

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(220)

CWP-6287-2018

Date of Decision : April 25, 2022

Kamaljit

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Jyoti Sareen, Advocate, for the petitioner.

Ms. Anju Sharma Kaushik, Deputy Advocate General,
Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the challenge is to the reply given by the respondents to the legal notice issued by the petitioner wherein, the benefits claimed have been declined by the respondents.

The claim being made by the petitioner in the present petition is that firstly, the daily wage service which the petitioner has rendered from 01.01.1990 to 23.01.2001 be taken into consideration as qualifying service for computing the pensionary benefits and the second prayer of the petitioner is that he should be given the benefit of counting additional 5 years being orthopedically handicapped, as envisaged under Rule 4.2. (4) of the Punjab Civil Services Rules Volume 2 Chapter 4.

The further prayer of the petitioner is that the service which the petitioner had rendered on extension from 01.07.2014 to 30.06.2015 be also taken as a qualifying service for computing the pensionary benefits.

As per the facts mentioned in the petition, petitioner was appointed as Chowkidar on work charge/daily wages basis on 01.01.1990

with the respondents-Department. He continued in service till 1992 when his services were terminated on 01.12.1992, which action was challenged by the petitioner before the Labour Court. Vide Award dated 24.12.1998, the order terminating the services of the petitioner was set aside and the petitioner was reinstated in service with continuity as well as back wages. The Award was challenged by the respondents before this Court but the same was upheld by this Court vide order dated 24.12.1998 and ultimately, even in SLP filed before the Hon'ble Supreme Court of India, the award was only modified with regard to the extent of back wages and ultimately the petitioner was reinstated with 50% of the back wages.

Keeping in view the regularization policy, the services of the petitioner were regularized by the respondents vide order dated 06.11.2003 w.e.f. 23.01.2001 and the petitioner continued working on regular basis thereafter. The petitioner attained the age of superannuation on 31.07.2014. After which, the petitioner was granted extension in service for a period of one year, which period the petitioner completed on 31.07.2015. Thereafter, another extension was given to the petitioner keeping in view the terms and conditions of the policy dated 30.10.2015 and ultimately, the petitioner retired from service on 31.07.2016.

After the retirement, the grievance of the petitioner is that the daily wage service which the petitioner had rendered from 01.07.1990 till 23.01.2001 has not been taken into account as a qualifying service and even the service which the petitioner had rendered from 01.08.2014 onwards till 31.07.2015 when the petitioner was on extension, has also not been taken into account as a qualifying service whereas, under the Rules and settled principle of law, the petitioner is entitled for the grant of the said benefit

and the prayer of the petitioner is to direct the respondents that the said period be taken into account as a qualifying service for computing the pensionary benefits.

The further grievance of the petitioner is that as the petitioner is 80% handicapped, the petitioner is entitled for the benefit of Rule 4.2 (4) of the Punjab Civil Service Rules Volume 2 Chapter IV according to which, in case a person is handicapped at the time of joining the service, he is to be given benefit for an additional period of five years towards qualifying service for computing the pensionary benefits.

As the said benefits being claimed by the petitioner were not being extended to the petitioner, the petitioner filed a legal notice with the respondents and in reply to the said legal notice dated 18.01.2018 (Annexure P-9), the said benefits were declined to the petitioner, which has led to the filing of the present petition.

After notice of motion, the respondents have filed the reply wherein, the respondents have stated that with regard to the counting of daily wage service from 01.01.1990 till 23.01.2001, the same is under consideration. With regard to the period from 01.08.2014 onwards till 31.07.2015, the respondents have stated that keeping in view the instructions dated 30.10.2015, the said service cannot be taken into account for any purpose and with regard to the claim of the petitioner for the grant of 5 years benefit as per Rule 4.2 (4) of the Punjab Civil Services Volume 2 Chapter IV, as per the reply, the same is also under consideration.

Today, during the hearing, learned counsel for the respondents submits that she has no further instructions except the one stated in the

reply.

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

As far as the first prayer of the petitioner for taking into consideration the daily wage service rendered by the petitioner from 01.01.1990 till 23.01.2001, the said service at the hands of the petitioner is not in dispute. Once, that being so, the petitioner is entitled for counting of the said service keeping in view the the provisions of the Punjab Civil Service Rules i.e. Rule 3.17, which Rule is as under:-

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;

(ii) Omitted.

(iii) Omitted.

Note 1.—In case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, under rule 1.1 (b) of these rules, the term “continuous temporary/officiating service” shall include such service rendered under Central Government.

Note 2.—In case of a purely temporary Central Government employee who is permanently transferred to Punjab Government and becomes subject to these rules, the term “continuous temporary service” includes the temporary service under the Central Government. The pensionary liability in respect of such cases shall be allocated on the length of service.

