

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

CM-21356-CWP-2023 in/&
CWP-14589-2005
Date of Decision :-18.12.2023

Mastan Singh Bhatia

..Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mayank Garg, Advocate for
Mr. Raman B. Garg, Advocate for the petitioner.

Mr. Pankaj Middha, Addl. A.G., Haryana.

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Harsimran Singh Sethi, J. (Oral)

CM-21356-CWP-2023

Present application has been filed for fixing the main writ petition at an early actual date of hearing and dispose the main petition in view of the judgment in CWP-15081-2011, titled as Shanno Devi vs. State of Haryana and others, decided on 11.04.2012 (Annexure A-1), keeping in view the fact that the petitioner is 75 years of age and is still waiting for his entitled pensionary benefits.

Notice of the application to the respondent-State.

Mr. Pankaj Middha, Addl. A.G. Haryana accepts notice on behalf of the respondents-State and raises no objection for the grant of prayer as made in the present application.

Keeping in view the joint request of the parties, application is

allowed and the main writ petition is taken up for hearing today itself.

CWP-14589-2005

1. The grievance of the petitioner in the present petition is that the services which the petitioner had rendered with the respondent-department on adhoc basis starting from 07.07.1970 till 30.11.1972 has not been taken into account as qualifying service for computing the pensionary benefits of the petitioner, which action on the part of the respondents is contrary to the settled principle of law as well as rules governing the service.

2. Certain facts need to be mentioned for the correct appreciation of the issue in hand.

3. Petitioner was appointed as Junior Auditor after his name was sponsored by the Employment Exchange. Selection process was undertaken by the respondents and ultimately the petitioner was appointed on 07.07.1970 as Junior Auditor. The petitioner continued working as such when the same post was advertised by the department to be filled up on regular basis and petitioner competed for the post in question and was selected against the regular post by the authority concerned on 13.11.1972.

4. Before the petitioner could be given appointment on regular basis keeping in view his regular selection, while he was working on adhoc basis on the same post, the respondents relieved him from service on 30.11.1972 but ultimately keeping in view the selection of the petitioner on the said post of Junior Auditor, petitioner was again appointed on 10.02.1973 on regular basis.

5. The petitioner continued working on the said post till he attained the age of superannuation and ultimately retired on 31.07.2005.

After the retirement of the petitioner, when his pensionary benefits were to be calculated, the benefit of qualifying service starting from 10.02.1973 till retirement was given and the earlier services rendered by the petitioner with the respondent-department on adhoc basis from 07.07.1970 till 30.11.1972 was not taken into account as qualifying service for computing the pensionary benefits.

6. Learned counsel for the petitioner submits that the petitioner was entitled for the grant of benefit of adhoc service starting from 07.07.1970 till 30.11.1972 as qualifying service for computing his pensionary benefits.

7. Upon notice of motion, respondents have filed reply wherein, it has been stated that the claim of the petitioner was not covered under Rule 3.17 (A) of the Punjab Civil Services Rules (as applicable to Haryana) at the time when the petitioner had retired from service, wherein it has been mentioned that only adhoc service which leads to confirmation can be treated as qualifying service, whereas, in the present case, the petitioner stood relieved on 30.11.1972 and was not in service on 01.12.1972 till 10.02.1973 and hence, as there is a gap between the two services, benefit of earlier service cannot be granted to the petitioner however, claim of the petitioner does not fall under any of the exception of Rule 4.21 of the said Rules.

8. Learned counsel for the respondents submits that the claim of the petitioner is not maintainable as the petitioner was freshly appointed on 10.02.1973 hence, the earlier services rendered by the petitioner on adhoc basis cannot be taken into account for any purpose much less to be treated as

qualifying service for computing his pensionary benefits.

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

10. As per the facts, which have been noticed hereinbefore, the petitioner was initially appointed through Employment Exchange after undergoing due selection process on 07.07.1970 as Junior Auditor on adhoc basis, on which post, the petitioner continued working till 30.11.1972. It is a conceded fact that the petitioner while working on adhoc basis applied for the post of Junior Auditor when the same was advertised by the respondent-department to be filled through proper selection and the petitioner got selected on the said post on 13.11.1972 but due to the non-grant of appointment, the petitioner was relieved from the said post on 30.11.1972 to be again appointed in pursuance to the regular selection, which the petitioner had cleared while working on adhoc basis in service on 13.11.1972.

