

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

368

CWP-17814-1996 (O&M)
Date of Decision: 13.09.2023

Guran Devi

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Abhishek Kaushik, Advocate
for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. The petitioner by way of this petition assails the order dated 18.06.1996 and 04.09.1996, whereby, recovery orders were issued for recovering the amount paid to the petitioner for the period of service prior to 04.05.1982.

2. Learned counsel for the petitioner submits that the petitioner had earlier preferred a writ petition before this Court in the year 1987 bearing CWP-9382-1987, which was allowed on 03.12.1991 in terms of the judgment passed in the case of '*Rajinder Kumari Vs. State of Punjab and others*', 1988(4) SLR 297 and the petitioner was granted the higher pay w.e.f. 22.06.1973 which was available to a person who possessed the Giani qualification. He further submits that the said benefits were received by the petitioner as arrears of pay. Thereafter, the respondents issued a show-cause notice to the petitioner on 20.12.1995 stating that the grant of fixation done w.e.f. 22.06.1973 was erroneous and in fact the said pay fixation in the Giani

grade could have been done only from the date, the petitioner's adhoc service begins continuously, i.e. w.e.f. 04.05.1982. The petitioner submitted a reply to the show-cause notice and pointed out that she has been continuously performing her duty from 22.06.1973 itself and the breaks in her adhoc service which was for six months or more, was artificial and actually the petitioner did not work for any other post. She is, therefore, entitled for being given the benefit from the year 1973 and the earlier action taken by the State Government granting her Giani grade from 22.06.1973 does not call for any change. However, the State Government after considering her reply rejected her contention and directed for fixing CNV grade w.e.f. 04.05.1982 i.e. from the date her adhoc service was continuous. Recovery orders were also accordingly passed. Learned counsel submits that such recovery could not have been made nor the dates could have been changed. The continuous adhoc service was from the date of initial appointment and the breaks which are artificial ought to be ignored.

3. Learned counsel for the petitioner has further submitted that in no case, the recovery could have been made from the petitioner and he relies upon the Supreme Court judgments in '*State of Punjab and others Vs. Rafiq Masih (White Washer) etc*', AIR 2015 SC 696, and '*Smt. Nirmal Kanta Vs. State of Punjab and others*', passed in CWP-11884-1996, decided on 02.06.2016. He also relies upon a Co-ordinate Bench judgment of this Court in the case of '*Bhajan Singh Vs. PRTC*', passed in CWP-13281-2017, decided on 31.01.2023, to submit that such breaks in service have to be ignored for counting the qualifying service for pension.

4. Per contra, learned State has referred this Court to the judgment in the case of '*Rajinder Kumari Vs. State of Punjab and others*' in CWP-4515-1986 passed by the Division Bench of this Court which has been the

basis for allowing the writ petition of the petitioner and submits that the Division Bench specifically held as under:-

“In the foregoing circumstances, therefore, we are of the view that the benefit of circular Annexure P2 shall be available to the petitioners even they were in adhoc employment provided the adhoc employment was continuous and ultimately was regularized. In this case, since the adhoc employment with effect from May 16, 1977, continued until the petitioner was appointed on regular basis, which fact has not been disputed, the petitioner is held to be entitled to be brought in Group 2, Category B, and has also to be paid higher scale applicable to that category. Since it is stated that even on the date she was appointed originally on adhoc basis on May 16, 1977, she possessed the requisite qualification, the petitioner shall be placed in Group II, Category B, with effect from that date and paid salary on that basis as revised from time to time. In the result, the petition is allowed. However, there will be no order as to costs.”

5. Learned State counsel further submits that the Court thus only allowed the benefit of the grade pay for the period of adhoc employment which was continuous and ultimately regularized. The petitioner had not completed adhoc employment continuously prior to 1982. For the said purpose, learned counsel has also referred this Court to Annexure R-II to reflect that the petitioner's services were not continuous prior to 01.04.1982. He further also relies upon on the circular issued by the Punjab Government dated 17.09.1991 which allows grant of the grade, who were appointed on adhoc basis before 19.02.1979 and had acquired qualification of BA/inter/F.A. or Matric plus JAV before 19.02.1979.

6. I have considered the submissions made by learned counsel for the parties and have perused the record.

7. The petitioner has come on record to state that she passed the

Giani qualification on 22.06.1973 and joined service on 15.02.1973. She had several breaks in her service from 1973 onwards. The respondents have also shown that there were several breaks in her service upto January 1982 and thereafter, she has been working almost continuously. It is noticed that the breaks are not of one day or the other but at least she has remained without duty for a long period, like from 03.06.1976 upto 29.10.1976, the petitioner was not in service anywhere. Similarly from 27.11.1979 to 20.04.1980, the petitioner was not in service.

8. Keeping in view thereto, it cannot be said that the petitioner was in continuous service through out from 15.02.1973. In fact, even between 15.02.1973 to 03.05.1982, there are several breaks. The question whether the breaks were artificial or natural, is not to be decided at this point of time. Suffice it to state that the judgment passed by the Division Bench dated 02.08.1988 cautiously held that the benefit of circular shall be available to the petitioners even though they were on adhoc employment provided that the adhoc employment was continuous and ultimately was regularized. In the circumstances, the decision taken by the respondents in granting Giani grade from 1982, i.e. the period when the petitioner had continuous adhoc service, cannot be said to be erroneous or illegal.

9. The question further arises whether the amount could be recoverable or not. In **Rafiq Masih's case** (supra), the Apex Court held as under:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few

situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

10. In the present case, the petitioner had been granted the entire benefit for the entire service from 1973 i.e. from the date she had joined service and already acquired qualification. However, since her adhoc service is continuous only from 1982, the same has been corrected. The order was passed of granting benefit on 22.12.1989 and the same was corrected on 18.06.1996 after having given an opportunity of hearing and giving a show-cause notice, reply to which has been filed by the petitioner. The recovery was effected even before the petitioner retired.

11. In view thereof, no case for quashing the recovery is made out

and moreso, the pay fixation and granting of grade is always subject to condition of correction of recovery and if it is later on deducted i.e. higher pay has been granted erroneously. The judgment passed by the Apex Court in Rafiq Masih's case (supra) would therefore, have no application in the present case.

12. Keeping in view the above, the present petition is found to be without merit and accordingly, the same is dismissed.

13. The pending application(s), if any, shall stand(s) disposed of accordingly.

13.09.2023

D.Bansal

(SANJEEV PRAKASH SHARMA)
JUDGE

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