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

**CWP NO.10426 OF 2001 (O&M)
DATE OF DECISION : 02.08.2022**

Raghubir Sharan

...Petitioner

Versus

The State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ravi Verma, Advocate
for the petitioner.

Mr. R. D. Sharma, D.A.G., Haryana.

ARUN MONGA, J.

Petitioner herein, *inter alia*, seeks issuance of a writ in the nature of certiorari to quash impugned order dated 31.12.1999 (Annexure P-4), whereby his claim for benefit of service rendered as J.B.T. Teacher from 06.10.1971 to 05.04.1972, for the purpose of increment, was rejected.

2. Succinct facts first. Petitioner was initially appointed as J.B.T. Teacher in the Haryana Education Department through Employment Exchange on adhoc basis in the pay scale of Rs.125-250 w.e.f. 06.10.1971. Later on, upon his selection the petitioner was appointed as Clerk on regular basis in the pay scale of Rs.110-225, was relieved of duty as teacher on 05.04.1972 and he joined in the same department i.e. Haryana Education Department as Clerk w.e.f. 06.04.1972

which is the next date of relieving from the post of J.B.T. Teacher. However, claim of the petitioner for counting his earlier service on the post of J.B.T. Teacher for the purpose of increment was rejected vide impugned order.

3. Learned counsel for the petitioner argues that Rule 4.9 of Punjab Civil Service Rules, Vol. I, Part I provides for counting the period of past service in the time scale for the purpose of fixation of increment and the said rule does not require that the past service should be in the same scale or post for the purpose of pay fixation/increment on the subsequent appointment. He further relies upon the judgment of this Court in *Megh Raj vs. State of Haryana and Another, 2014 (2) SCT 394*, wherein the adhoc service (with or without break) rendered by the petitioner therein, in different department, followed by regular appointment as Clerk, has been ordered to be counted for the purpose of pay fixation/increment in view of Rule 4.9 of Punjab Civil Service Rules, Vol. I, Part I and Haryana Govt.'s instructions dated 11.06.1974, as per which the benefit of past service shall be allowed to even those employees who submitted their application directly for employment while they were not in Govt. service.

4. *Per contra*, learned State counsel argues that adhoc period can be counted for grant of annual increments only if the petitioner was regularized/absorbed/freshly appointed on the same posts of JBT without any interruption in service in the identical time scale of Rs.125-5-150/5-250. However, in the present case, his subsequent appointment as a Clerk in the time scale of Rs.110-4-130/5-160/5-225 is on the lower post and therefore, the time scale is not identical as defined under Rule 2.60 of CSR Part-I. Further he argues that Rule 4.9 of Punjab Civil Service

Rules is not applicable in the case of the petitioner in view of Rules 4.9(b)(i), 2.60 and 4.4(a)(i to iii)) of Punjab Civil Service Rules as he was not holding any lien on the post of JBT Teacher. Further he argues that judgment of Megh Raj's case (supra) is not applicable in the case in hand as firstly in the said case, the adhoc service was followed by either absorption, regularization or appointment through S.S. Baord on the same post having identical time scale and secondly in the present case, the petitioner was not regularized, adjusted, absorbed, recruited on the same post carrying identical time scale as he was holding on the post of JBT teacher when appointed on adhoc basis in the time scale of Rs.125-5-150/5-250 and later on appointed as Clerk having lesser pay scale of Rs.110-4-130/5-160/5-225. As per the learned State counsel, the said judgment is also not applicable in the case in hand as in that case the adhoc service has been counted for calculating the length of service for the purpose of post retiral benefits i.e. pension and gratuity etc.

5. On 19.07.2022, the following order was passed:-

*“On a Court query, learned State counsel seeks an adjournment to produce relevant service rules which envisages that benefit of continuity of adhoc service on a regular post is to be given only if the continuity is on the same post. It is since pleaded in the written statement that the petitioner was working on adhoc basis as a Teacher and he was later appointed on regular post, no doubt, without any break but there being a change of post and therefore he was not entitled to increment.
Post it on 19.07.2022.”*

6. I have perused the pleadings and gone through the record.

7. Pointed reference may be made to Rule 2.60, Rule 4.4(a) (i to iii) and Rule 4.9 of the Punjab Civil Services Rules of which relevant parts are as under:-

“2.60. (a) Time-scale pay means pay which, subject to any conditions prescribed in these rules, rises by periodical

increments from a minimum to a maximum. It includes the class of pay previously known as progressive.

(b) Time scales are said to be identical if the minimum, the maximum, the period of increment and the rate of increment of time-scales are identical.

