2025:PHHC:163455

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

CWP-23037 of 2018
Date of decision: 19.11.2025

Dharvinder Paul Sehgal and others
......Petitioners

Versus

State of Punjab and others
......Respondents

CWP-27166 of 2018

Harinder Kumar and others
......Petitioners

Versus

State of Punjab and others
......Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. D.S. Patwalia, Sr. Advocate,
with Ms. Sehar Navjeet Singh, Advocate,
for the petitioners in CWP-23037 of 2018.

Mr. K.S. Dadwal, Advocate, and
Mr. Naresh Kumar, Advocate,
for the petitioners in CWP-27166 of 2018.

Mr. Satnampreet Singh Chauhan, DAG, Punjab.

Mr. Sarthak Gupta, Advocate, and
Mr. Saurabh Gupta, Advocate,
for respondent No.3 in CWP-23037 of 2018.

Mr. A.P. Chaudhary, Advocate,
for respondent No.4 in CWP-23037 of 2018.

NAMIT KUMAR, J.

1. By way of this common judgment, afore-mentioned two writ petitions are being disposed of as common questions of law and

facts are involved therein. For the sake of brevity, facts are being taken from CWP-23037 of 2018.

2. Instant writ petition has been filed by the petitioners under Articles 226/227 of the Constitution of India impugning the order dated 13.04.2018 (Annexure P-21), whereby the claim of the petitioners for counting their past service rendered in the Municipal Corporation, Patiala (hereinafter referred to as 'the Corporation')/Punjab Pollution Control Board, Patiala (hereinafter referred to as 'the Board'), towards pensionary benefits has been rejected. Further, a writ of mandamus has been sought for directing the respondents to count the services of the petitioners rendered in the Corporation/Board towards pension and other pensionary benefits and allow them to be the members of General Provident Fund as well as pension under the Punjab Civil Services Rules, Volume-II.

3. Brief facts of the case are that petitioners were appointed as Clerks/Clerk (Accounts)/Steno-typists on regular basis in the Corporation/Board. The service details of the petitioners in the Corporation/Board are as under: -

Sr. No.	Name	Duration of appointment	Corporation/Board
1.	Dharvinder Paul Sehgal (petitioner No.1)	18.11.1993 to 04.09.2008 as Clerk	Municipal Corporation, Patiala
2.	Narinder Singh (petitioner No.2)	29.10.1998 to 21.05.2007 as Clerk (Accounts)	Punjab Pollution Control Board, Patiala
3.	Sukhvinder Singh (petitioner No.3)	03.11.1998 to 11.03.2010 as Clerk (Accounts) 12.03.2010 to 15.09.2010 as Senior Assistant (Accounts)	Punjab Pollution Control Board, Patiala
4.	Rajeev Kumar (petitioner No.4)	27.10.1998 to 18.05.2007 as Steno-typist	Punjab Pollution Control Board, Patiala

5.	Kulwinder Singh (petitioner No.5)	10.12.2001 to 30.10.2013 as Clerk (Accounts) 31.10.2013 to 18.07.2016 as Senior Assistant (Accounts)	Punjab Pollution Control Board, Patiala

In terms of amended provisions of the 'Punjab State Subordinate Accounts (Class-III) Service Rules, 1978' dated 28.08.1998, they were eligible to appear in the Punjab State Subordinate Accounts Services Examination. After qualifying the same, they were appointed as Section Officers in the Department of Finance (Treasuries and Accounts Branch), Government of Punjab, Chandigarh. It is further the case of the petitioners that they had applied through proper channel and were granted permission to appear in the said examination by the competent authority and respondent-department requested the previous employer of the petitioners to submit the service record of the petitioners for appointment as Section Officers and consequently the pay of the petitioners was protected. However, in terms of the appointment letters as Section Officers they were governed by the New Contributory Pension Scheme. It is further the case of the petitioners that they submitted representations claiming counting of their previous service rendered in the Corporation/Board for pension and other pensionary benefits, which was followed by legal notice dated 02.10.2017 (Annexure P-14) and thereafter they filed CWP-3423 of 2018 (Dharvinder Paul Sehgal and others v. State of Punjab and others) for counting of their previous services in Corporation/Board towards pension and pensionary benefits and allow them to continue as members of General Provident Fund under the Old Pension Scheme available as per Punjab Civil Services Rules, Volume II, which was disposed of vide order dated 15.02.2018 (Annexure P-20) with a direction to respondent No.1 to look into the grievance of the petitioners stated in the legal notice dated 02.10.2017 (Annexure P-14) in view of the policy dated 17.08.2010 (Annexure P-7), within a period of six weeks from the receipt of certified copy of the order. However, the said claim of the petitioners has been rejected by respondent No.1 vide order dated 13.04.2018 (Annexure P-21) and the said order has been impugned in the present writ petition.

