IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL WRIT PETITION NO.15081 OF 2011

DATE OF DECISION: APRIL 11, 2013

Shanno Devi

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Ram Niwas Sharma, Advocate for the petitioner.

Mr. Harish Rathee, Senior Deputy Advocate General, Haryana.

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TEJINDER SINGH DHINDSA, J.

Learned counsel for the parties have been heard at length.

- 2. The challenge in the instant writ petition is to the order dated 17.6.2011, Annexure P3, whereby the claim of the petitioner to count the adhoc service rendered by her for the period 21.2.1974 to 5.8.1978 for the purposes of pension and gratuity has been rejected.
- 3. The facts of the present case lie in a narrow campass. Petitioner was initially appointed as a Hindi Teacher under the

State Education Department on adhoc basis, vide order dated 13.2.1974, in pursuance to which she joined on the post on 21.2.1974. She worked as such on adhoc basis till 5.8.1978 whereupon she was relieved from service upon the joining of a regular employee. Petitioner was again appointed on adhoc basis and she joined as such on 1.9.1979. Under a regularization policy, services of the petitioner were regularized vide order dated 8.7.1980 but, with effect from 1.1.1980. Petitioner retired from service on 28.2.2010 upon attaining the age of superannuation. She was released the pension and pensionary benefits by computing the service rendered by her w.e.f. 1.9.1979 to 28.2.2010 i.e. 30 years, 5 months and 27 days. Petitioner was denied the benefit of adhoc service rendered by her for the period 21.2.1974 to 5.8.1978 for the purposes of pension and gratuity. A claim raised in regard thereto has resulted in the passing of the impugned order dated 17.6.2011, Annexure P3.

- 4. The validity of the order dated 17.6.2011, Annexure P3, and the claim raised by the petitioner for counting of her adhoc service as a Hindi Teacher for the period 21.2.1974 to 5.8.1978 would require adjudication in the light of the relevant statutory provisions.
- 5. Rule 3.17-A of the Punjab Civil Services Rules contained in Chapter 3, Vol.II (as applicable to the State of Haryana) reads in the following terms:
 - "3.17-A. (a) All service interrupted or continuous followed by confirmation shall be treated as qualifying service; the period of break shall be omitted while

working out aggregate service.

- b) Extraordinary leave counted towards increments under rule 4.9 (b)(ii) of Punjab Civil Services Rules, volume-I, Part-I, will be accounted towards service qualifying for pension.
- c) Periods of suspension, dismissal, removal, compulsory retirement followed by re-instatement will count for pension to the extent permissible under rule 4.17 of Punjab Civil Services Rules Volume-II read with rule 7.3 of the Punjab Civil Services Rules, Volume-I, Part-I.
- d) Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of rule 4.19 (a) of Punjab Civil Service Rules Volume-II.
- e) An interruption in the service of a Government employee caused by willful absence from duty and unauthorised absence without leave will as hitherto entail forfeiture of past service.

(Explanation:- The willful refusal to perform duties by a Government employee by any means including pen down strike shall be deemed to be willful absence from duty)

f) Employees retiring from Government service without confirmation (as temporary employees) in any post on

or after 5th February, 1969 will be entitled to invalid/retiring/superannuation pension and death-cum-retirement gratuity on the same basis as admissible to permanent employees. In case of death of temporary employee in service his family will also be entitled to similar benefits as are admissible to the families of permanent employees. This concession will, however, not apply to:

- i) Persons paid from contingencies; provided that half of the period of service of such persons paid from contingencies rendered from 1st January, 1973 onwards for which authentic records of service is available will count as qualifying service subject to the following conditions:
 - a) Service paid from contingencies should have been in a job involving whole time employment and not part time for a portion of day,
 - b) Service paid from contingencies should be in a type of work or job for which regular post should have been sanctioned e.g. malis, chowkidars, khalasis etc.,
 - c) The service should have been such for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should

bear some relations in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments; and

d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

Note. - While bringing contingent paid employee to the regular establishment an entry for verification of contingent service should be made at the appropriate place in his service book, preferably before making any entry regarding his regular service in the following manner:-

"Service from......... to paid out of contingencies verified from acquittance rolls and office copies of contingent bills". This entry should be signed by the Head of Office with date.

- (ii) [Deleted]
- (iii) Casual Labour;
- (iv) Contract Officers; and
- [(v) Persons borne on Contributory Provident Fund Establishment.]
- [(g) The entire service rendered by an employee as work charged shall be

reckoned towards retirement benefits provided -

- i) such service is followed by regular employment;
- ii) there is no interruption in the two or more spells of service or the interruptions fall within condonable limits; and
- iii)such service is a whole time employment and not part-time or portion of day.]"
- 6. A bare reading of the provision re-produced hereinabove would make it apparent that the entire service, interrupted or continuous, followed by confirmation is to be treated as qualifying service for pension and the period of break is to be omitted while working out the aggregate service.
- 7. A perusal of the impugned order dated 17.6.2011, Annexure P3, would reveal that the claim of the petitioner has been rejected in the light of Rule 4.23 of Punjab Civil Services Rules, Vol.II holding that interruption in service between two spells can be condoned if the service prior to interruption is not less than five years and interruption in service between two spells should not be more than one year's duration. In the light of Rule 4.23, a view has been taken that since the adhoc service of the petitioner prior to interruption is less than five years and the interruption itself between the two spells of service is more than one year, accordingly, the service rendered by the petitioner on adhoc basis for the period 21.2.1974 to 5.8.1978 cannot be considered as qualifying service for the purposes of pension and

gratuity.

- I find that the respondent-authorities while passing the impugned order dated 17.6.2011, Annexure P3, have clearly proceeded on an erroneous premise. Rule 4.23 contained in Punjab Civil Services Rules, Chapter IV, Vol.II regulates Condonation of Interruptions and Deficiencies. The interruption in service as regards the petitioner between the spell of adhoc service and permanent service was clearly not condonable as the adhoc service rendered by the petitioner preceding interruption was less than five years duration and such interruption itself was more than a period of one year. Be that as it may, the claim of the petitioner was not as regards condonation of such interruption in service i.e. the period between the initial adhoc service and followed by permanent regular service. Rather the claim of the petitioner was to count the adhoc service rendered by her for the period 21.2.1974 to 5.8.1978 towards qualifying service and by omitting the period of break. Such claim of the petitioner stands squarely covered in the light of Rule 3.17-A of Punjab Civil Services Rules.
- 9. While taking a view that the entire service interrupted or continuous followed by confirmation is to be treated as qualifying service for pension and the period of break is to be omitted while working out the aggregate service, I would draw support from a Division Bench judgment of this Court rendered in Kesho Ram v. State of Haryana and others, 2006(6) SLR 334 wherein it was held in the following terms:

"......The matter is no longer res-integra as un-

amended Rule 3.17 which confined the qualifying service only to the period of regular service was struck down by a Full Bench of this Court in the case of Kesar Chand v. State of Punjab 1988(3) PLR 223. Rule 3.17 (ii) as applicable in the State of Punjab had specifically provided that the period of service in work charge establishment was not to be taken into account for determining qualifying service of an employee. The afore-mentioned rule was declared as ultra vires of Article 14 of the Constitution. The view of the Full Bench is discernible from para 19 of the judgement which reads as under:

"..... Once the services of a work charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularisation has not

been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work charged employee have been regularized, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, for these and reasons provisions of sub rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."

We further find that the afore-mentioned view taken by the Full Bench has been followed by a Division Bench of this Court in the case of Mangat Ram v. Haryana Vidyut Prasaran Nigam Ltd. and others 2005(5) SLR 793 wherein again it has been held that the services rendered by a daily wager followed by regularisation of his service deserved be considered as qualifying service for the purposes of pension and other retiral benefits. The view taken by this Court has lead to addition of Rule 3.17(A) of the Punjab Civil Service Rules, Volume II (as applicable to Haryana)

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which provides that all service interrupted or

continuous followed by confirmation shall be treated

as qualifying service and the period of break are to be

omitted while working out the aggregate service.

Accordingly we are of the considered view that this

petition deserves to be allowed."

10. For the reasons recorded above, the present petition is

allowed. The order dated 17.6.2011, Annexure P3, is set aside. It

is directed that the period of service rendered by the petitioner on

adhoc basis from 21.2.1974 to 5.8.1978 would also be counted

towards qualifying service for pension and gratuity. Let such

exercise of re-computation of aggregate qualifying service for

pension and gratuity be completed within a period of two months

from the date of receipt of a certified copy of this order and the

requisite benefits flowing thereupon be released to the petitioner

within a period of four weeks thereafter.

11. Petition allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

APRIL 11, 2013

SRM

Note: Whether to be referred to Reporter? Yes/No