
(2021) 03 P&H CK 0469

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11701 Of 2020

Baljit Singh Kamboj And Others

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 26-03-2021

Acts Referred:

Punjab Civil Services (Executive Branch) Rules, 1976 — Rule 9, 10, 11, 15
Constitution Of India, 1950 — Article 226

Citation : (2021) 03 P&H CK 0469

Hon'ble Judges : Rajbir Sehrawat, J

Bench : Single Bench

Advocate : Akhil Ahuja, Abhaypal Singh Gill

Final Decision : Allowed

Judgement

Rajbir Sehrawat, J

This petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of mandamus, directing the respondents to count the service rendered by the petitioners on contract basis, as 'service under the Government' as required under the Punjab Civil Services (Executive Branch) (First Amendment) Rules, 2011, and the same be recorded in the respective service books of the petitioners.

At the outset, it is submitted by the counsel for the petitioners that in this petition the petitioners are not seeking the benefit of their contractual service towards seniority or for any other financial benefits. Their plea is restricted only for counting their contractual service as 'continuous service under the Government' for the purpose of their participation in the process of preparation of Register of 'C' of accepted candidates under Rule 15 of the Punjab Civil Services (Executive Branch) Rules, 1976 (in short '1976 Rules'), amended upto date.

The brief facts involved in this case are; that the petitioners were appointed in

the year 2010 as Assistant District Attorneys (ADA) pursuant to an advertisement vide which 98 posts of ADAs were advertised by the respondents. The appointment of the petitioners were on contractual basis. However, in continuity; the services of the petitioners were regularised on the same posts of Assistant District Attorneys in the year 2013. Hence, it is submitted that for the period from the date of contractual appointment till the date of regularisation, their service be considered as 'under the Government' within the scope of Rule 15 of the 1976 Rules.

It is submitted by the counsel for the petitioners that Rule 15 mentioned above, does not require any 'regular service under the government' for acquiring eligibility for the purpose of Rule 15. The requirement is only a 'continuous service under the government'. Hence, the respondents are bound to count the contractual service of the petitioners as 'continuous service under the government' for the purpose of the above said 1976 Rules.

On the other hand, counsel for the State submitted that the petitioners were appointed only on contractual basis, therefore, their service cannot be taken into consideration as 'service under the government' except for the purpose of pension. It is further submitted that the petitioners are governed by the Punjab Prosecution and Litigation (Group B) Service Rules, 2010 (in short '2010 Rules'); being member of that cadre, therefore, their service would be governed by the 2010 Rules. Moreover, the State of Punjab has framed General Conditions of Service Rules, which are applicable on the aspects which are not covered under the Specific Cadre Rules. Hence, Rule 15 of 1976 Rules has no application in case of the petitioners.

Having heard counsel for the parties, this Court finds substance in the argument of the counsel for the petitioners. However, before proceeding further, it would be apposite to have reference to Rule 15 of the 1976 Rules, as amended in 2011, which is as under :-

"15. Preparation of Register C of accepted candidates - (1) The Commission shall invite the applications from amongst the members of Group 'A' and Group 'B' services, serving in connection with the affairs of the State of Punjab, who are not covered under any of the categories of officers or officials mentioned in rules 9, 10 and 11, not below the level of Senior Assistants, which shall be submitted to the Commission through proper channel alongwith their service record.

(2) The applications received along with the service records of the candidates shall be processed by the Commission for adjudging the suitability of such candidates, and after conducting a screening test, the Commission shall prepare a list of eligible persons, three times of the number of vacancies.

(3) For final selection of the candidates from the list prepared under sub-rule (2), the Commission shall determine the suitability of candidates on the basis of Annual Confidential Reports, Seniority, Experience and Performance in the Interview by associating two representatives of the State Government, one

serving as Secretary, Personnel and General Administration and the other senior IAS officer nominated by the Chief Secretary to Government of Punjab :

Provided that the members of the Commission and representatives of the State Government involved in the selection, shall certify in respect of the each candidates that they have no relation with him.

(4) The name of a person shall not included in the final list unless he-

"(a) is a confirmed hand and has completed eight years continuous service under the Government".

(b) Was under the age of fifty four years on the first day of November immediately preceding the date of submission of name by the concerned authorities; and

(c) is a Graduate of recognized university.

(5) A list of selected candidates shall be forwarded to the Government by the Commission for entering their names in Register C as accepted candidates and these names shall be entered in this register in order in which they are recommended by the Commission".

A bare perusal of the above said Rule shows that the requirement of the Rule is not of 'regular service under the government'. Rather the requirement is of 'continuous service under the government'. Undisputedly, during the contractual service period of the petitioners, they have been paid from the Government Exchequer, after having been appointed by the Government on the post in the cadre of Assistant District Attorney through an advertisement. Therefore, the respondents cannot deny or refuse to recognize the service rendered by the petitioners on contractual basis as being a 'service under the government'. Undisputedly, the petitioners have been regularised on the posts of Assistant District Attorneys in continuity of their contractual service. Hence, the service of the petitioners has to be deemed to be 'continuous service under the government', by counting their contractual service as well, for the purpose of Rule 15 of the 1976 Rules. Accordingly, they are held entitled to count the contractual service for the purpose of counting of 'continuous service under the government' under the above said Rule 15 of the 1976 Rules.

Although counsel for the respondents/State has submitted that the petitioners; being members of the cadre of Assistant District Attorney, are governed by a different 2010 Rules, therefore, they cannot take the benefit of 1976 Rules, however, this argument is totally mis-conceived. Rule 15 of the 1976 Rules envisages preparation of Register 'C' of accepted candidates from amongst the members of all the cadres in Group A and Group B services under the State of Punjab; for being inducted in Punjab Civil Services (Executive Branch). It is obvious, that all such Group A and Group B officers would be governed by their respective rules, qua their cadre service aspects. However, that does not preclude such Group A and Group B officers from participating in the process of

preparation of Register 'C' of accepted candidates for the purpose of inducting in PCS (Executive Branch). Rather, being Group A and Group B Cadre Rules, their respective departmental rules would make them eligible for Rule 15 of 1976 Rules. Hence, this argument of the counsel for the respondents/ State is liable to be noted only to be rejected.

In view of the above, the present petition is allowed. The respondents are directed to count the contractual service of the petitioners for the purpose of Rule 15 of 1976 Rules for counting of 'continuous service under the government'.

However, it is clarified that this order shall not be taken as conferring any other right upon the petitioners on the basis of contractual service qua seniority or qua any other financial benefits.