

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision :03.04.2019

(1) CWP No. 9525 of 2016

Sandeep Nain and others

...Petitioner(s)

versus

Dakshin Haryana Bijli Vitran Nigam and others

...Respondent(s)

AND

(2) CWP No. 23471 of 2016

Baljinder Singh and others

...Petitioner(s)

versus

Dakshin Haryana Bijli Vitran Nigam and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.N. Sharma, Advocate for the petitioners.

Mr. Bhuwan Vats, Advocate for respondents No. 1 to 4.

RITU BAHRI, J. (Oral)

This order shall dispose of CWP-9525-2016 and CWP-23471-2016 having similar issue. However, the facts are being taken up from CWP-9525-2016.

The petitioners are seeking writ of mandamus for directing the respondents-Dakshin Haryana Bijli Vitran Nigam (in short 'DHBVN') to allow annual increments to the petitioners by counting extraordinary leaves sanctioned by the respondents for prosecuting higher technical studies.

Learned counsel for the petitioners, at the outset, refers to the orders dated 12.11.2007, 30.08.2012 and 11.02.2015 (Annexure P-5 colly) where in the case of one Dharam Veer-Junior Engineer, Sandeep Kumar-Lineman and Ramesh Kumar-JE-1 were granted leaves for higher technical studies. After completing their diplomas, they were granted leave of the kind due and were allowed annual increments by the competent authority

taking into consideration the leave period towards annual increments. The respondents, in the written statement, are not disputing the orders (Annexure P-5 colly) while sanctioning earned leaves, this period has been counted towards increments.

The petitioners are seeking parity keeping in view the orders (Annexure P-5 colly) as all the petitioners were appointed as Assistant Lineman as per the following details:-

Sr. No.	Name	Date of appointment
1.	Sandeep Nain	21.08.2007
2.	Sanjay Ranga	31.08.2007
3.	Devender Singh	25.05.2010
4.	Pardeep Kumar	25.05.2010
5.	Rajesh Kumar	25.05.2010
6.	Rajender	25.05.2010

As per Annexure P-1 colly, the petitioners were granted permission for acquiring higher qualification i.e. three years diploma in Electrical Engineering.

The stand taken by the respondents is that as per instructions dated 13.12.1989 (Annexure R-1/1), the length of service to get permission for acquiring higher qualification was extended from 3 years to 5 years and these instructions have been adopted by DHBVN vide letter dated 27.11.2012 (Annexure R-1/2). In the case of the petitioners No. 1 and 2, they had completed 5 years of service at the time of granting permission for higher studies and hence necessary benefits of increments have been granted to them but with respect to petitioners No. 3 to 6, they have not completed 5 years of service. Hence, they have not been granted benefits of annual increments and ACP.

Learned counsel for the petitioners has argued that Rule 4.9(a) of the Punjab Civil Services Rules contemplates the condition for which the service is counted in a time scale with respect to extra ordinary leave taken for higher studies. The petitioners can be granted benefit of increment as per note 5(b) (ii) and note 6. Note 5(b)(ii) and note 6 are reproduced as under:-

“(ii) All leave extraordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time scale applicable to a post in which a Government employee was officiating at the time he proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of India.

Provided that the competent authority may in any case in which it is satisfied that the extraordinary leave was taken for any cause beyond the Government employee's control or for prosecuting higher scientific and technical studies, direct that extraordinary leave shall be counted for increments under clause (i) and (ii).

Note 6:-In the case of temporary/officiating Government employees, a certificate that Government employee concerned would have continued to officiate in that post but for his proceeding on extraordinary leave is necessary and the period of extraordinary leave would count for increment only to the extent covered by the certificate.”

A further clarification has been issued with respect to the above said note 5(b)(ii) and note 6 by the DHBVN on 24.11.2015 (Annexure P-4) as under:-

“..... All leave extraordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time scale applicable to a post in which a Government employee was officiating at the time he

proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of India.

Provided that the competent authority may in any case in which it is satisfied that the extra-ordinary leave was taken for any cause beyond the Government employee's control or for prosecuting higher scientific and technical studies, direct that extraordinary leave shall be counted for increments under clause (i) and (ii).

.....Note 6:- In the case of temporary/officiating Government employees, a certificate that Government employee concerned would have continued to officiate in that post but for his proceeding on extraordinary leave is necessary and the period of extraordinary leave would count for increment only to the extent covered by the certificate.....”

Reading of note 5(b)(ii) makes it abundantly clear that in case of extraordinary leave taken for prosecuting higher scientific and technical studies, it shall be counted for increments and note 6 further clarifies that even in case of temporary/officiating Govt. employees, a certificate can be taken from the employee that he will have to continue to officiating post and period of extraordinary leave would be counted to increment only to the extent covered by the certificate. He will have to give certificate that he will continue to officiating post for proceedings on extraordinary leaves. In the present case, all the petitioners No. 3 to 6 i.e. Devender Singh, Pardeep Kumar, Rajesh Kumar and Rajender, after being granted extraordinary leaves for 3 years, have joined back and are working on the same posts and hence they cannot be denied benefit of annual increments on the basis of letter dated 27.11.2012 (Annexure R-1/2). Note 5(b)(ii) of the Punjab Civil Services Rules in very clear terms gives discretion to the competent authority that in case of technical studies, this extraordinary leave can be counted for

increments.

Moreover a perusal of the orders (Annexure P-1 colly) shows that this study period has been treated as leave of the kind due and the instructions dated 27.11.2012 (Annexure R-1/2) deal with Rule 3.317 of Punjab CSR Vol. 1 Part 1 which relates to grant of extraordinary leave for doing higher education and once the leave is granted, for the purpose of increments the relevant Rules are 4.9(a), note 5(b)(ii) and note 6 which have been clarified by the DHBVN vide letter dated 24.11.2015 (Annexure P-4) and petitioners' case is squarely covered by the above said clarification.

Writ petition is being allowed. Respondents are directed to treat the period of extraordinary leave granted vide Annexure P-1 colly in favour of petitioners No. 3 to 6, for the purpose of increments and all necessary benefits be given within a period of four months from the date of receipt of certified copy of this order.

03.04.2019
Divyanshi

(RITU BAHRI)
JUDGE

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