

IN THE HIGH COURT OF PUNJAB AND HARYANA,  
AT CHANDIGARH

CWP No.13651 of 2021 (O&M)  
Date of decision : 27.07.2021

UT Chandigarh and others

... Petitioners

Versus

Rama Chaudhary and another

.. Respondents

**CORAM : HON'BLE MR.JUSTICE RAJAN GUPTA  
HON'BLE MR.JUSTICE KARAMJIT SINGH**

Present : Mr.Namit Kumar, Advocate  
Additional Standing Counsel for the U.T.Chandigarh.

**(The case has been taken up through Video Conferencing)**

**Karamjit Singh, J.**

The petitioners have filed this writ petition challenging the order dated 22.11.2018 (Annexure P-3) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, “the Tribunal”), whereby Original Application (OA) filed by respondent No.1 claiming counting of her service from 06.10.1983 to 05.07.1985 as qualifying service for the purpose of calculating pension and other retiral benefits, was allowed in terms of Rule 4.23 of Vol.II of Punjab Civil Services Rules.

Briefly, the facts of the case as made out in the Original Application (OA) are that respondent No.1, Rama Chaudhary was initially appointed as SS Mistress on 06.10.1983 on temporary basis and she remained working as such till her services were regularized w.e.f. 05.07.1985. She served the Education Department of U.T.Chandigarh and retired from service on 31.03.2011 on attaining the age of superannuation.

While fixing the pension, services rendered by respondent No.1 on temporary basis during the period from 06.10.1983 to 05.07.1985 were not

calculated towards her pensionary benefits. On this, she filed O.A.No.060/28/2018, which was contested by the petitioners (respondents therein). After hearing both the parties, the said OA was allowed by the Tribunal vide impugned order dated 22.11.2018.

The petitioners (respondents therein) being dissatisfied, have filed the present writ petition challenging the order of the Tribunal dated 22.11.20218.

We have heard learned counsel for the petitioners.

The counsel for the Chandigarh Administration vehemently argued that the claim of the respondent No.1 is suffering from laches and is also time barred. The learned counsel contended that respondent No.1 retired from service on 31.3.2011 and she received pensionary benefits without raising any objection. Respondent No.1 raised her claim for the first time in 2018, when she filed original application before the Tribunal claiming benefit of her temporary service towards pension. He further contended that the claim being time barred deserves to be rejected.

The counsel for Chandigarh Administration further argued that respondent No.1 was temporarily engaged from time to time with break by the UT Administration during the period from 6.10.1983 to 5.7.1985. He further contended that in these circumstances the temporary service rendered by respondent No.1 cannot be counted towards qualifying service for grant of pension. The learned counsel further made prayer that the impugned order being illegal, deserves to be set aside.

We have considered the contentions raised by the counsel for the petitioners.

The petitioners have not denied the fact that respondent No.1

was engaged as 'SS Mistress' on temporary basis on 6.10.1983 and she remained working as such on the said post till 5.7.1985 with break in service from 1.4.1984 to 31.7.1984. The services of respondent No.1 were regularized by the petitioners w.e.f. 5.7.1985 and she retired from service on 31.3.2011, on attaining the age of superannuation.

Respondent No.1 has claimed the benefit of the aforesaid temporary service for purposes of computing the pension. It is a settled proposition of law that pensionary benefit is recurring cause of action and consequently is not hit by delay and laches. So, argument raised by the petitioners that the claim of respondent No.1 is suffering from delay and laches is totally misconceived and thus was rightly rejected by the Tribunal.

The petitioners have not denied the fact that the case of respondent No.1 is governed by Punjab Civil Services Rules, which are adopted by the Chandigarh Administration. While passing the impugned order the Tribunal took into consideration Rule 4.23 of Volume-II of Punjab Civil Services Rules, which reads as follows:-

**4.23.** In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered under the State Government shall be treated as automatically condoned, and the pre-interruption service shall be treated as qualifying service for pension purposes, except where the interruption has been caused by resignation, dismissal or removal from service or due to participation in a strike, but the period of interruption itself shall, under no circumstances, be reckoned as qualifying service for pension purposes.

The case of respondent No.1 is squarely covered by Rule 4.23 (supra) as has been rightly observed by the Tribunal. The reason being that interruption in the service of respondent No.1 was not due to any of the

reasons detailed in the aforesaid Rule i.e. resignation, dismissal or removal from service or due to her participation in strike.

The case of the respondent No.1 is also covered under Rule 3.17 of Volume-II of Punjab Civil Services Rules as has been rightly pointed out by the Tribunal. Rule 3.17 (supra) reads as follows:-

3.17. If an employee 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) periods of temporary or officiating service in non-pensionable establishment;

Furthermore, we are of the view that Rule 3.17A of Volume-II of Punjab Civil Services Rules is also applicable in the instant case. The said Rule provides that all services rendered on establishment, interrupted or continuous shall count as qualifying service subject to the provisions of Rules 4.23, except in the following cases:

“(i) Omitted.

(ii) Omitted.

(iii) Casual or daily rated service.

(iv) Suspension adjudged as a specific penalty.

Note.—In cases where an officer dies or is permitted to retire while under suspension will not be treated as an interruption.

(v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government where service qualifies for pension.

(vi) Joining time for which no allowances are admissible under

rules 9.1 and 9.15 of C.S.R., Volume I, Part I.

(vii) If any unauthorised leave of absence occurs in continuation of authorised leave of absence and if the post of the absentee has been substantively filled up, the past service of the absentee is forfeited.

(viii) Transfer to a non-qualifying service in an establishment not under Government control or if such transfer is not made by the competent authority and transfer to service in a grant-in-aid school.

(A Government employee, who voluntarily resigns qualifying service, cannot claim the benefit under this clause.)

(ix) Removal from public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of the past service.

(x) Service rendered beyond the date of retirement on superannuation in terms of rule 3.26 of Punjab Civil Services Rules, Volume I, Part I.”

In view of the aforementioned provisions of law as contained in the Punjab Civil Services Rules, interruption between two spells of temporary service rendered by respondent No.1 in the U.T. Administration is to be treated as automatically condoned and pre-interruption service shall be treated as qualifying service for pension purposes. We also concur with the findings of the Tribunal to the effect that the period of non-engagement is not be counted towards qualifying service of respondent No.1, in the light of the provisions laid down in Rule 4.23 (supra).

In the light of the above, we are of the view that the impugned order is not suffering from any illegality or perversity.

Consequently, the present writ petition is hereby dismissed being devoid of merits.

At this stage, Additional Standing Counsel for the U.T.

Administration has submitted that another three months' time be granted to

the U.T. Chandigarh for implementation of the order. The prayer being reasonable is accepted and time as prayed for, is granted.

[ RAJAN GUPTA]  
JUDGE

[KARAMJIT SINGH ]  
JUDGE

27.07.2021  
sd/Gaurav Sorot

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether Reportable        | : | Yes/No |