

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

C.W.P No. 19088-2003

Date of Decision:- 28.02.2020

Parmod Kumar

...Petitioner

vs.

State of Haryana and anr.

...Respondent

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Shubham Saroha, Advocate for
Mr. S.P. Laler, Advocate
for the petitioner.

Mr. Randhir Singh, Advocate
for State of Haryana

RITU BAHRI, J. (Oral)

Petitioner has filed the present petition seeking quashing of impugned order dated 29.05.2001 (P-4) and further prayer of the petitioner is for issuance of direction to the respondents to grant benefit of his adhoc services towards retiral benefit and annual increments.

On notice of the petition, a written statement has been filed on behalf of respondents admitting the fact that petitioner was appointed as Assistant District Attorney on adhoc basis on 14.12.1984 and he remained posted as such up to 07.01.1987 (AN). The services of the petitioner were terminated when the post was filled up on regular basis. The petitioner was then appointed on regular basis w.e.f 02.04.1992 as Assistant District Attorney. Thus, there is a break of 05 years, 02 months and 27 days between his adhoc service and regular service.

Learned counsel for the petitioner is relying upon Divisoin

Bench judgment of this Court in a case of ***Kartar Singh vs. State of Haryana, 1996 (2) SCT 11*** wherein it has been observed as under:-

“We also find that the respondents have not assigned any reason on the basis of which it can be said that the petitioner is not entitled to condonation of break in his service between November, 1949 to 31.02.1995. Though the language used in Rule 4.23 prima facie suggests that the discretion vests in the competent authority to condone the break in service but a careful reading of the rule shows that this discretion is not absolute and in a case where interruption in service has been caused by reasons beyond the control of the Government employee, the condonation of break in service cannot be denied. In the case of the petitioner also, the interruption has been occasioned due to the termination of his service on the ground of abolition of the post held by him. Therefore, it cannot be said that the interruption was for the reasons beyond his control and in our opinion, he is entitled to the benefit of condonation of interruption in service.”

Learned counsel for the petitioner is further relying upon Rule 3.17-A of CSR which has been added vide amendment dated 13.05.1971. Rule 3.17-A (a) reads as under:-

“3.17-A (a) All service interrupted or continuous followed by confirmation shall be treated as qualifying service; the period of break shall be omitted while working out aggregate service.”

Heard learned counsel for the parties.

The present petition deserves to be dismissed as firstly there is a delay in filing of the writ petition, as the petitioner was appointed on

regular basis in the year 1992 and the present writ petition has been filed in the year 2000. Learned counsel for the petitioner has not been able to cite any judgment whereby gap of more than 05 years has been condoned and benefit of adhoc service has been given towards pensionary benefits. The judgments referred to by learned counsel for the petitioner i.e Annexure P-5, P-7 to P-13 are not applicable to the facts of the present case.

At the very outset, reference at this stage can be made to Rule 4.23 of CSR Vol II, Part I, which reads as as under:

"4.23. Interruption in service (either between two spells of permanent, or temporary service or between a spell of temporary service and permanent service or vice versa) in the case of an officer retiring on or after the 5th January, 1961, may be condoned, subject to the following conditions, namely:-

(1) The interruption should have been caused by reasons beyond the control of Government employee concerned.

(2) Service preceding the interruption should not be less than five years 'duration'. In cases where there are two or more interruption, the total service, pensionary benefits in respect of which shall be lost if the interruption are not condoned should not be less than five years.

(3) The interruption should not be of more than one years duration. In cases where there are two or more interruption the total period of all interruptions to be condoned should not exceed one year."

The above Rule 4.23 is very clear that if the interruption had been caused by reasons which is beyond the control of Government employee concerned, only then an employee is entitled for condonation. But in the present case, the petitioner was appointed on adhoc basis on 14.12.1984 and remained posted as such up to 07.01.1987. He was then

appointed on regular basis w.e.f 02.04.1992 on the post of Assistant District Attorney on the recommendation of Haryana Public Service Commission. Therefore it cannot be said that the interruption in his service was beyond the control of the government employee i.e. petitioner in this case. The said break period could not be condoned under **Rule 4.23 of Punjab Civil Services Rules** Vol. II, Part-I. As per the aforesaid **rule**, the interruption should not be more than one year duration and in case where there are two more interruptions, the total period of all interruptions to be condoned should not exceed one year. As such, since the break period of the petitioner was more than one year and as per **Rule 4.23** *ibid*, condonation was not permissible, so the period in dispute was not added in the qualifying service of the petitioner. Rule 3.17 is not applicable in the case of the petitioner, as the break in service is more than 05 years and the same cannot be condoned keeping in view provisions contained in above Rule 4.23. Petitioner does not fulfill the condition No. 2 and 3 of Rule 4.23 of CSR Vol. II i.e his service proceeding interruption is more than 05 years and the period of interruption is also more than 01 year of duration. Further the previous service being ad hoc does not fall under this rule.

In view of the above discussion, the present petition stands dismissed.

28.02.2020

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No