Note 3.—The entire service rendered by an employee as work-charged as also the service paid from contingencies, shall count as qualifying service:

Provided that—

- (i) such service is followed by regular employment;*
- (ii) there is no interruption in the two or more spells of service, or the interruptions are condonable under rule 4.23; and*
- (iii) such service must be a full-time job.*

Note 4. The entire adhoc service rendered by a Government employee may be counted as qualifying service:

Provided that—

- (i) such service is followed by regular employment;*
- (ii) there is no interruption in the two or more spells of adhoc service, and adhoc and regular service, or the interruptions are condonable under rule 4.23;*
- (iii) such service must be a full-time job; (iv) recruitment to such service should have been made through the Employment Exchange or by open advertisement;*
- (v) the service rendered as adhoc employee must have been against a regular post or vacancy; and*
- (vi) the conditions for eligibility, like academic qualifications, experience and age, at the time of adhoc appointment, should have been fulfilled.”*

A bare perusal of the above Rule would show that the daily wage service rendered by an employee is to be counted as a qualifying service in case the same is followed by the regularization. In the present case, the service which the petitioner had rendered from 01.01.1990 till 23.01.2001 was followed by regular service and therefore, the same is liable to be counted keeping in view the provisions of Rule 3.17 (A) of the Punjab Civil Service Rules.

Not only this, by interpreting Rule 3.17 (A), the Full Bench of this Court while deciding '*Kesar Chand Vs. State of Punjab and others*', **AIR 1988 Punjab 265** has held that the daily wage service followed by the regular service is to be taken as a qualifying service for computing the pensionary benefits.

Learned counsel for the respondents has not been able to dispute the said proposition of law. That being so, the petitioner is entitled for counting the period starting from 01.01.1990 till 23.01.2001 as a qualifying service for computing the pensionary benefits.

With regard to the claim of the petitioner for counting the service which the petitioner had rendered on extension from 01.07.2014 onwards till 31.07.2015, the same is being denied to the petitioner on the ground that as per the instructions dated 30.10.2015, the employees, who were on extension, are not entitled for any benefit of the service being rendered on extension. The respondents are implementing the instructions issued by the Government dated 30.10.2015 retrospectively upon the petitioner. The instructions dated 30.10.2015 are prospective not retrospective and therefore, any service which an employee has rendered prior to the said date, is to be governed by the instructions applicable at the time of rendering the service on extension. Learned counsel for the respondents has not been able to point out any provisions/instructions which were applicable prior to 30.10.2015 which debars taking into account the service rendered on extension from 01.08.2014 till 31.07.2015 for purpose claimed. That being so, even the said service is to be taken into account as a qualifying service for computing the pensionary benefits.

The last claim of the petitioner in the present petition is for

granting him the additional benefit of 5 years service keeping in view the Rule 4.2. (4) of the Punjab Civil Service Rules Volume 2 Chapter IV. The said Rule is as under:-

“4.2. (1) A Government employee appointed to a service or post after the twentysixth day of October, 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension), the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years, or a period of five years, whichever is less, if the service or post to which the Government employee is appointed is one –

(a) for which post-graduate research or specialist qualification, or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty-five years of age are normally recruited: Provided that this concession shall not be admissible to a Government employee unless his actual qualifying service at the time he quits Government service is not less than ten years: Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

(2) Omitted.

(3) Omitted.

(4) A Government employee, who is blind, deaf, dumb or otherwise orthopaedically handicapped or widow at the time of his entry into Government Service, shall be eligible to add to his service qualifying for superannuation pension a period of five years.

(5) A Government employee, who becomes blind, deaf, dumb or otherwise orthopaedically handicapped during the service and is retired from service as a result thereof, shall

also be eligible to add to his service qualifying for superannuation pension, a period of five years.”

A bare perusal of the above Rule would show that Clause 4 grants the additional benefit of 5 years service to a orthopedically handicapped person, who joined the service as such.

In the present case, the factum that the petitioner is orthopedically handicapped and was such even at the time of joining the Department has not being challenged. That being so, the petitioner is entitled for the grant of additional benefit of 5 years service as being claimed by him.

Keeping in view the above, the claim of the petitioner, in respect of the above claim is being allowed. The petitioner is entitled for counting of the daily wage service as a qualifying service from 01.01.1990 till 23.01.2001 as well as the period from 01.08.2014 till 31.07.2015 and period of additional 5 years should be added to the total service rendered by the petitioner keeping in view the Rule 4.2 (4) of the Punjab Civil Service Rules. Let the respondents recalculate the qualifying service of the petitioner and the pensionary benefits be recalculated and arrears of recalculation be done within a period of two months from the receipt of copy of this order and the arrears on recalculation be given to the petitioner within a period of one month thereafter.

The present writ petition is disposed of in above terms.

April 25, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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