

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

**CWP No.6276 of 2007
Date of Decision : 20.01.2023**

Paramjit Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Kanwaljit Singh, Senior Advocate assisted by
Mr. Robin Gill, Advocate
for the petitioner.

Mr. Inderpreet S. Kang, Asstt. Advocate General, Punjab.

Mr. Roshan Lal Sharma, Advocate and
Mr. S.K. Boodh, Advocate
for respondent No.6.

PANKAJ JAIN, J.

The petitioner seeks writ in the nature of mandamus directing the respondents to count the service period of the petitioner for which he worked in the office of Chief Electrical Inspector, Government of Punjab as Line Superintendent for the purpose of pension/retiral benefits.

2. The petitioner joined as clerk with the office of Deputy Commissioner, Patiala after having been selected through Subordinate Selection Board on 14th of October, 1964. In the year 1974, the petitioner applied through proper channel for a vacancy in the office of

Chief Electrical Inspector. The petitioner joined as Line Superintendent in the pay-scale of Rs.200-450/- keeping lien on his substantive post in the clerical cadre. Vide Annexure P-2, dated 9th of September, 1974, the petitioner was allowed to continue holding lien over his substantive appointment. The petitioner worked as Line Superintendent in the office of Chief Electrical Inspector till 2nd of November, 1978. On being relieved the petitioner joined back in the office of Deputy Commissioner, Patiala on 3rd of November, 1978. The petitioner was again selected as Line Superintendent with Punjab State Electricity Board where he joined back on 2nd of January, 1989. The petitioner after rising to the rank of Addl. Assistant Engineer retired from respondent-Board on 31st of December, 2002. The primary grievance as raised in the present writ petition relates to non-consideration of the service rendered by the petitioner from 14th of October, 1964 to 9th of September, 1974 as Clerk in the Office of Deputy Commissioner, Patiala and further from 9th of September, 1974 to 2nd of November, 1978 while the petitioner worked in the office of Chief Electrical Inspector as Line Superintendent on adhoc basis keeping lien over his substantive posting in the clerical cadre.

3. Counsel for the petitioner submits that the petitioner cannot be denied the aforesaid period as his appointment as Clerk in the year

1964 was through proper channel having been appointed through Subordinate Services Selection Board. He was appointed as Line Superintendent in the Office of Chief Electrical Inspector on 9th of September, 1974 on adhoc basis but was allowed to keep lien over his substantive posting in the clerical cadre. Thus, there is no reason to deny counting of the aforesaid service period for pensionary benefits. Reliance is being placed upon Rule 4.17 of the Punjab Civil Services Rules.

4. Per contra, Mr. Sharma appearing on behalf of the respondent-Corporation submits that in terms of Rule 4.2(1)(b) of Punjab Civil Services, Volume II, the petitioner having not completed 10 years' regular service with the Punjab Government is not entitled for such pension. He further submits that the petitioner joined office of Deputy Commissioner, Patiala as Clerk on 14th of October, 1964 on regular basis thereafter joined office of Chief Inspector on 9th of September, 1974 as Line Superintendent purely on adhoc basis for a period of 6 months. As per the terms & conditions of the appointment letter, the said service was purely on adhoc basis for six months and the petitioner continued to serve in the said office on the strength of interim orders passed in CWP No.4620 of 1975 wherein he claimed regularization in view of Presidential order dated 19th of October,

1973. The said writ petition was dismissed on 11th of February, 1976 and the petitioner was relieved from his service on 2nd of November, 1978. It has been claimed that since the petitioner was granted initial permission to keep lien over substantive appointment only for 6 months, his services are deemed to be terminated after expiry of those six months. It has been further claimed that there being no provision in the Rules to count the period of service on adhoc basis towards retiral benefits, the writ petition filed by the petitioner merits rejection.

