

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

(218)

CWP-19384-2017

Date of Decision : March 14, 2022

Suresh Kumar Jain

.. Petitioner

Versus

State of Haryana and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. J.K. Goel, Advocate, with
Mr. Shvetanshu Goel, Advocate, for the petitioner.

Mr. Raman Kumar Sharma, Additional A.G., Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

Present petition has been filed challenging the order dated 03.05.2016 (Annexure P-10) by which, the service which the petitioner had rendered from 04.07.1980 to 29.02.1984, has not been taken into account as a qualifying service for computing the pensionary benefits. The prayer of the petitioner is that direction be issued to the respondents that the said period be taken into consideration as qualifying service for computing the pensionary benefits.

As per the facts mentioned in the petition, the petitioner applied for the post of Medical Officer in the year 1980 in pursuance to an advertisement issued by the respondents-State and after undergoing the

process for selection, the petitioner was appointed as Medical Officer on

03.07.1980. The appointment, which was given to the petitioner, was adhoc in nature and while working on the said post of Medical Officer on adhoc basis, the petitioner submitted his resignation as he was interested in pursuing studies so as to obtain higher qualification than the one he had. The said resignation was accepted and the petitioner left the job and got admission in a diploma course in orthopedic.

After the petitioner completed the said diploma course, again the posts of Medical Officers were advertised and the petitioner got selected as a regular Medical Officer on 04.01.1986. After the petitioner joined, all the service benefits were extended to the petitioner from 04.01.1986 and ultimately, on attaining the age of superannuation, the petitioner retired from service on 31.10.2011. After the retirement, his pensionary benefits were calculated and while calculating the same, the adhoc service which the petitioner had rendered from 04.07.1980 to 29.02.1984 (prior to the date of regularization) was not treated as a qualifying service for computing the pensionary benefits. The petitioner started agitating that he is entitled for calculating the service period mentioned above as a qualifying service as the adhoc service rendered prior to the regularization of service, is entitled to be computed as a qualifying service. The prayer of the petitioner seeking the said benefits was declined by the respondents on 03.05.2016, which order is under challenge in the present petition.

After the notice of motion, the respondents have filed the reply wherein, the respondents have stated that in the facts and circumstances of the present case wherein, the petitioner had resigned from service initially in the year 1984 to do the diploma course in orthopedic and it was only after he underwent the said diploma course, he again applied for the post of

Medical Officer when the posts were advertised to be filled on regular basis and he was selected afresh, hence, no benefit for the earlier service was granted for the reason that firstly the service was not continuance and secondly at the time of resignation the employee forfeit his right to service benefits.

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

The prayer of the petitioner is for calculating the adhoc service which the petitioner has rendered on the post of Medical Officer from 04.07.1980 to 29.02.1984 as qualifying service for computing the pensionary benefits.

It is not in dispute that the petitioner had resigned from the service though in order to diploma in orthopedic. The resignation leads to the service which was rendered prior to the resignation being washed of for all intent and purposes. Rule 3.17A (d) of the Punjab Service Rules is as under:-

“ d) Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of rule 4.19 (a) of Punjab Civil Service Rules Volume-II.”

That being so, the service which the petitioner had rendered from 04.07.1980 to 29.02.1984 cannot be taken into consideration at all as the same stands forfeited upon the resignation submitted by the petitioner.

As far as the prayer of the petitioner is that the case of the petitioner is covered by Rule 4.19 (b) of the Punjab Civil Service Rules, the said argument is also not supported by the said Rule. Rule 4.19 (b) of the

Punjab Civil Service Rules is as under:-

“b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part is not a resignation of public service.”

A bare perusal of the above would show that it is only a case where a resignation has been submitted after proper permission to take up another appointment that the benefit of the past service can be given by treating the resignation as a technical resignation. Furthermore, Rule 4.19 (b) does not envisage resignation with permission to undergo higher studies, the same only envisages “another appointment”. That being so, the case of the petitioner is not covered under Rule 4.19 of the Haryana Civil Services Rules as petitioner had resigned from service to pursue higher studies.

Therefore, keeping in view the above, no fault can be found in the impugned order dated 03.05.2016 (Annexure P-10) rejecting the claim of the petitioner.

Accordingly, the present petition is dismissed.

March 14, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes