IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(206) **CWP-19113-2014**
Date of Decision : August 24, 2023

Shri Parkash **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Pardeep Sehrawat, Advocate, for
Mr. Vivek Goyal, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present petition has been filed with a prayer that the petitioner is entitled for calculating the adhoc service which the petitioner had rendered from 24.03.1979 till 19.01.1982 as a qualifying service for computing the pensionary benefits, which benefits are not being given to him and that too without any valid justification.

2. As per the facts mentioned in the petition, the petitioner was initially appointed on adhoc basis on 24.03.1979 as Ayurvedic Vaidya. He continued working on the said post till 19.01.1982 after which date, his services were terminated. On 04.11.1988, the petitioner was again appointed on the same post and the petitioner continued working till his services were regularized and ultimately, on attained the age of superannuation, the petitioner retired from service on 31.08.2012.

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3. The prayer of the petitioner is that while computing the qualifying service, the period of adhoc service which the petitioner has rendered on the same post from 24.03.1979 to 19.01.1982, has not been taken into account as a qualifying service which act on the part of the respondents is contrary to the rules governing the service and therefore, the respondents are under an obligation to grant the petitioner the benefit of the same.

4. Upon notice of motion, the respondents have filed the reply and it has been mentioned that the claim of the petitioner for counting the adhoc service from 24.03.1979 till 19.01.1982 is not correct as, there is a gap in service. Learned State counsel submits that after the year 1982 when the services of the petitioner were terminated, he was again appointed in the year 1988 and as per the rules governing the service where there is interruption in the service, the same cannot be taken into account for computing the qualifying service.

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

6. The facts of the present case qua the rendering of the service by the petitioner are not in dispute. It is a conceded fact that initially the petitioner was appointed as Ayurvedic Vaidya on adhoc basis in the year 1979 and he continued working as such till the year 1982 and thereafter, once again was appointed in November 1988 and he continued working till he attained the age of superannuation in the year 2012.

7. The only question whether, the service rendered by the petitioner on adhoc basis from 24.03.1979 till 19.01.1982 is a valid service to be taken into account as a qualifying service for computing the pensionary benefits or not. The Rule 3.17-A of the Punjab Civil Services

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Rules as applicable to Haryana, which was being followed by the relevant time is as under:-

> *"3.17 In the case of an officer retiring on or after 5th January, 1961, if he 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) Period of temporary or officiating service in non-pensionable establishment;*
>
> *(ii) Deleted*
>
> *(iii) period of service paid from contingencies.*
>
> *Note-I : In the case of a Central Government employee who is permanently transferred to Haryana Government and becomes subject to these rules under Rule 1.1 (b) of these rules, the terms 'continuous temporary service or continuous 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 Haryana 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 : (a) In respect of temporary employees of the following categories who render service under the Central/State Governments prior to securing posts under the Central/State Governments on their own violation in response to advertisements or circulars, including those by Union/State Public Service Commission and who are eventually confirmed in their new posts, the proportionate pensionary "liability in respect of temporary service rendered under the Central/State Governments to the extent such service would have qualified*

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for grant of pension under the rules of the respective Government, will be shared by the concerned Governments on a service share basis: -

(1) Those who having been retrenched from the service of Central/State Governments secured on their own employment under State/Central Government either with or without interruption between the date of retrenchments and date of new appointment.

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Government through proper channel/with proper permission of the administrative authority concerned.

Explanation:- Where an employee in category (2) is required for administrative reasons for satisfying technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement to join with proper permission, the new "posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement.

The gratuity, if any, received by the Government employee for temporary service under the Central/State Governments will, however, have to be refunded by him to the Government concerned.

(b) Those employees, who while holding temporary posts under Central/State Governments apply for post under Central/State Governments direct without permission and resign their previous posts to join the new appointment under the Central/State Governments will not be entitled to bount their previous service for pension"

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8. A bare perusal of the above mentioned Rule would show that the adhoc/temporary service rendered by an employee is to be taken into account and only the break period is to be excluded while counting the aggregate service for which an employee is entitled for to be treated as qualifying service for computing the pensionary benefits.

9. Hence, once the rule envisages two different period of adhoc service to be taken into account as a qualifying service, the claim of the petitioner is squarely covered by the Rule and only the break period is to be ignored hence, the petitioner is entitled for considering the service which he has rendered as adhoc employee starting from 24.03.1979 till 19.01.1982 as a qualifying service. Learned State counsel has not been able to point out any argument as to how under Rule 3.17-A, adhoc service rendered by the petitioner from 24.03.1979 till 19.01.1982 cannot be treated as qualifying service for computing the pensionary benefits.

10. Keeping in view the above, the present writ petition is allowed. Respondents are directed to re-compute the pensionary benefits of the service by grating the petitioner the benefit of adhoc service as a qualifying service and grant the petitioner the benefit of arrears as well.

11. As the date on which the petitioner retired, Rule 3.17A existed and the benefit of the same was not extended to the petitioner by the respondents without any valid justification, the petitioner will also be entitled for interest on the arrears of the pensionary benefits including the pension @ 6% per annum from the date petitioner retired till the actual payment.

August 24, 2023 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

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

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