11. In the present case, relieving of the petitioner from the post of Junior Auditor while working on adhoc basis, is due to the non-grant of appointment by the respondents despite the fact that the petitioner had already been selected much before his relieving from the post of Junior Auditor hence, in the present case, where the appointment order of the petitioner was delayed despite being selected through proper selection, by the respondents, the petitioner cannot be made to suffer so as to decline the benefit, which was admissible to him under the rules governing the service. Had the respondents given an appointment to the petitioner after being selected through proper selection process before relieving him on 30.11.1972, the petitioner would have got the benefit of Rule 3.17 (a). Non-

grant of appointment on substantive post despite selection is attributable to the respondents and hence, the petitioner cannot be made to suffer for the inaction on the part of the respondents in not giving appointment to the petitioners for a period of four months despite being selected by the competent agency.

12. Further, the respondents are wrongly interpreting the Rule 3.17-A (a) so as to oust the petitioner for the grant of benefit of service, which the petitioner had rendered on adhoc basis starting from 07.07.1990 till 30.11.1972. Rule 3.17-A(a) is reproduced hereunder for the ready reference:-

“3.17-A (a) All service interrupted or continuous followed by confirmations shall be treated as qualifying service; the period of break shall be omitted while working out aggregate service.”

13. A bare perusal of the said rule would show that all the service interrupted or continuous followed by confirmation shall be treated as qualifying service and the period of break is to be omitted while working out aggregate service. In the present case, if there is a break in service from 01.12.1972 till 09.02.1973, the same is to be ignored once, the petitioner got confirmed on the same post on which he was working on adhoc basis hence, Rule 3.17-A(a) covers the case of the petitioner especially, when it is a conceded position that petitioner was confirmed/regularly appointed on the same post on which, he discharged his duties on adhoc basis hence, once the petitioner stood selected for the same post on which he was already working on adhoc basis since 07.07.1970, merely that the respondents had terminated his services before giving him appointment on the same post on 10.02.1973, the break in service cannot be made a ground to decline the benefit of earlier

service rendered by him on adhoc basis from 07.07.1970 till 30.11.1972 to be treated as qualifying service for computing his pensionary benefits as the same is to be ignored as for, interrupted adhoc service, benefit is to be extended.

14. Learned counsel for the respondents submits that nothing has come on record that the petitioner was given appointment in pursuance to his selection qua the same post dated 13.11.1972.

15. On being asked to show as to on what basis the respondents had given permanent appointment to the petitioner on 10.02.1973, despite being selected for the post in question on 13.11.1972, learned counsel for the respondents has not been able to show that the same was not in pursuance to his selection on 13.11.1972. Under these circumstances, the benefit of selection, which was only delayed due to the inaction on the part of the respondents cannot take away the right of the petitioner to claim the benefit of the earlier adhoc services rendered by the petitioner with the respondent-department.

16. Learned counsel for the respondents has placed reliance upon the judgment of this Court in CWP-9852-1989 titled as Harphul Singh (Subedar) vs. State of Haryana decided on 10.09.1993 to contend that where an employee has been appointed substantively, earlier service cannot be taken into account.

17. The facts and circumstances in Harphul Singh (Subedar) (supra) cannot be made applicable in the present case. In the case of Harphul Singh, he was working on adhoc basis in a different department whereas, his substantive appointment was in different department but in the

case of petitioner herein, he was working in a same department, on the same post on which he was appointed substantively and that too on regular basis. Hence, the facts and circumstances in Harphul Singh (Subedar) (supra) is not akin to the case of the petitioner herein.

18. No other argument has been raised.

19 Keeping in view the facts and circumstances noticed hereinbefore, present petition is allowed. Respondents are directed to grant the petitioner benefit of service, which the petitioner had rendered on adhoc basis from 07.07.1970 to 30.11.1972 to be counted as qualifying service for the grant of pensionary benefits. Let the respondents recalculate the pensionary benefits of the petitioner for which, he became entitled along with the arrears and the same be released to him within a period of two months from the date of receipt of copy of this order.

December 18, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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