224 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.29950 of 2017 (O&M)
Date of decision : February 24, 2020

Kamla Devi **..... Petitioner**

Versus

The State of Punjab and others **..... Respondents**

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Gagandeep Singh, Advocate for the petitioner.

Ms. Devki Anand Sullar, AAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

The petitioner is challenging the order dated 17.08.2016 (Annexure P-3) vide which the claim of the petitioner for taking into consideration the service, which the petitioner had rendered against a leave vacancy, to be treated as a qualifying service for computing the pensionary benefits is rejected. The prayer of the petitioner is that the total length of service including the service, which the petitioner had rendered against a leave vacancy, be taken into consideration as a qualifying service for computing the pensionary benefits.

As per averments made in the present writ petition, the petitioner was initially appointed against a leave vacancy on 24.10.1974. She continued working against the leave vacancy created by one or the other employee till the service of the petitioner were regularized on 01.05.1981. Thereafter, the petitioner continued working on regular post till she attained the age of superannuation and retired on 30.06.2005.

After the petitioner retired from service, the benefits of

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qualifying service was given to the petitioner from the date the services of the petitioner were regularized i.e. 01.05.1981 till she attained the age of superannuation i.e. on 30.06.2005. No benefit of service which the petitioner had rendered from 24.10.1974 till 30.04.1981 against a leave vacancy, was granted to the petitioner. The petitioner approached the respondents for granting her the benefits of service, which she had rendered from 24.10.1974 till 30.04.1981 to be taken as a qualifying service for computing the pensionary benefits but the said claim was declined by the respondents, vide order dated 17.08.2016 (Annexure P-3), which order has been impugned by the petitioner in the present writ petition.

Upon notice of motion, respondents have filed the reply. In the reply, respondents have admitted that the petitioner continued working against a leave vacancy from 24.10.1974 till her services were regularized on 01.05.1981. Respondents have further stated that as the petitioner was working against a leave vacancy, the said temporary service, which the petitioner had rendered against the leave vacancy, cannot be taken into consideration as a qualifying service and therefore, the claim of the petitioner was rightly rejected vide order dated 17.08.2106 (Annexure P-3).

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

The only question, which arises for determination in this writ petition is whether services which the petitioner had rendered on temporary basis against a leave vacancy starting from 24.10.1974 till 30.04.1981, is to be treated as a qualifying service for computing the pensionary benefits, keeping in view the provisions of Punjab Civil Services Rules, Volume-II.

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The Rule 3.17(a) of the Rules *ibid* provides as to which qualifying service is to be taken into account for computing the pensionary benefits. Rule 3.17(a) of the Rules *ibid* 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:*
> *Provided that after the 1st January, 1973 half of the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions:-*
> *(a) Service paid from contingencies should have been in a job involving whole time employment (and not part-time or for a portion of the day).*
> *(b) Service paid from contingencies should have been in a type of work or job for which regular post could have been sanctioned e.g. Malis, Chowkidars, Khalasis etc.*
> *(c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishment.*
> *(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.*
> *(iii) Casual or daily rated service.*
> *(iv) Suspension adjudged as a specific penalty;"*

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A bare perusal of the Rule would show that all the services rendered on the establishment uninterrupted or continuous, is to be treated as a qualifying service. The service rendered on a work-charge establishment and paid out of the contingencies is to be counted as qualifying service. The service which the petitioner had rendered was though temporary but the same cannot be treated as less than the work-charge service. Further, there is no distinction made in the Rules *ibid* that the temporary service rendered against a leave vacancy is to be excluded from the qualifying service while computing the pensionary benefits. Once, all service rendered on an establishment is to be treated as a qualifying service, the services which the petitioner had rendered with the respondent-Department continuously from 24.10.1974 till her services were regularized on 01.05.1981, cannot be excluded from the qualifying service for computing the pensionary benefits.

Further, as per the judgment of the Full Bench of this Court in case of ***"Kesar Chand v State of Punjab and others", AIR 1988 PUNJAB 265,*** even daily wages service, which an employee had rendered prior to the regularization of the service, is to be treated as a qualifying service for computing the pensionary benefits, in case the services of the daily wager is regularized prior to the retirement. The services of the petitioner, which she had rendered was rendered against a permanent post though available as a leave vacancy, said service cannot be treated subvert than the daily wages services so as to deny the benefit of the same to be treated as a qualifying service for computing the pensionary benefits.

Even otherwise, the Division Bench of this Court while

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deciding LPA No.1095 of 2015, titled as ***"Joginder Singh v State of Punjab & Ors.",*** on 23.08.2018 has settled this question of law wherein, service rendered against a leave vacancy is to be held as a qualifying service for computing pensionary benefits. While interpreting Rule 3.17(a) of the Rules *ibid*, this Court held that the services rendered by an employee though against a leave vacancy prior to regularization of the service of that employee is to be treated as a qualifying service for computing the pensionary benefits. The relevant paragraph of the judgment passed in ***Joginder Singh's*** case (*supra*) is as under:

> *"(4) Learned Single Judge has vide order under appeal declined the appellant's claim on the premise that as per the Circular issued by the Finance Department, service rendered against a 'leave vacancy' is not countable for pensionary benefits.*
>
> *(5) We have heard learned counsel for the parties at a considerable length and gone through the record.*
>
> *(6) It appears that the objection raised by the respondents is totally misdirected and misplaced and consequently, the entire service rendered by the appellant deserves to be counted towards 'qualifying service'. We say so for the reason that Rule 3.17-A of Punjab Civil Services Rules, Vol-II provides that "all service rendered on establishment, interrupted or continuous, shall count as qualifying service" and which shall include "service rendered in work charged establishment" as also "service paid from contingencies". The service rendered by the appellant fell in the 2nd category.*
>
> *(7) Rule 3.30 further provides that a service which satisfies the conditions prescribed therein, namely, the remuneration of which are "(a) paid from the*

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Government revenues; (b) paid from Funds in respect to which the Government hold the position of Trustee; and (c) paid by fees levied by law, or under the authority of the Government, or by Commission…". The 'service' paid from the 'revenues' qualifies under Rule 3.31 of the Rules ibid.

(8) Rule 3.17-A (before its amendment when "work charge service" was excluded from the definition of 'qualifying service') was subject matter of interpretation before a Full Bench of this Court in ***Kesar Chand vs. State of Punjab through the Secretary, PWD, B&R, Chandigarh & Ors., 1988 (2) PLR 223****, in which it was held that even work charged service rendered by an employee followed by his regular appointment shall count towards 'qualifying service' for the purpose of pension and other retiral benefits. The expression "service" contained inRule 3.17-A has been well expanded in a catena of judgments laying down that ad hoc service followed by regular appointment, shall also count towards 'qualifying service' for the purpose of retiral benefits.*

(9) It goes without saying that if the appellant was appointed on work charged or ad hoc basis, the service rendered by him from 28.02.1979 till 31.03.1985 would have been counted towards 'qualifying service'. The only objection raised by the respondents on the strength of an executive circular of Finance Department is that the service rendered against 'leave vacancy' would not be countable for the purpose of retiral benefits. Such an objection, with reference to the facts in the case in hand, appears to be totally illogical. The appellant was actually appointed on 'temporary basis' for a period of six months till he was to be replaced by regular appointee. Such appointment no less inferior than ad

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hoc appointment. After appointment, he was merely posted against a 'leave vacancy' where the regular incumbent had proceeded on leave. That regular incumbent did not turn up and consequently, the appellant continued to serve against the leave vacancy till his own services were regularized w.e.f. 01.04.1985. It was not a case of arrangement for a short duration of leave period which can be ignored for the purpose of retiral benefits. The appellant uninterruptedly served for six years without any break. The expression "temporary" recites in the appointment order of appellant connotes a definite meaning that the appellant's appointment was co-terminus with the joining of Teacher on regular basis and not on the joining of the teacher who had gone on leave. Had the teacher come back from leave, the appellant would have continued against any other vacancy till regular appointments were made. That being the import terms and conditions of his appointment letter, the view taken by learned Single Judge that the appellant was appointed against a 'leave vacancy' does not carry any weight. The appointment was on temporary basis for six months though the appellant was posted against a leave vacancy. That being the case, the wider interpretation of Rule 3.17-A ibid given by this Court from time to time would encompass the service rendered by the appellant on temporary basis within the meaning of 'qualifying service' for the purpose of retiral benefits.

(10) For the reasons afore-stated, the appeal is allowed; the order of learned Single Judge is set aside and the writ petition is accepted. It is directed that the pension of the appellant be re-fixed after counting the 'qualifying service' from 28.02.1979 till he retired from service. The arrears of pension shall be paid to the

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> *appellant within a period of four months from the date of receipt of certified copy of this order but without any interest."*

Learned counsel for the respondents has not been able to distinguish the facts of the present case with that of ***Joginder Singh's*** case (*supra*). Learned counsel for the respondents, keeping view the averments made in the reply, has admitted that the petitioner had rendered continuous service against leave vacancy prior to regularization of her services. That being so, the claim of the petitioner for the grant of relief of treating the service rendered from 24.10.1974 till 30.04.1981 as a qualifying service is squarely covered by the decision of the Division Bench of this Court in ***Joginder Singh's*** case (*supra*).

The respondents are directed to grant the petitioner the benefits of service, which the petitioner had rendered from 24.10.1974 till 30.04.1981 as a qualifying service for computing the pensionary benefits. Let the benefits of the petitioner be re-calculated under this order.

It is important to note here that the petitioner had retired from services in the year 2005 and the present petition has been filed by the petitioner in the year 2017, after a period of 12 years. No explanation has been given as to why, the petitioner has approached this Court after a period of 12 years.

Learned counsel for the petitioner states that the delay in approaching this Court can be compensated by limiting the arrears for which the petitioner becomes entitled to a period of three years two months prior to filing of the present writ petition.

Keeping in view the undertaking given by learned counsel for

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the petitioner, after re-fixing the pensionary benefits of the petitioner in terms of this order, the petitioner will only be paid the arrears for a period of three years two months prior to the filing of the present writ petition.

The present writ petition is allowed in the abovenoted terms.

(HARSIMRAN SINGH SETHI)
JUDGE

February 24, 2020
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Whether speaking / reasoned Yes
Whether Reportable: Yes

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