
(2019) 09 P&H CK 0247

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 26333 Of 2016

Yashwanti

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 30-09-2019

Acts Referred:

Punjab Civil Services Rules, Volume-II, — Rule 3.17(b), 4.19(b), 4.23

Citation : (2019) 09 P&H CK 0247

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Surinder Gaur, Charanjit Singh Bakhshi

Final Decision : Allowed

Judgement

Harsimran Singh Sethi, J

In the present writ petition, the claim raised by the petitioner that the service rendered by her from 11.02.1992 till 03.07.1996 as a JBT Teacher in the Government Middle School, Darba Kalan, Sirsa be counted as qualifying service for computing the pensionary benefits.

The facts stated in the writ petition are that petitioner was appointed as a JBT Teacher in the Government Middle School, Darba Kalan, Sirsa, vide letter dated 10.02.1992 (Annexure P-1). While working as such, petitioner submitted resignation on 03.07.1996 so as to join as a JBT Teacher at the Government Girls Primary School, Kila Zafar Garh, Jind. She continued working there till she retired on attaining the age of superannuation on 31.11.2015. After the retirement, petitioner made a request to the respondents to take into consideration the period which she worked as a JBT Teacher in the Government Middle School, Darba Kalan, Sirsa from 11.02.1992 till 03.07.1996 as qualifying service for computing the pensionary benefits. As the said claim was not considered by the respondents, petitioner has filed the present writ petition claiming the abovesaid benefits.

Upon notice of motion, the respondents have filed the reply, in which, they have stated that once the petitioner had resigned from her earlier post where she worked from 11.02.1992 till 03.07.1996, the benefits of the said service cannot be granted as the resignation will forfeit all the previous service. The relevant paragraph of the reply is as under:-

"5. That the contents of para No.5 of the petition are not in dispute that she was given the fresh appointment as JBT vide letter dated 1.7.1996 and she had joined in pursuance of the same on 9.7.1996. Her second appointment is quite separate and distinct one and further she had not applied for the fresh appointment through proper channel. She had resigned from her first service. Had there been the continuity of her service then she should not have resigned. Her previous service has come to an end as and when her resignation was accepted and she had joined a fresh by accepting the terms and conditions of her appointment letter issue to her vide letter dated 1.7.1996.

6. That the contents of para No.6 of the petition are matter of record but it is submitted here that the petitioner has not applied for the fresh appointment through proper channel. Her previous service has come to an end when she had given the resignation which was accepted by the competent authority and she has joined again a fresh on 9.7.1996 in pursuance of the appointment letter dated 1.7.1996, as such, the petitioner is not at all entitled to get previous service counted towards seniority, increment and the retiral benefits as is being claimed by her at this belated stage.

7. xxxxxxxx

8. That the contents of the para No.8 of the petition are wrong, hence denied. The petitioner is not at all entitled to get her service for the period 11.2.1992 to 3.7.1996 counted towards her fresh service. She cannot be given the benefit of her past service. She had resigned from her service and had joined as fresh appointee. The petitioner has not annexed any acknowledgment of submitting the representation dated 5.8.2016 with the office of respondent No.2."

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

The only question in the present writ petition is that whether petitioner is entitled for counting of the service rendered by her from 11.02.1992 till 03.07.1996 as qualifying service for computing the pensionary benefits or not.

It is not the case of the respondents that that petitioner did not discharge the duties of the post from 11.02.1992 till 03.07.1996. The only objection taken by the respondents is that petitioner had resigned from the earlier post and the resignation forfeits all the previous service and therefore, she is not entitled for the benefit of computing the said service as a qualifying service for the grant of pensionary benefits.

Under the Punjab Civil Services Rules (as applicable to the Haryana), Rule

4.19(b) allows the service, which an employee has rendered, in case the resignation has been tendered to join another appointment. The above-said relevant Rule 4.19(b) is as under:-

"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."

It is not being denied by the respondents that when the petitioner was working as a JBT Teacher in the Government Middle School, Darba Kalan, Sirsa, she had applied for the post of JBT Teacher in Government Girls Primary School, Kila Zafar Garh, Jind, where she was ultimately selected. Once, the petitioner resigned to join a post under the State Government, which she was allowed to do, it cannot be said that the petitioner resigned and left the job. The resignation has to be treated as a technical resignation tendered in order to join another job under the same government in the same department. Therefore, the case of the petitioner will be covered by the above-said Rule 4.19(b).