4. Separate written statements have been filed on behalf of respondents No.1 and 2, 3 and 4. Respondents No.1 and 2 have opposed the claim of the petitioners by stating that since the petitioners had joined Government service in the department after clearing SAS examination and were appointed after 31.12.2003 in Government departments, therefore, they come under the New Pension Scheme. Only those employees who had joined Government service before 01.01.2004 are governed under the Old Pension Scheme, whereas in the present case, petitioners joined Punjab Government services after 01.01.2004, therefore, petitioners are not entitled for the benefit of previous service to be counted towards pension and pensionary benefits under the Old Pension Scheme. It is further stated that the petitioners had accepted the conditions laid down in appointment letters by filing affidavits before joining the service. So, no discrimination has been

done with the petitioners with regard to counting their previous service rendered in the Board/Corporations as these benefits are only extended to those employees who joined Government department through process of absorption. Petitioners are not entitled for the benefits prayed in the present writ petition and no injustice has been caused to them.

5. Learned counsel for the petitioners contended that past service rendered by the petitioners is liable to be counted for the purpose of pension and other pensionary benefits as the petitioners, who were earlier working in the Corporation/Board, had applied for the post of Section Officer through proper channel and they were granted permission to appear in the said examination by the competent authority and in pursuance thereto they appeared in the 'Punjab State Subordinate Accounts Services Examination' and after clearing the same they were appointed as Section Officers in the Department of Finance (Treasuries and Accounts Branch), Government of Punjab, Chandigarh, and the action of the respondents in rejecting the claim of the petitioners, vide order dated 13.04.2018 (Annexure P-21), is totally illegal and arbitrary. He further submitted that in view of the provisions of Rule 3.17-A of the Punjab Civil Services Rules, the past service rendered by the petitioners is liable to be counted. He further submitted that the case of the petitioners is squarely covered by the judgments of this Court in ***CWP-2722 of 2013 – Yash Pal Singh Rana v. The State of Punjab and others, decided on 05.02.2019***; ***CWP-***

12364 of 2021 – Sham Lal v. State of Punjab and others, decided on 28.08.2024; ***CWP-3638 of 2023 – Jasdeep Singh Aulakh v. State of Punjab and others, decided on 24.04.2024*** and ***CWP-29667 of 2019 – Vinod Kumar v. State of Punjab and others, decided on 16.12.2024***.

6. *Per contra*¸ learned State counsel has opposed the claim of the petitioners by stating that appointment of the petitioners as Section Officers was a fresh appointment and they were governed by the New Defined Contributory Pension Scheme and, therefore, their claim for counting of the past service has rightly been rejected by the respondents vide impugned order dated 13.04.2018 (Annexure P-21).

7. I have heard learned counsel for the parties and perused the record.

8. The only question which arises for consideration in the present petition is as to *whether the past service rendered by the petitioners in the Corporation/Board is countable towards pension and other pensionary benefits or not?*

9. There is no dispute with regard to the service rendered by the petitioners in the Corporation/Board and that they were appointed as Section Officers after following due procedure of law as while working in the Corporation/Board they had sought permission to appear in the 'Punjab State Subordinate Accounts Services Examination', which was duly accorded and upon successfully clearing the said examination, they were appointed as Section Officers through

the prescribed procedure and their pay was duly protected in accordance with applicable rules.

10. Before proceeding further, it is necessary to give reference of the relevant provisions of the Rules.

11. Rule 3.17-A of the Punjab Civil Services Rules (Volume II) deals with the counting of service rendered in an establishment and provides that service rendered in an establishment would be counted as qualifying service, if the employee has submitted resignation for taking up another appointment and said resignation has been accepted.

