
(2012) 04 P&H CK 0127
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18667 of 2009

Om Parkash

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Citation : (2012) 166 PLR 737 : (2013) 1 SCT 300

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Naveen Daryal, for the Appellant; Harish Rathee, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Petitioner has approached this Court for issuance of a writ of mandamus directing the respondents to grant him increment, seniority, arrears of increment and fixation of pay at par to his junior i.e. Respondent No. 5 Girraj with all consequential benefits from the date of his initial appointment to the post of Conductor on temporary basis with a further prayer for quashing of the order dated 16.10.2003 (Annexure P-6) vide which the claim of the petitioner for condoning the break in service has been declined in the light of Rule 4.23 of the Punjab Civil Service Rules, Volume 2, Clause 2 (hereinafter referred to as the Rules). Counsel for the petitioner contends that the petitioner was employed through the Employment Exchange by the respondents as Conductor and joined as such on 18.11.1980 on temporary basis. His services were discontinued on the ground that there were surplus Conductors at Chandigarh Depot on 28.11.1980. Thereafter, he was again reappointed vide order dated 1.12.1980. His services were discontinued on 14.1.1981. Another re-appointment order dated 15.3.1981 was issued to him and thereafter he had been continuing in service with the respondents till 7.9.1981. He was again re-appointed on 9.10.1982 leading ultimately to regularization of his services on 5.6.1983. Petitioner was not granted increments because of the break in service nor was he

granted any wages or seniority. Similarly placed employees and especially his junior Girraj respondent No. 5 was granted benefit of condoning the delay in the breaks which had occurred similarly in his case as in the case of the petitioner which benefit was granted to respondent No. 5 vide order dated 29.12.2006 (Annexure P-11).

2. Petitioner approached the respondents earlier thereto for claiming the benefit which was declined vide order dated 16.10.2003 (Annexure P-6). After the grant of this benefit to his junior, the petitioner again approached the respondents and even served the legal notice dated 8.12.2008. When no response was received, he approached this Court by way of the present writ petition claiming the same benefit as has been granted to Despondent No. 5.

3. Upon notice issued by this Court, respondents have filed reply wherein the facts with regard his initial joining through the Employment Exchange on temporary basis, dis-continuation of his service and reappointments as also the regularization of his services w.e.f. 5.6.1983 have been admitted. The reason assigned for not granting the benefit of break in service in the case of the petitioner is on the basis of Rule 4.23 of the Rules, the extract whereof has been reproduced in Annexure R-1.

4. Counsel for the petitioner has claimed the same benefit as has been granted to respondent No. 5 on the basis of the pleadings. His further contention is that the claim of the petitioner is covered under the provisions of Rule 4.23 of the Rules. He, therefore, contends that rejection of the claim of the petitioner vide impugned order dated 16.10.2003 (Annexure P- 6) cannot sustain.

5. On the other hand, counsel for the respondents submits that the petitioner's appointment was a stop-gap arrangement and, therefore, the benefit of Rule 4.23 of the Rules has rightly not been granted to him.

6. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

7. The only short question which requires to be considered and decided is with regard to the claim of the petitioner as to whether the said claim is covered by Rule 4.23 of the Rules as applicable to Haryana. This Rule reads as follows:-

4.23 Interruption in service (either between two spells of permanent, or temporary services or between a spell of temporary services and permanent services or vice versa in the case of an office retiring on or after the 5th January, 1961, may be condoned, subject to the following conditions, namely:-

(1) The interruption should have been caused by reasons beyond the control of Government employee concerned.

(2) Service preceding the interruption should not be less than five years duration. In cases where there are two or more interruptions, the total service, pensionary benefits in respect of which shall be lost if the interruptions are not

condoned should not be less than five years.

(3) The interruption should not be of more than one year's duration. In cases where there are two or more interruptions, the total period of all interruptions to be condoned should not exceed one year."

8. A perusal of the above Rule would show that interruption in service whether permanent or temporary or intermittent can be condoned for a person who retires on or after the 5th day of January, 1961. The conditions (1) and (2) of the said Rule have been fulfilled by the petitioner as he was appointed on temporary basis and the breaks in service were beyond his control. His service preceding his retirement is not less than five years and the total period of interruption is also not exceeding one year. It is an admitted position on the part of the respondents that the total break in service comes to 90 days, therefore, he fulfills all the conditions as has been laid down under Rule 4.23 of the Rules which would entitle him the benefit of the said Rule leading to the condonation of the breaks in service. That apart, the claim of the petitioner is based upon the benefit granted to a similarly situated employee i.e. Respondent No. 5-Girraj, who admittedly is junior to the petitioner. If that be so, the benefit as claimed by the petitioner cannot be denied to him.

9. Accordingly, the writ petition is allowed; impugned order dated 16.10.2003 (Annexure P-6) is hereby quashed. Petitioner is held entitled to the condonation of the breaks in his service. Since the petitioner has already retired from service on 31.3.2011, a direction is issued to the respondents to count the total period of his service by condoning the breaks in accordance with Rule 4.23 of the Rules and grant him the consequential benefits which would include re-fixation of his pension and other pensionary benefits within a period of three months from the date of receipt of certified copy of the order.