5. Reply on behalf of the State has also been filed wherein it has been claimed that the petitioner was ordered to be relieved as Clerk from the office of the Dy. Commissioner on 9th of September, 1974 and was allowed to keep lien over his substantive posting in the clerical cadre. Such lien at the most can continue for 3 years under the Rules. The lien stood terminated after 3 years. The petitioner on his subsequent appointment on regular basis joined Punjab State Elec. Board without getting himself relieved. After having rejoined and submitted his joining report on 3rd of November, 1978 back with the office of the Deputy Commissioner, Patiala he should have remained present but he absented himself and joined Electricity Board without being relieved from the office of Deputy Commissioner and thus no order of his posting as Clerk was issued. It has been claimed that he

worked in the office of Deputy Commissioner from 14th of October, 1964 to 9th of September, 1974 which is less than 10 years qualifying service for pension. So far as service of the petitioner in the office of Chief Electrical Inspector, Punjab as Assistant Lineman from 10th of September, 1974 to 2nd of November, 1978 is concerned, the same being on adhoc basis cannot be counted. Resultantly, the petitioner is not entitled for getting the aforesaid service period counted towards pension.

6. I have heard counsel for the parties and have gone through the records of the case.

7. In the considered opinion of this Court, the issue is:

(i) Whether service rendered by the petitioner in the office of Deputy Commissioner from 14th October, 1964 to 9th September, 1974 and lien period thereafter can be counted as eligible for pension?

(ii) Whether period for which the petitioner worked as Assistant Lineman in the office of Chief Electrical Inspector commencing from 9th of September, 1974 till 2nd of November, 1978 / 3rd of November, 1978 is to be counted for pensionary benefits or not especially in light of the effect of the communication dated 7th of November, 1978 issued by Deputy Commissioner, Patiala?

8. Chapter III of the Punjab Civil Services Rules, Vol. II deals with service qualifying for pension. Section II thereof deals with conditions of qualification. Rule 3.12 relevant for adjudication of the present case reads as under :-

“3.12. The service of a Government employee does not qualify for pension unless it conforms to the following three conditions :-

First – The service must be under Government

Second – The employment must be substantive and permanent.

Third – The service must be paid by Government.

These three conditions are fully explained in the following rules.

Note.- The question whether service in a particular office or department qualifies for pension or not is determined by rules which were in force at the time such service was rendered; orders subsequently issued declaring the service to be non- qualifying, are not applicable with retrospective effect.”

9. Substantive and permanent employment has been provided in Part 'C' of Section II. Rule 3.17 and Rule 3.17-A read 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.

3.17-A. (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:—

- (i) Omitted.
- (ii) Omitted.
- (iii) Casual or daily rated service.
- (iv) Suspension adjudged as a specific penalty.

Note.—In cases where an officer dies or is permitted to retire while under suspension will not be treated as an interruption.

- (v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government where service qualifies for pension.
- (vi) Joining time for which no allowances are admissible under rules 9.1 and 9.15 of C.S.R., Volume I, Part I.
- (vii) If any unauthorised leave of absence occurs in continuation of authorised leave of absence and if the post of the absentee has been substantively filled up, the past service of the absentee is forfeited.
- (viii) Transfer to a non-qualifying service in an establishment not under Government control or if such transfer is not made by the competent authority and transfer to service in a grant-in-aid school. (A Government employee, who voluntarily resigns qualifying service, cannot claim the benefit under this clause.)

(ix) Removal from public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of the past service.

(x) Service rendered beyond the date of retirement on superannuation in terms of rule 3.26 of Punjab Civil Services Rules, Volume I, Part I.

(2) An interruption in the service of a Government employee caused by wilful absence from duty or unauthorised absence without leave, shall entail forfeiture of the past service.

(3) Wilful abstinence from performing duties by a Government employee by resort to pen down strike shall be deemed to be wilful absence from duty and shall also entail forfeiture of the past service.

Note.—In the case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, the pensionary benefits admissible for service under Central Government would be that admissible under the Government of India rules and the liability for such benefits shall be allocated in accordance with the prevalent orders.

Clarification (1).—Even after the introduction of rule 3.17 (A) and deletion of rule 4.21 the following cases do not entail forfeiture of past service:—

- (a) authorised leave of absence;
- (b) abolition of post or loss of appointment owing to reduction in establishment. (“Post” or “appointment” means a post or appointment service in which qualifies for pension).

(2) While counting such qualifying service for working out aggregate service, the period of break in service shall be omitted.”

10. Rule 4.23 deals with the Condonation of Interruptions and

Deficiencies and the same reads as under :-

“4.23. In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered under the State Government shall be treated as automatically condoned, and the pre-interruption service shall be treated as qualifying service for pension purposes, except where the interruption has been caused by resignation, dismissal or removal from service or due to participation in a strike, but the period of interruption itself shall, under no circumstances, be reckoned as qualifying service for pension purposes.”

