

2024:PHHC:002616
CWP-11711-2015 (O&M)
Date of Decision: 10.01.2024

...Petitioner

Vs.

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. Puneet Kumar Bansal, Advocate for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioner has preferred this writ petition for counting his period of service rendered with the respondents as Junior Soil Surveyor under the Rural Engineering Survey, Punjab, for the period 23.01.1973 to 31.03.1976, in terms of Rule 4.23 the Punjab Civil Service Rules Volume-II.

2. Learned counsel for the petitioner submits that the petitioner having worked for the aforesaid period was subsequently selected as an Agriculture Inspector on 05.01.1977 and has continued to perform his duties till he retired on 30.11.2006, as the Soil Conservation Officer. However, his period of qualifying service for fixation of pension was counted from 1977 to 2006 alone, resulting in his getting pension lower than what he was entitled to. Learned counsel submits that the period of service from 23.01.1973 to 31.03.1976, ought to have been counted and interruption between two spells of service would have to be treated automatically condoned.

3. The petitioner had earlier preferred CWP-24300-2014, wherein this Court passed an order on 28.11.2014, directing the State authorities to examine the representation with regard to counting of period of service rendered by the petitioner from 23.01.1973 to 31.03.1976. The said representation was rejected holding that the *ad hoc* service rendered under Rural Engineering Survey, which was sponsored by the Government of India, could not be taken into consideration for the purpose of pension.

4. Aggrieved whereof, the petitioner has preferred this writ petition.

5. Learned counsel submits that since the service was rendered with the State of Punjab although under a scheme sponsored by the Government of India, the fact regarding having served cannot be ignored and import of provisions of Rule 4.23 of the Punjab Civil Services Rules Volume-II, have to be understood to count spells of service rendered under the State Government even if there has been interruption. It is only when the interruption has been caused by resignation, dismissal or removal that the said period is to be ignored. Since the petitioner had performed his duties from 23.01.1973 to 31.03.1976 with the State of Punjab and till the scheme was in force. It is not a case where he had resigned, removed or dismissed from service or had been on strike, therefore, the said period of service is required to be counted.

6. Per contra, learned counsel for the respondents submits that the provision of Rule 4.23 of the Punjab Civil Services Rules Volume-II, would only have an application where the service rendered by the employee was on regular basis with the State of Punjab and not for *ad hoc* service.

7.

I have considered the submissions.

8. So far as the petitioner's service for the period from 23.01.1973 to 31.03.1976 is concerned, it is an admitted position that the same was rendered with the State of Punjab, of course, the same was under a Rural Engineering Survey scheme sponsored by the Government of India. However, the services were on regular pay scale and thus, it cannot be said that the said period of service would not be available for the purpose of counting of qualifying service. Recently the Apex Court in the case of Uday Pratap Thakur vs. State of Bihar 2023 SCC OnLine SC 527, has directed for counting of work charge service for the purpose of counting qualifying service. Relevant extract of the decision in Pratap Thakur (supra) is reproduced as under:-

“In view of the above and for the reasons stated above, present appeals lack merits and the same deserve to be dismissed and are accordingly dismissed. It is observed and held that the service rendered as work charged after their services have been regularized under the regularization scheme, namely, the Rules, 2013 and the Circular shall be counted for the purpose of qualifying service for pension only as per Rule 5(v) of the Rules, 2013.”

9. Accordingly, the writ petition is allowed. The period of service rendered by the petitioner from 23.01.1973 to 31.03.1976 shall be counted along with the service from 05.01.1977 to 31.11.2006, as qualifying service for calculating the pension of the petitioner. The pension of the petitioner

shall be revised and retiral benefits including arrears shall be paid accordingly. The entire exercise shall be completed within three months henceforth. However, no interest is required to be paid to the petitioner.

10. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

10.01.2024
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1. Whether speaking/reasoned?

:

Yes/No
2. Whether reportable?

:

Yes/No