12. Rule 3.17-A of the Punjab Civil Services Rules reads as under: -

> "**Rule 3.17-A**. *(1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:–*
>
> *(i) Omitted.*
> *(ii) Omitted.*
> *(iii) Casual or daily rated service.*
> *(iv) Suspension adjudged as a specific penalty.*
>
> *Note.– In cases where an officer dies or is permitted to retire while under suspension will not be treated as an interruption.*
>
> *(v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government where service qualifies for pension.*

(vi) Joining time for which no allowances are admissible under rules 9.1 and 9.15 of C.S.R., Volume I, Part I.

(vii) If any unauthorised leave of absence occurs in continuation of authorized leave of absence and if the post of the absentee has been substantively filled up, the past service of the absentee is forfeited.

(viii) Transfer to a non-qualifying service in an establishment not under Government control or if such transfer is not made by the competent authority and transfer to service in a grant-inaid school.

(A Government employee, who voluntarily resigns qualifying service, cannot claim the benefit under this clause.)

(ix) Removal from public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of the past service.

(x) Service rendered beyond the date of retirement on superannuation in terms of rule 3.26 of Punjab Civil Services Rules, Volume I, Part I.

(2) An interruption in the service of a Government employee caused by wilful absence from duty or unathorised absence without leave, shall entail forfeiture of the past service.

(3) Wilful abstinence from performing duties by a Government employee by resort to pen down strike shall be deemed to be wilful absence from duty and shall also entail forfeiture of the past service.

***Note**.– In the case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, the pensionary benefits admissible for service under Central Government would be that admissible under the Government of India rules and the* *liability for such benefits shall be allocated in accordance with the prevalent orders.*

Clarification (1).–Even after the introduction of rule 3.17(A) and deletion of rule 4.21 the following cases do not entail forfeiture of past service:–

(a) authorised leave of absence;

(b) abolition of post or loss of appointment owing to reduction in establishment.

("Post" or "appointment" means a post or appointment service in which qualifies for pension).

(2) While counting such qualifying service for working out aggregate service, the period of break in service shall be omitted."

[Emphasis Supplied]

Sub-Rule (2) of Rule 7.5 of PCS Rules provides that resignation submitted for taking up another appointment with Government, shall not entail forfeiture of past service, if there is permission by Competent Authority. Sub-Rule (2) of Rule 7.5 of PCS Rules is reproduced as below: -

"A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension."

13. The said provisions have been interpreted by this Court in ***Jasdeep Singh Aulakh's case (supra)***. In the said case, petitioner had rendered service as Assistant Engineer from 1996 to 2004 in Punjab State Electricity Board (hereinafter referred to as 'PSEB') and

thereafter he participated in the direct recruitment process of PCS (Executive Branch) and was selected in 2004 and joined PCS (Executive Branch) after submitting resignation to his parent department i.e. PSEB, which was accepted and his pay was protected. The relevant paras from the said judgment read as under: -

> *"10. From the perusal of above quoted Rules 3.17-A and 7.5 (2) of PCS Rules, it is quite evident that service rendered with an establishment is counted for qualifying service if an employee resigns with the permission of Competent Authority and for the purpose of taking up employment with Government. The respondent has failed to controvert applicability of aforesaid Rule to petitioner except pleading that instructions do not provide for counting previous service.*
>
> *11. It is settled proposition of law that instructions can supplement statutory provisions but cannot supplant the statutory provisions. The instructions cannot be contrary to mandate of Rules. The said instructions are not under challenge, however, being contrary to statutory provisions as well as intent of beneficial scheme cannot detain this Court.*
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> *12. The Supreme Court in **Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise and another, (2016) 3 SCC 643**, has observed that Rules or Regulations which are ultra vires though not challenged may be ignored. The relevant extracts of the judgment read as:*
>
> > *"28. Shri Aggarwal in order to buttress his submission that he ought to be allowed to raise a pure question of law going to the very jurisdiction to levy interest, cited before us the judgment in*

Bharathidasan University v. All-India Council for Technical Education [Bharathidasan University v. All-India Council for Technical Education, (2001) 8 SCC 676 : 1 SCEC 924] and in particular para 14 thereof which reads as follow: (SCC pp. 688- 89)

> *"14. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make Regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that the Regulations made under Section 23 of the Act have 'constitutional' and legal status, even unmindful of the fact that any one or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which AICTE could*

not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions."

