

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

208

CWP-7274-2017

Date of Decision: 27.07.2023

Gurtej Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Sunny Singla, Advocate
for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to count the services rendered by the petitioner in a Government High School.

2. Learned counsel for the petitioner submits that the petitioner has expired. However, in view of the amendment in CPC under Order 22 Rule 3, this petition has been heard. It would be apposite to quote the amendment as under:-

“Procedure in case of death of one of several plaintiffs or of sole plaintiff.

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff."

3. The deceased petitioner has claimed that his services rendered from 19.11.1968 to 13.03.1980 with the Haryana Government as S.S. Master in a Government High School, Morkhi, be counted for the purpose of pension and retiral benefits.

4. Learned counsel for the petitioner, while inviting attention of this Court to a judgment rendered by this Court in the case of '**Partap Singh Vs. State of Haryana and others**', passed in **CWP-6980-2009**, submits that the services rendered with the Punjab Government were directed to be counted for the purpose of pension when the petitioner therein has retired from Government of Haryana. Learned counsel has points out that the rules are identical for both Punjab as well as State of Hayrana. He has referred to this Court the Rule 3.17 which provides as under:-

"In the case of an officer retiring on or after 5 January, 1961, if he was holding substantially 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) period of service in work charged establishment; and;

(iii) period of service paid from contingencies"

Note 1 and 2

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 govt. on their own volition in response to advertisements or circulars, including those

by Union/State Public Service Commission and who are eventually confined 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 for grant of pension under the rules of the respective Government will be shared by the concerned Government on a service basis:

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

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

Explanation: Where an employee in category (2) is required 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 this 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 for temporary service under the Central/State Government will however, have to be refunded by him to the Government concerned.

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

5. Learned counsel for the petitioner further submits that the petitioner only submitted a resignation and had joined immediately on 14.03.1980 with the Government of Punjab as S.S. Master in the Education Department, Punjab.

6. Learned counsel for the petitioner further submits that the rules

clearly provide for counting of services rendered either with the Central Government or the State Governments and there is no requirement of *inter se* arrangement between the State of Haryana and State of Punjab.

7. Per contra, learned State counsel has submitted that the claim raised by the petitioner suffers from laches and inordinate delay. It is submitted that the claim is being set up after 15 years of retirement and there is no plausible explanation coming forward for not claiming the said period of service earlier. She relies upon a judgment rendered by the Hon'ble Supreme Court in the case of *Bharat Sanchar Nigam Limited Vs. Ghanshyam Dass and others, 2011(4) SCC 374*, to submit that the persons who have been sleeping over their rights, ought not been granted the relief at a belated stage. Further, she submits that the objection of the claim was legal and proper as there is no arrangement or decision between the State of Punjab and State of Haryana for counting the service rendered in one or the other State. She further relies upon a judgment passed by this Court in *CWP-7694-1998*, wherein, similar relief was declined by the Court.

8. I have heard learned counsel for the parties at length and have considered the submissions.

9. The question regarding mutual arrangement between the Government of Haryana and Government of Punjab does not arise in view of the provisions of the Rule as above.

10. From the perusal of the Rule as noticed above, it is apparent that the period of service rendered with any of the State Governments or with the Central Government in substantive capacity has to be counted subject to three conditions:-

- (i) The permission has been taken from the previous Government for applying for the new post in the Punjab

Government.

(ii) A person must be relieved by the concerned respective Government to join at the new place of posting. Explanation to the Rule (supra) specifically mentions about such conditions.

(iii) The services can be counted provided gratuity received by the Government servant under the earlier Central or State Government, has been refunded by him to the Government concerned.

11. In the present case, the petitioner has resigned and joined on the next date itself with the State of Punjab on 14.03.1980. The said reservation has to be deemed to be a technical reservation and therefore, the previous service rendered in State of Haryana under the Government of Haryana from 19.11.1968 to 30.03.1980, has to be counted subject to submission of proof that the permission was taken to apply for the post in Government of Punjab at that relevant time. The service record in this regard will have to be looked into. Further, there is another condition which deems to be satisfied i.e. with regard to refunding of the gratuity already received from Government of Haryana.

12. Since the petitioner had already expired, his legal heirs would be entitled to put up the claim and if they are able to produce the sufficient proof which the authorities will examine and deposit the gratuity, the retiral benefits of the deceased petitioner shall be counted, revised and released to the legal heirs of the petitioner.

13. With these observations, the writ petition is disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

27.07.2023
D.Bansal

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