11. Thus, from conjoint reading of the aforesaid provisions the mandate of Rules is that for a service of a government employee to qualify for pension following three conditions need to be satisfied :-

“First – The service must be under Government

Second – The employment must be substantive and permanent.

Third – The service must be paid by Government.”

12. Further 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 shall count in full except in the contingencies as stipulated under Rule 3.17. Service rendered in work charge establishment and service paid from contingencies subject to Rule 4.23 shall count for qualifying service. Rule 4.23 provides for automatic condonation of interruption between two spells of service rendered under the State Government in the absence of a specific

indication to the contrary and provides that pre interruption service shall be treated as qualifying service for pension purpose except where such interruption has been caused by resignation, dismissal or removal. In the present case, there is no dispute w.r.t. uninterrupted service of the petitioner with the office of Deputy Commissioner, Patiala for the period commencing from 14th of October, 1964 to 9th of September, 1974 which falls short of 10 years just by 38 days. The petitioner applied for the post of Assistant Lineman under the Government on adhoc basis through proper channel. Communication dated 9th of September, 1974 issued by Deputy Commissioner allowing the petitioner to join Assistant Lineman in the Office of Chief Electrical Inspector to Government of Punjab while holding lien on his substantive appointment reads as under :

“From

The Deputy Commissioner,
Patiala.

To

Shri Paramjit Singh, Asstt. Nazir
Nazarat Branch.

Memo No. 1763/ Estt.

Dated : 9.9.74

Subject : Appointment as Line Superintendent.

**

Reference your application dated 6.9.74 on the
above noted subject.

On your appointment as Line Superintendent in the

office of Chief Electrical Inspector to Govt. Punjab Patiala. You are hereby relieved of your duties today the 9th September, 1974, after-noon. You being a permanent hand of this office will continue to hold your lien in this office as your substantive appointment. A copy of the Medical fitness certificate is also enclosed.

Sd/- G.A.I.
For Deputy Commissioner,
Patiala”

13. Petitioner was relieved from the office of Chief Electrical Inspector on 2nd of November, 1978. He reported to join back on his substantive appointment on 3rd of November, 1978 and admittedly in between there is no communication which has an effect of communicating to the petitioner that his lien over substantive post stood lapsed. Respondent No.6 in their written statement have admitted that the lien continued for 3 years. Even if for the sake of arguments it is taken that the lien of the petitioner could not have continued beyond three years from 9th of September, 1974 the same shall end only on 8th of September, 1977 meaning thereby that there can't be any denial to the fact that service rendered by the petitioner up to 8th of September, 1977 is in conformity to the conditions enumerated in Rule 3.12. Thus, the reasoning afforded by the respondents in denying the claim of the petitioner to omit whole of the service period rendered by the petitioner on adhoc basis as Assistant Lineman in the office of Chief Electrical Inspector, State of Punjab and thereby

holding that his service period on substantive post has to be counted only from 14th of October, 1964 till 6th of September, 1974 and thus, he was not eligible for pension, the same being less than 10 years, cannot be sustained. Once the respondents themselves admit that the lien of the petitioner over the substantive post was in vogue for three years from 9th of September, 1974 till 8th of September, 1977, this Court has no hesitation in holding that the period served by petitioner as an Assistant Lineman in the office of Chief Electrical Inspector, State of Punjab has to be reckoned and counted for pensionary benefits. Since the petitioner was holding substantive permanent post and the adhoc service rendered by him was with the State of Punjab the same would not fall within the exceptions carved out under Rule 3.17 rather the same would fall within the ambit of Rule 3.17(a) making it eligible to be counted as qualifying service. Since there is no order on record wherein there is any communication to the contrary by the Government the interruption if any stands condoned under Rule 4.23 as the same has not been caused due to resignation, dismissal or removal from service.

14. In view of the above, the present writ petition is allowed. Respondents are directed to release the retiral benefits of the petitioner by counting his service period from 14th of October, 1964 to 2nd of

November, 1978 towards qualifying service for the purpose of terminal benefits. The necessary relief be released to the petitioner within a period of 12 weeks from the date of receipt of certified copy of this order.

January 20, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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