29. It would be seen that Shri Aggarwal is on firm ground because this Court has specifically stated that rules or regulations which are in the nature of subordinate legislation which are ultra vires are bound to be ignored by the courts when the question of their enforcement arises and the mere fact that there is no specific relief sought for to strike down or declare them ultra vires would not stand in the court's way of not enforcing them. We also feel that since this is a question of the very jurisdiction to levy interest and is otherwise covered by a Constitution Bench decision of this Court, it would be a travesty of justice if we would not allow Shri Aggarwal to make this submission."

*13. A three Judge Bench of Supreme Court in **State of Haryana Vs. Shamsher Jang Bahadur, 1972(2) SCC 188**, while relying upon Constitution Bench judgment in **Sant Ram Sharma Vs. State of Rajasthan and another, AIR 1967 Supreme Court 1910** has held that Government is not Competent to alter the Rules framed under Article 309 by means of administrative instructions. The relevant extracts of the judgment reads as:*

*"**7.** It may be noted that herein we are dealing only with those who were promoted from the cadre of clerks in the Secretariat. The first question arising for decision is whether the Government was competent to add by means of administrative instructions to the qualifications prescribed under the Rules framed under Article 309. The High Court and the courts below have come to the conclusion that the Government was incompetent to do so. This Court has ruled in Sant Ram Shama v. State of Rajasthan [(1968) 1 SCR 111] that while the Government cannot amend or supersede the statutory rules by administrative instructions, if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. Hence we have to see whether the instructions with which we are concerned, so far as relate to the clerks in the Secretariat amend or they alter the conditions of service prescribed by the rules framed under Article 309. Undoubtedly the instructions issued by the Government add to those qualifications. By adding to the qualifications already prescribed by the rules, the Government has really altered the existing conditions of service. The instructions issued by the Government undoubtedly affects the promotion of concerned officials and therefore they relate to their conditions of service. The Government is not competent to alter the rules framed under Article 309 by means of administrative instructions. We are unable to agree with the contention of the State that by issuing the*

instructions in question, the Government had merely filled up a gap in the rules. The rules can be implemented without any difficulty. We see no gap in the rules."

14. A rule cannot operate contrary to a statutory provision whereunder said rule has been made. Rules cannot be contrary to statutory provisions. Similarly, neither instructions can be contrary to statutory provisions nor rules. The instructions cannot override or flow beyond the banks of river of rules. The instructions, which are contrary to Rules, need to be ignored.

15. In the case in hand, the case of petitioner is squarely covered by afore-stated Rules, however, his claim has been rejected on account of instructions which are contrary to Rules framed under proviso to Article 309 of the Constitution. In view of afore-stated legal position, the instructions need to be ignored. It is apt to notice here that respondent has granted similar benefit to identically placed other employees.

16. In the wake of above discussion and findings, the present petition deserves to be allowed and accordingly allowed. The impugned order dated 31.01.2023 (Annexure P-17) is hereby quashed."

The said judgment has become final as the same has not been challenged by the respondents and has been implemented after filing of ***COCP-3243 of 2024 (Jasdeep Singh Aulakh v. Anurag Verma, IAS and others)***.

14. To the same effect is the judgment of a Co-ordinate Bench in ***Yash Pal Singh Rana (supra)***. In the said case, the petitioner had joined the Punjab Land Development and Reclamation Corporation

Limited as Clerk on 01.11.1975 and thereafter he was promoted as Senior Assistant. While he was working in the said Corporation, due to weak financial status of the said Corporation, the same was wound up and during the said period, the posts of Superintendent in the District Consumer Disputes Redressal Forum were advertised by the respondents therein and petitioner therein applied through proper channel and was selected vide appointment order dated 20.12.2000 and he joined on 05.01.2001 after he was relieved from the services of the said Corporation. He joined the State Consumer Disputes Redressal Commission on 05.01.2001 and superannuated on 30.11.2011, however, his earlier service rendered from 01.11.1975 till 04.01.2001 was not counted as qualifying service for computing the pensionary benefits. The said claim was accepted by this Court vide judgment dated 05.02.2019 while relying upon various earlier orders passed by this Court in various other writ petitions. The said judgment has been followed in ***Sham Lal (supra)*** and the same reads as under: -

