

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

(202)

CWP-121-2015

Date of Decision : January 11, 2024

Padam Singh**.. Petitioner****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. H.C. Arora, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the prayer of the petitioner is that his services rendered as a Conductor in the Department of Transport w.e.f. 05.03.1977 to 09.04.1986 be treated as qualifying service for the purpose of computing pensionary benefits after the petitioner retired from the Department of Food and Supplies, Haryana.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The petitioner initially joined the Department of Transport in Haryana Roadways as a Conductor on 05.03.1977 as a regular employee. While he was working on the said post, the posts of Sub Inspector in the Department of Food and Supplies, Haryana were advertised. The petitioner being eligible, applied for the same. As per the averments made in the petition, the petitioner had applied for the post of Sub Inspector in Food and

Supplies Department through the General Manager, Haryana Roadways, Hisar by following proper channel as envisaged under the Rules governing the service for a working Government employee.

4. Keeping in view the participation in the selection process, the petitioner got selected on the post of Sub Inspector and the petitioner joined the said post on 16.04.1986 after being relieved from the post of Conductor by the General Manager Haryana Roadways on 09.04.1986. The petitioner continued working in the Department of Food and Supplies, Haryana and ultimately after attaining the age of superannuation retired from service on 28.02.2014. After the retirement, the petitioner made a representation with the respondents that his service rendered with the Department of Transport in Haryana Roadways be taken into account as a valid service to be treated as qualifying service for computing the pensionary benefits. The said request was declined by the respondents by passing an order dated 12.08.2014 (Annexure P-4), which is impugned in the present writ petition.

5. Learned counsel for the petitioner argues that keeping in view the fact that the petitioner had applied for the post of Sub Inspector in the Department of Food and Supplies, Haryana through proper channel, the petitioner is entitled for counting of his previous service rendered in the Department of Haryana Roadways as qualifying service while granting the pensionary benefits after he attained the age of superannuation while working in the Department of Food and Supplies, Haryana especially when once the petitioner was relieved by the Department of Transport so as to join the new assignment in the Department of Food and Supplies, Haryana, the earlier service has to be counted keeping in view the provisions of Rule 4.19 of the Punjab Civil Services Rules, as applicable to Haryana, which were in operation at the relevant time.

6. Upon notice of motion, the respondents have filed the reply wherein, it has been mentioned that in the year 2003, a letter was written by the General Manager, Haryana Roadways to the Department of Food and Supplies, Haryana that while competing for the post of Sub Inspector, the application filed by the petitioner was forwarded by the General Manager, Haryana Roadways and he had participated in the said selection process with due permission of the Department of Transport in Haryana Roadways but the said averment was proved to be untrue keeping in view the facts mentioned by the petitioner in his application form so as to compete for the post of Sub Inspector in the Department of Food and Supplies, Haryana.

7. Learned counsel for the respondents submits that in application form submitted by the petitioner while competing for the post of Sub Inspector, the petitioner has clearly mentioned that he is not employed in any of the Department. Learned counsel for the respondents further submits that the said application form was submitted on 11.03.1986 and therefore, once there is a contradiction between the application form of the petitioner and the letter written by the General Manager, Haryana Roadways dated 11.09.2003, no benefit of the past service has been given to the petitioner.

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

9. It is a conceded fact that as per Rule 4.19 of the Punjab Civil Services Rules, as applicable to Haryana, in case an employee who is already working with one of the Department of Government of Haryana and competes for another post with permission of the employer and gets selected, the past service rendered by the said employee in the earlier Department is to be counted as a valid service for computing the pensionary

benefits. Hence, keeping in view the facts and circumstances of the present case, this Court is to adjudicate as to whether the petitioner is entitled for the benefit of service rendered in the Transport Department as a qualifying service for computing the pensionary benefits or not.

10. It may be noticed that while competing for the post of Sub Inspector in Food and Supplies Department, Haryana, the petitioner filled up the form, which also carried a specific column as to whether the candidate who is seeking appointment, is already employed in any Government Department or not. In the said column, the petitioner in his own writing had mentioned 'No'. Once, the petitioner himself has stated that he is not employed in any Government Department, question of seeking permission from the Department of Transport to compete for the post in question does not arise.

