

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

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CWP-9088-2017

Date of Decision: 28.08.2023

Sukhdev Singh Garcha

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Manish Prabhaker, Advocate
for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. The petitioner has remained away from service for a period of 22 years upto the time when he attained the age of superannuation. Thereafter, he has turned back and preferred this writ petition for seeking quashing of order dated 06.02.2015, whereby, his period of service for 01.04.1990 to 30.04.2013 was forfeited and the order dated 06.05.2016, whereby, the appeal was rejected. The petitioner prays to direct the respondents to release all the pensionary benefits after quashing of the orders of forfeiture of service from the date of his initial appointment dated 20.10.1976.

2. Learned counsel for the petitioner submits that the earlier period of service rendered with the respondents has to be taken into consideration for granting of pension. He relies upon a Co-ordinate Bench judgment of this Court in the case of *Jai Singh Vs. State of Haryana and others*, passed in CWP-23751-2011, to submit that 10 years of qualifying service rendered

by him was to be counted and therefore, he was entitled for pension for the period of service which he rendered with the respondents. He also relies upon a Supreme Court judgment in the case of ***Lajpat Rai Mehta Vs. Secretary to Government of Punjab, 2009(3) SCC 260***, to submit that the petitioner would be entitled for pension even though he has remained absent for such a long period. In the said case, the said appellant was on unauthorized absence for a period of 13 years.

3. A look at the judgment passed by the Hon'ble Supreme Court in the case of Lajpat Rai Mehta (supra) reflects that the provisions of Rule 3.17 A(2) of the Punjab Civil Services Rules Volume II were not brought to the knowledge of their Lordships and a person who has already abandoned his service, cannot claim pension for his previous service after a period of remaining absent from duty for 22 years.

4. I have considered the submissions and the judgments as noticed hereinabove.

5. Admittedly, the petitioner was working on adhoc basis and was appointed as an adhoc teacher on 20.10.1976. His services were regularized with effect from 01.10.1980 by the Department of Education. The orders have not been placed on record by the petitioner.

6. Initially, this Court vide order dated 01.05.2017, had observed as under:-

“This Court is not inclined to interfere in the matter regarding forfeiture of 23 years of service on account of the fact that after the petitioner had availed of his leave without pay, he has not rendered a single day of service with the department. The plea taken that he was not aware as to where his post had been transferred is not tenable. In case, the petitioner was desirous of rendering service with the department, he would have made adequate efforts to rejoin on the said post which is wholly lacking

in the instant case. However, it is noticed that the petitioner had availed leave without pay which was to extend upto 30.04.1991 which had been sanctioned. Therefore, prima facie the order needs to be amended accordingly. Moreover, it is contended that retiral benefits have not been released.

Issue notice to the limited extent for modification in date of order and retiral benefits, for 11.08.2017.”

7. Keeping in view the observations of the Court, the order of 06.02.2015 was suitably modified by the respondents by making a rectification that he remained absent from duty 01.05.1991 to 30.04.2013 instead of 01.04.1990 to 30.04.2013. The respondents have stated that the petitioner went abroad for his personal work and never returned for a long period of 22 years. In terms of Rule 3.17 A(2) of the Punjab Civil Services Rules Volume II, the past service of the employee can be forfeited for unauthorized absence of employee and accordingly, the services of the petitioner stands forfeited and he would not be entitled for pensionary benefits.

8. Learned counsel for the petitioner submits that the service rendered by the petitioner with the Department cannot be washed away in any manner as per Rule 6.6 of the Punjab Civil Services Rules Volume II, by the respondents and the petitioner would be entitled for pension on the basis of his service which he has actually rendered with the respondents.

9. In CWP-539-2015, decided by Co-ordinate Bench of this Court on 15.02.2017 in the case of **‘*Harminder Kaur Vs. State of Punjab and others*’**, the provision of Rule 3.17 A(2) of the Punjab Civil Services Rules Volume II was considered, which reads as under:-

“3.17-A(s) An interruption in the service of a Government employee caused by willful absence from duty or unauthorized absence without leave shall entail forfeiture of the past service.”

10. The petitioner admittedly has remained absent from duty for a long period of 22 years. In fact, he has abandoned his service on his own. There is no document on record wherein the petitioner can be said to have given reasons for remaining absent for such a long period. In fact, he went abroad and must have been earning in the said intervening period. He cannot be allowed to turn around and thereafter also demand pension from the State Government for the service which is required to be forfeited in terms of Rule 3.17 A(2) (supra).

11. The Hon'ble Supreme Court in the case of ***State of Punjab Vs. Dr. P.L. Singla, 2008(8) SCC 469*** held as under:-

“10. Where the employee who is unauthorizedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorized absence (unless the rules require otherwise). Where the punishment awarded for the unauthorized absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorized absence remains unaccounted, it will result in break in service, thereby affecting the seniority, pension, pay etc., of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing

punishment.”

12. Keeping in view the act of indiscipline and remaining absent for such a long period, the petitioner’s service was liable to be forfeited and therefore, no case for granting pension to him is made out. The action of the respondents does not call for any interference.

13. Accordingly, the present petition is dismissed subject to payment of costs of Rs.10,000/- to be deposited in the High Court Legal Services Committee.

28.08.2023

D.Bansal

**(SANJEEV PRAKASH SHARMA)
JUDGE**

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