

[202] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12464-2013

Date of Decision :30.11.2023

Harjinder Singh, PTI (Retd.)

...Petitioner

versus

State of Punjab and others

....Respondents

Coram : **HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

Present : Ms. Arshdeep Kaur, Advocate for the petitioner.
Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (ORAL)

[1] The petitioner by way of this writ petition prays to count his service rendered in Indian Army from 12.11.1976 to 06.02.1982 where he worked as a *Gunner* in the Artillery Regiment. The said period is prayed to be counted for the purpose of pensionary benefits, DCRG and other retiral benefits.

[2] The petitioner served with the State Government as a Physical Training Instructor (PTI) from 22.04.1997 upto 30.06.2011 when he took voluntary retirement.

[3] The respondents have admitted that as per notification dated 15.10.2009, the period of military service shall count towards pension only when the person concerned should not have earned pension under Military Rules in respect of the Military service in question. It is also noted that the period, if any, between the date of discharge from the date of service and date of appointment to any service shall count for pension

exceeding one year to three years may be also be allowed in exceptional cases but period beyond three years shall not be counted. The petitioner has been disallowed the period of service rendered in Indian Army on account of the fact that he was being granted disability pension by the Army Authorities.

[4] The Armed Forces provide disability pension as a separate unit apart from regular pension to armed personnels, if they have acquired disability while in service. The disability pension, therefore, being an independent aspect cannot be taken into consideration to deprive the petitioner his services rendered in Indian Army for the purpose of counting total qualifying service or pension in the State services.

[5] As noticed above, the petitioner served in the Indian Army from 12.11.1976 to 06.02.1982 when he was discharged obviously on account of acquiring disability.

[6] Be that as it may, the said period of service cannot be ignored in terms of notification dated 15.10.2009 and the pre-condition that the person should not have earned pension under the Military Rules would not be *an embargo* for counting that period of service with the service rendered in the State Department as PTI for counting total qualifying service.

[7] The respondents have also objected with regard to the period of service between the date when the petitioner was discharged from Army and the date when he joined as a PTI.

[8] This Court finds that the said aspect apparently is in favour of the State Government and in terms of the said notification, period from 06.02.1982 to 22.04.1997 cannot be counted. However, the earlier period from 1976 to 1982 has to be counted with the total qualifying service rendered as a PTI. If so calculated, the petitioner's total qualifying service is found to be more than 10 years. A total of 05 years 03 months will have to be added to the total calculated qualifying service in Civil, namely 08 years, 02 months and 29 days, and therefore, the petitioner would be entitled to receive pension in terms of Para 3.1 of the Punjab Services Rules as well as would be entitled to enhanced gratuity. Para 3.1 of the Punjab Civil Services (Premature Retirement) Rules, 1975 is as under:-

3. (1) **Premature Retirement** :

“(a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

(b) The period of such notice shall not be less than three months.

Provided that where at least three months' notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, at the same rates at which he was drawing them immediately before the date of retirement, for a period of three months or, as the case may

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be, for the period by which such notice falls short of three months.”

[9] The writ petition is *allowed* in the aforesaid terms.

[10] Calculation of pension and retiral benefits shall be done by the respondents within a period of three months and release the same to the petitioner.

(SANJEEV PRAKASH SHARMA)
JUDGE

30.11.2023
'Rajneesh'

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