(c) A post is said to be on the same time-scale as another post on a time-scale if the two time-scales are identical and the posts fall within a cadre, or a class in a cadre, such cadre or class having been created in order to fill all posts involving duties of approximately the same character or degree of responsibility in a service or establishment or group of establishments, so that the pay of the holder of any particular post is determined by his position in the cadre or class, and not by the facts he holds that post.

Note.—Two time scales of pay should be treated as identical within the meaning of Rule 2.60 (b) even though the scales may differ in the matter of provision of efficiency bars.

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:—

(a) If he holds a lien on a permanent post, other than a tenure post—

(i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule 4.13) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;

(ii) when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference; and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum of the time-scale of the new post is higher than his substantive pay in respect of the old post he will draw that minimum as initial pay;

(iii) when appointment to the new post is made on his own request under rule 3.17 (a) and maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay.

4.9. The following provisions prescribe the conditions on which service counts for increments in a time-scale:—

(a) All duty in a post on a time-scale counts for increments in that time-scale: provided that, for the purpose of arriving at the date of the next increment in that timescale the total of all such periods as do not count for increment in that time-scale shall be added to the normal date of increment.

xxxxxxx xxxxxxxxxxxx xxxxxxxx

(b) (i) Service in another post other than a post carrying less pay referred to in clause (a) of rule 3.17, whether in a substantive, or officiating capacity, service on deputation out of India and leave except extraordinary leave taken otherwise than on medical certificate count for increments in the time-scale applicable to the post on which the Government employee holds a lien.

Xxxx xxxx ”

8. The plain language of Rule 4.9 sub rule (a) relied upon by the learned counsel for the petitioner shows that for its applicability, the duty in a post on a time-scale counts for increments only in same time-scale. In present case, the service of the petitioner as JBT teacher, though in higher time scale of Rs.125-5-150/5-250 was followed by service as Clerk in the lower time scale of Rs.110-4-130/5-160/5-225. Thus, the petitioner's service/duty on the two posts was not in the same time scale but in two different time scales. This being the position, to my mind, Rule 4.9 sub rule (a) relied upon by the learned counsel for the petitioner is not applicable to the case.

9. However, Sub Rule (b) (i) of Rule 4.9 reproduced above provides inter alia that Service in another post other than a post carrying less pay referred to in clause (a) of rule 3.17, whether in a substantive or officiating capacity, also counts for increments in the time-scale applicable to the post on which the Government employee holds a lien. Clause (a) of rule 3.17 *ibid* and Rule 4.22 referred to therein are as under:

“3.17 (a) Government may transfer a Government employee from one post to another; Provided that except-
(1) On account of inefficiency or misbehavior; or
(2) on his written request;
a Government employee shall not be transferred substantively to or, except in case covered by rule 4.22, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien.

4.22 The competent authority may appoint one Government employee to hold substantively, as a temporary measure or to officiate in, two or more independent posts at one time. In such cases, the Government employee shall draw the higher pay to which he would be entitled if his appointment to one of the posts stood alone: Provided that the employee must fulfil the requisite qualifications and conditions for services for both the posts."

10. As would be seen, in the facts of the instant case, clause (a) of rule 3.17 or the provisions of Rule 4.22 referred to therein are not attracted and, therefore, the exception carved out in Sub Rule (b) (i) of Rule 4.9 is not applicable to the petitioner's case.

11. The time scale of Rs.125-5-150/5-250 of the post of JBT teacher held by the petitioner from 06.10.1971 to 05.04.1972 was not less and in fact it was higher than the time scale of Rs.110-4-130/5-160/5-225 of the post of clerk to which he was appointed from 06.04.1972. It follows, therefore, that the petitioner's case is squarely covered by the main provision of Sub Rule (b) (i) of Rule 4.9 of the Punjab Civil Services Rules Volume I, Part I, as applicable to Haryana and he is entitled to count the period of his service/duty from 06.10.1971 to 05.04.1972 on the post of JBT teacher for increment on the post of clerk to which he was appointed from 06.04.1972.

12. Accordingly, the petition is allowed and the respondents are directed to count the period of petitioner's service/duty from 06.10.1971 to 05.04.1972 on the post of JBT teacher in the time scale of Rs.125-5-150/5-250 for increment on the post of clerk in the time scale of Rs.110-4-130/5-160/5-225 to which he was appointed from 06.04.1972. Necessary exercise be carried out and consequential monetary benefits be paid to the petitioner with interest @ 4% per annum from the due date till payment, within four months of the supply of copy of this order.

13. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 02, 2022
ashish

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No