> *"1. In the present petition, the challenge is to the orders dated 25.04.2017 (Annexure P-5) and 03.02.2020 (Annexure P-7) respectively by which the respondents have declined to grant the benefit of service rendered by the petitioner with the Punjab Scheduled Castes Land Development and Finance Corporation, after the petitioner retired from service working on a pensionable post with the Government of Punjab.*
>
> *2. Learned counsel for the petitioner submits that the relief which is being claimed by the petitioner has already been granted by this Court to another similarly situated*

> *employee, who had filed CWP No. 2722 of 2013 titled as* ***Yash Pal Singh Rana Vs. The State of Punjab and others, decided on 05.02.2019****, which judgment has already attained finality and relief has already been given to Yash Pal Singh Rana.*
>
> *3. Learned counsel for the respondents has not been able to dispute the fact that in Yash Pal Singh Rana's case (supra) also, the service rendered in the Corporation wherein the petitioner of that case was working, was directed to be taken into account for computing the pensionary benefits. No differentiating factor in the case of the petitioner and that of Yash Pal Singh Rana's case (supra) has been proved and so as not to appeal the said decision in the case of petitioner herein. Hence, the present petition is also allowed in the same terms as Yash Pal Singh Rana's case (supra) except that the rate of interest will be 6% per annum and not 9% as claimed."*
>
> *x x x x*

15. The ***judgment dated 28.08.2024 in Sham Lal's case (supra)*** has been upheld by a Division Bench of this Court in ***LPA-3328 of 2024 – State of Punjab and another v. Sham Lal and another decided on 20.12.2024***. The relevant portion from the said judgment reads as under: -

> *"4. Learned Single Bench noted that relief claimed by respondent/writ-petitioner had been granted to another similarly situated employee i.e., the petitioner in* ***CWP No. 2722 of 2013, titled 'Yashpal Singh Rana Vs. State of Punjab and others', decided on 05.02.2019'****. It was concluded that respondents were not able to distinguish the cause of writ petitioner from that of Yash Pal Singh Rana. Writ petition was accordingly allowed in*

the same terms with the difference that interest at the rate of 6% per annum instead of 9% was ordered.

5. Aggrieved therefrom, present appeal has been filed.

6. Learned counsel for appellants submits that Instructions dated 25.04.2017 are categoric, therefore directions by learned Single Bench are unjustified. Appointment of writ-petitioner on the post of Section Officer had to be treated as fresh appointment and he was not entitled to counting of his service for the purpose of pension with the respondent-Corporation as qualifying service for the purpose of pension. It is thus prayed that present appeal be allowed.

7. We have heard learned counsel for appellants and have perused the file carefully with his able assistance, however, we do not find any ground to cause interference in this matter.

8. It is to be noted that the import and effect of Instructions dated 25.04.2017 have already been considered by this Court in ***LPA No. 2445 of 2024, titled State of Punjab and others Vs. Om Parkash and others*** *with the appeal filed by State of Punjab being dismissed. In the present case also, writ-petitioner had been appointed through proper channel while in service. His representation for counting his service with the respondent-Corporation as qualifying service for the purpose of pension was duly submitted.*

9. It is to be noted, at this stage that in a number of writ petitions involving similar controversy, respondent has already granted relief to the employees therein and counted the service rendered by them with the Corporations which had not been wound up, for the *purpose of pension. This fact is not denied by learned counsel for appellants.*

10. Learned counsel for appellants is unable to point out any illegality, infirmity or perversity in the impugned order dated 28.08.2024, passed by learned Single Bench, which calls for interference by this Court."

x x x x

16. Keeping in view the above, present petition is allowed. Impugned order dated 13.04.2018 (Annexure P-21) is hereby set aside and the respondents are directed to take into account the service rendered by the petitioners in the Corporation/Board for the purpose of pension and other pensionary benefits and release the necessary benefits to the petitioners within a period of four months, from the date of receipt of certified copy of the order.

(NAMIT KUMAR)
JUDGE

19.11.2025
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No