, petitioner was appointed as a Driver in the Haryana Roadways, Rewari on 10.06.1994 for a period of three months on contract basis. Thereafter, the said contract was extended continuously upto May, 1997 and order dated 22.05.1997 was amended and ultimately, the services of the petitioner were regularized w.e.f. 01.05.1998 and petitioner continued to work with the respondents till the petitioner retired on medical grounds on 10.01.2014. The grievance of the petitioner is that only the benefit of regular service has been granted to him as a qualifying service for computing the pensionary benefits and the service, which the petitioner had rendered on contract basis, has not been

taken into account as a qualifying service for computing the pensionary benefits, which act of the respondents is contrary to the provisions of law governing the service especially Rule 3.17-A of the Punjab Civil Services Rules, as applicable to Haryana.

Upon notice of motion, the respondents have filed the reply. In the reply, the respondents have stated that petitioner was working on contract basis and not on daily wage basis or work charge basis and therefore, the said service cannot be taken into account as a qualifying service keeping in view the provisions of Rule 3.17-A of the Punjab Civil Services Rules and further the contractual service was interrupted by a break of 45 days and therefore, the claim of the petitioner for granting him the benefit of the service rendered on contractual basis from 01.10.1994 till 30.04.1998 to be taken as a qualifying service is contrary to the rules governing the service.

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

The rule governing the service as to which service is to be treated as a qualifying service is Rule 3.17-A of the Punjab Civil Services Rules, as applicable to Haryana. The said Rule is as under:-

“3.17-A. (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-

(i) Service rendered in work-charged establishment.

(ii) Service paid from contingencies:

x x x x x x x x x

(iii) Casual or daily rated service.”

A bare perusal of the above would show that if an employee is

being paid from the contingencies, the said service cannot be taken into account as a qualifying service for the grant of pensionary benefits. The respondents have failed to show this Court that the petitioner was being paid out of the contingencies even while working on contract basis. As there is no material to rebut the contention that the petitioner was not being paid from the contingencies, the contractual service rendered by an employee, will also be eligible to be treated as a qualifying service for computing the pensionary benefits.

This Court had an occasion to examine the said question of law while deciding **CWP No.7389 of 2015 titled as Raghbir Chand Vs. Bhakra Beas Management Board and others, decided on 15.01.2016.** By relying upon the provisions of Rule 3.17-A, this Court held that the contractual service is to be counted as a qualifying service, once the payment released to an employee is not from the contingencies. The relevant paragraphs of the said judgment are as under:-

4. In the present case, admittedly, petitioner had been appointed on contract basis for 89 days w.e.f. 01.07.2000 to 27.09.2000 vide Annexure P-1, from 01.07.2001 to 27.09.2001 vide Annexure P-2 and from 01.07.2002 to 27.09.2002 vide Annexure P-3. Thereafter, petitioner was appointed as Chageman Grade-II (Wireless Operator) on regular basis vide order dated 25.02.2003 (Annexure P-4).

5. Learned counsel for the petitioner has placed reliance on Rule 3.17-A (1) of Punjab Civil Services Rules (Volume-II) that all service rendered on establishment, interrupted or continuous, shall count as qualifying service. Said Rule reads as under:-

“3.17-A. (1) 3.17-A. (1) 3.17-A. (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment,

interrupted or continuous, shall count as qualifying service:-

(i) Service rendered in work-charged establishment.

(ii) Service paid from contingencies:

x x x x x x x x x

(iii) Casual or daily rated service.”

6. In view of the above Rule, the service rendered by the petitioner on contract basis from 01.07.2000 to 27.09.2000, 01.07.2001 to 27.09.2001 and 01.07.2002 to 27.09.2002 was liable to be counted while calculating the qualifying service of the petitioner towards pensionary benefits. A perusal of Annexure P-1 to Annexure P-3 does not show that the petitioner was being paid from contingency funds. Rather as per Annexure P-1 to Annexure P-3, petitioner had been appointed on contract basis for 89 days. Vide Annexure P-1 and Annexure P-2, petitioner was appointed on contract basis as a stop gap arrangement or till regular vacancy was filled up.

7. Accordingly, this petition is allowed. Respondents are directed to count the service rendered by the petitioner on contract basis from 01.07.2000 to 27.09.2000, 01.07.2001 to 27.09.2001 and 01.07.2002 to 27.09.2002 while calculating his qualifying service for pensionary benefits. Needful be done by the respondents within four months from the date of receipt of certified copy of this order.”

Learned counsel for the respondents is not able to distinguish the case of the petitioner with that of **Raghubir Chand's case (supra)**.

Keeping in view the above, wherein, even the Rule grants the petitioner the benefit of counting the service rendered on contractual basis as a qualifying service which has already been interpreted by this Court in **Raghubir Chand's case (supra)**, the present writ petition is allowed. Impugned order dated 20.03.2017 (Annexure P-8) is set aside. A direction is issued to the respondents to grant the petitioner the benefit of contract service which the petitioner has rendered by treating the same as a

qualifying service for computing the pensionary benefits. Let the pensionary benefits of the petitioner be re-computed and the arrears of the difference be released to the petitioner within a period of two months from the receipt of certified copy of this order.

The writ petition is allowed, in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

November 28, 2019
harsha

Whether speaking/reasoned: Yes
Whether reportable: Yes