Further, this Court in CWP No.8398 of 2011 titled as 'Ishwar Singh Vs. State of Haryana and others', decided on 03.09.2015, had an occasion to consider somewhat similar question of law. In Ishwar Singh's case (supra), the past service was not being counted on the ground that the service was rendered in two different departments and petitioner therein, while applying in the Department of Education, the permission of the District & Sessions Judge, where the petitioner-Ishwar Singh was working, was not taken and therefore, the benefits of the service rendered with the District & Sessions Judge, Rohtak, cannot be taken into consideration as a qualifying service for computing the pensionary benefits. This Court rejected the said objections and held that once an employee was working in the same State and had actually resigned to join another post under the same State, but in a different department, the benefits under Rule 4.19(b) of the Punjab Civil Services Rules, cannot be denied and the said resignation cannot be treated as a resignation which forfeits the past service. The relevant portion of the said judgment is as under:-

4.) In other words, they are not resisting the claim of the petitioner. The facts are undisputed that the petitioner rendered service in the Judicial Department for the period from 12.9.1981 to 15.1.1987. At this juncture, the State counsel cannot contend that selection and appointment of the petitioner to the post of SS Master in the Education Department is not through proper channel and so also without permission of the District and Sessions Judge, Rohtak. That too when the

District and Sessions Judge, Rohtak has not disputed the aforesaid contentions. Insofar as contention of the learned State counsel that the petitioner took voluntary retirement, therefore, he is not entitled to count the service, in this regard, the State counsel has not pointed out any provision which prohibits for counting past service rendered in a different Department. Learned counsel for the State further contended that the petitioner has resigned the post of Assistant Ahlmad on 15.01.1987, therefore, under Rule 3.17 (b) of the Punjab Civil Services Rules, Volume-II, the service rendered by the petitioner in the Judicial Department cannot be counted. Rule 3.17 (b) deals with Central and State Government whereas the petitioner herein was not working in the Central Government. On the contrary, he was working in the Judicial Department which is one of the State Government Department. Therefore, Rule 3.17 (b) is not applicable to the petitioner's case.

5.) Rule 4.19 (b) of the Punjab Civil Services Rules, Volume-II reads as under:-

"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."

6.) The resignation of the petitioner should have been treated as relief from the Judicial Department in order to enter Education Department since both the Departments come under the State Government, namely, State of Haryana. In view of these facts and circumstances, the respondents are directed to count the service rendered by the petitioner in the Judicial Department from 12.9.1981 to 15.01.1987 towards retiral benefits with reference to Rule 4.19 (b) read with Rule 4.23 of the Punjab Civil Services Rules Volume-II. The arrears of retiral benefits should be settled within a period of eight weeks from the date of receipt of certified copy of this order."

Against the said order, the respondents preferred an LPA No.270 of 2016, which was also dismissed by this Court. In the said LPA also, the same ground was taken by the respondents to contend that while submitting an application in the Education Department, no permission of the Judicial Department was taken and therefore, the service rendered with the Judicial Department cannot be taken into account as a qualifying service while calculating the retiral benefits. The said objection was rejected by this Court while dismissing the LPA filed by the Government of Haryana. The relevant portion of the same is as under:-

"Counsel for the State of Haryana submits that as the petitioner did not take permission while applying for the post of SS Master in the Education Department,

he is not entitled to consider his service in the judicial department while calculating retiral benefits. The impugned order has ignored this fact and, therefore, may be set aside.

We have heard counsel for the appellant but are not inclined to grant any relief. The respondent's prayer for a direction to count service rendered in the judicial department for the purpose of the length of service for computing retiral benefits has been rightly allowed. It is not denied that the appointment of respondent No.1 as SS Master in the Education Department was in accordance with the prescribed rules and regulations. At no stage was his appointment held to be illegal or irregular for violation of any provision of the rules or regulations. Even the District and Sessions Judge, Rohtak has not raised any objection regarding respondent No.1 leaving service. Thus, the impugned order directing that service rendered in the judicial department be counted towards length of service cannot be faulted. Consequently, finding no merit in the appeal or error in the impugned order granting the benefit of service rendered by respondent No.1 in the judicial department from 12.09.1981 to 15.01.1987 towards calculation of retiral benefits as provided in Rule 4.19(b) read with Rule 4.23 of the Punjab Civil Services Rules Vol.II, we dismiss the appeal.

Counsel for the respondents is not able to point out as to how the case of the present petitioner is different in any manner than that of Ishwar Singh's case (supra). Once, it is a matter of fact that the petitioner only resigned from the previous post in order to join another post in an another department under the same State, which resignation is to be treated as a technical resignation and the technical resignation, does not forfeit the past service, therefore, petitioner is entitled for the benefit of her service rendered from 10.02.1992 till 02.07.1996 as a qualifying service for computing the pensionary benefits.

In view of the above, the present writ petition is allowed. The respondents are directed to grant the benefit of the service rendered by the petitioner from 10.02.1992 till 02.07.1996 while computing the qualifying service for the grant of pensionary benefits.

Let the pensionary benefits of the petitioner be recalculated within a period of three months from the date of receipt of certified copy of this order and the difference of the amount for which the petitioner becomes entitled for in pursuance to this order be released to her within a period of one month thereafter.

Present writ petition stands allowed in the above terms.