

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13258-1997 (O&M)
Date of Decision: 05.05.2022

Kamlesh Kumari	Vs.	...Petitioner
State of Haryana and others		...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ramesh Hooda, Advocate,
 For the petitioner.

Mr. R.D. Sharma, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the respondents to count the service of the petitioner w.e.f. 24.01.1992 to 02.05.1994 rendered on *ad hoc* basis towards increment.

2. Before advertng on the merits of claim, reference may first be had to the Rule 4.4 (b) of Punjab Civil Services Rules, Volume-I which was holding the field at the relevant time. For ready reference, relevant thereof is extracted herein below:-

“4.4 The initial substantive pay of a Government employee who is appointed substantively to a post on a time-scale of pay is regulated as follows:-

XXX XXX XXX

(b) If the conditions prescribed in clause (a) are not fulfilled, he will draw as initial pay the minimum of the time-scale, on appointment in Government service in the case of member of Punjab Civil Service (Judicial Branch), specialist doctors and on completion of probation in other cases:

Provided both in cases covered by clause (a) and in cases, other than cases of re-employment after resignation or removal or dismissal from the public service, covered by clause (b), that if he either –

(1) has previously held substantively or officiated in –

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post other than a tenure post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale; or

(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated, then the initial pay shall not be less than the pay, other than special pay, personal pay or emoluments classed as pay by the competent authority under rule 2.44(b), which he drew on the last such occasion, and he shall count for increments the period during which he drew that pay on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay. If, however, the pay last drawn by the Government employee in a temporary post has been inflated by the grant of premature increments the pay which he would have drawn but for grant of these increments shall unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post.

The service rendered in a post referred to in proviso (1) (iii) shall, on reversion to the parent cadre, count towards initial fixation of pay, to the extent and subject to the conditions indicated below:—

- (i) The Government employee should have been approved for appointment to the particular grade/post in which the previous service is to be counted;*
- (ii) all his seniors, except those regarded as unfit for such appointment, were serving in posts carrying the scale of pay in which benefit is to be allowed or in higher posts, whether in the department itself or elsewhere, and at least one junior was holding a post in the Department carrying the scale of pay in which the benefit is to be allowed; and*
- (iii) the service will count from the date his junior is promoted and the benefit will be limited to the period the Government employee would have held the post in his parent cadre had he not been appointed to the ex-cadre post.*

The previous service rendered in the same post on identical time scale or a post having identical two/three/four tier scales of pay or in which time bound placements or grant of higher pay scales are provided as in the new post in a Government Department shall, in addition to the protection of pay actually drawn in the corresponding scale under the rule, count his previous service in the cadre of transferee Department for the purpose of Assured Career Progression Scheme as per instructions issued by the Punjab Government from time to time. This benefit is allowed to the junior employee as a measure personal to him and without creating any right for the senior employee to claim equality in pay and pay scale with junior who receives higher pay/pay scale due to his previous service and such employee will not be entitled to take benefit of his previous service towards seniority.”

3. To be noted that the aforesaid Punjab Civil Services Rules Volume-I were repealed with effect from 19.07.2016 when Haryana Civil Services Rules 2016 were promulgated by the State of Haryana. Perusal of Rule 4.4(b) *ibid* would reveal that petitioner is indeed entitled to the increment for the period she had rendered services on *ad hoc*. It is well settled principle of service jurisprudence that a right which had crystallized by virtue of applicable rules at the relevant time cannot be subsequently taken away merely on the ground that there has been either an amendment and/or repeal of the applicable rules.

4. In any case, it is not even the case of the State that when Haryana Civil Services Rules, 2016 were promulgated with effect from 19.07.2016, the same came into effect with retrospective effect. Vide subsequent Haryana Civil Services Rules, 2016, the earlier Punjab Civil Services Rules were merely repealed and, therefore, during the period the same held the field, an employee is entitled to be given benefit in accordance thereof.

5. As an upshot of my discussion above, writ petition is disposed of with direction the respondents to re-consider the case of the petitioner in accordance with the applicable rules at the relevant time i.e. Punjab Civil Services Rules, Volume-I and pass fresh appropriate administrative orders according her the benefit of additional increment as per her entitlement vis-à-vis the period of *ad hoc* service rendered by her.

6. Necessary exercise be carried out within a period of two months of the petitioner approaching the respondents with certified copy of this order.

(ARUN MONGA)
JUDGE

May 5, 2022
Vandana

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