11. Though, vide Annexure R-1, General Manager, Haryana Roadways, Hisar has written a letter on 11.09.2003 to the Department of Food and Supplies, Haryana that the petitioner participated in the selection process after his application was forwarded by the competent authority but the same is in contradiction with the factual averments made by the petitioner in his own application. Once, there is a contradiction between the application submitted by the petitioner and letter written by the General Manager, Haryana Roadways, Hisar dated 11.09.2003 attached as Annexure R-1, the application form is to be given preference over the said letter for two reasons. Firstly, the application form was filled by the petitioner with his own hands wherein, he has conceded the fact that he is not working in any Government Department. Further, letter dated 11.09.2003 (Annexure R-1) does not give the basis on which the said letter was written by the Transport Department. Once, the basis of writing the letter dated

11.09.2003 (Annexure R-1) is not mentioned, the same cannot be accepted in view of the application form submitted by the petitioner in his own handwriting.

12. Learned counsel for the petitioner further submits that under Rule 4.19 of the Punjab Civil Services Rules, as applicable to Haryana, there is no embargo that application form should be submitted through the proper agency and once the petitioner is relieved by the Department of Transport in Haryana Roadways so as to join the new assignment, the petitioner fulfills the conditions as envisaged under Rule 4.19 of the Punjab Civil Services Rules, as applicable to Haryana so as to grant the benefit as being claimed by the petitioner in the present petition. Rule 4.19 of the Punjab Civil Services Rules, as applicable to Haryana, is as under:-

“4.19 (b):- Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.

In cases where an interruption in service is inevitable due to the two appointments being at different stations, such interruptions, not exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the Government employee on the date of relief or by formal condonation under Rule 4.23 to the extent to which the period is not covered by leave due to the Government employee.

Note.— The previous service of a Government employee who is transferred to a temporary appointment is forfeited by his resigning the temporary appointment and taking up another temporary appointment of his own accord.”

13. A bare perusal of the above Rule would show that resignation from an appointment to take another appointment is not to be treated as a resignation from public service so as to forfeit the past service. The

argument of the learned counsel for the petitioner has to be seen in light of the Rule 4.19 of the Punjab Civil Services Rules, as applicable to Haryana. Once, it is incumbent upon an employee to seek permission of the employer to participate in another selection process, the same has to be granted at the initial stage when an application is submitted and not at the time of relieving. Once a resignation is submitted and the same is accepted, that does not mean that the permission to compete for another appointment was granted. The acceptance of resignation only means that the permission to leave the job to join another job is being accepted.

14. Further, the said question of law has already been settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.7351 of 2013 titled as Union of India and others vs. H.R. Vijaya Kumar, decided on 31.08.2023*** wherein, the Hon'ble Supreme Court of India has held that in case an employee gets a fresh assignment while in job but without getting the permission from the earlier employer and the said candidate participated in the selection process without the valid permission of the employer, the said service cannot be taken into account as qualifying service for the grant of pensionary benefits. The relevant paragraph of the said judgment is as under:-

*“17. This Court in **Union of India and Others vs Braj Nandan Singh reported in (2005) 8 SCC 325**, while considering Rule 26 of the CCS Pension Rules observed that Rule 26 in clear terms provides that resignation from a service for another post, without due permission will entail forfeiture of service. In this case, although the respondent did seek permission of his employer to apply for the opening in HAL, such permission was not forthcoming. In the meantime, the respondent applied directly, appeared in the selection process availing leave despite denial of permission, and then took up the new assignment. The circumstances here would show that*

the present case is squarely covered by sub Rule (2) of Rule 26 of CCS Pension Rules. In such circumstances, we are of the considered view that the High Court erred in granting relief to the respondent by ordering that his resignation shall not entail forfeiture of past service. The reading of the applicable statutory provision does not warrant an interpretation which will enure to the benefit of an incumbent merely because he applies directly when such application is not supported by due permission of the competent authority.”

15. In the present case, the petitioner himself had submitted before the selection authority that he was not in service hence, question of grant of permission to participate in the selection process does not arise and therefore, the benefit of past service cannot be given to the petitioner in the facts and circumstances of the present case coupled with the settled principle of law cited hereinbefore.

16. No ground is made out for any interference by this Court in the facts and circumstances of the present case.

17. Dismissed.

January 11, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes