Before H.S. Bedi, J

JOGINDER SINGH,— *Petitioner*

versus

STATE OF HARYANA & OTHERS,— *Respondents*

CWP 5652 OF 1995

12th December, 1997

Constitution of India, 1950—Art. 226—Punjab Civil Service Rules, Volume II—Rls. 3.17-A(a) & (g), 4.23—Qualifying service for pension—Daily wager paid out of contingency fund—Subsequently regularised—Rule 3.17-A(f) (i) providing that half of the period of such service will count as qualifying service held arbitrary and, therefore, struck down as bad—Entire period has to be counted towards qualifying service for the purpose of pension—Interruption in service of petitioner from 14th July, 1981 to 29th July 1981 not occasioned on account of any lapse on his part—Employee is entitled to condonation in break in service in terms of Rule 4.23

Held that the words "half the period of service of such persons paid from contingency" occurring in sub clause (i) of clause (f) of rule 3.17-A are bad in law and are accordingly struck down.

(Para 5)

Further held , that the break in service for the period from 14th July 1981 to 29th July 1981 had not been occasioned on account of any fault on the part of the petitioner but it was beyond his control. In the light of the observations of the Division Bench in *Kartar Singh* v. *State of Haryana* 1996 (I) AIJ 318, I am of the view that this interruption in the Service has to be condoned and the petitioner shall be entitled to count his service from 24th October, 1979 to 31st May, 1993 as qualifying service for the purpose of persion.

(Para 6)

R. K. Mallik, Advocate, *for the Petitioner.*

H.C. Rathee, DAG, Haryana, *for the Respondents.*

JUDGMENT

H.S. Bedi, J (Oral)

(1) The petitioner was appointed as Ticket Verifier on daily wage basis on 11th March, 1966. The appointment continued up to 6th July, 1976 when

it was terminated. The petitioner was re-appointed as a Ticket Verifier on 24th October, 1979, and he continued to work as such till 13th July, 1981 when his services were dispensed with once again only to be employed on 18th July, 1981. The petitioner thereafter continued to be in service till his superannuation on 31st May, 1993. It is also the admitted case that the services of the petitioner were regularised w.e.f. 1st April, 1987 as a consequence of the directions issued by this Court in CWP 4743 of 1986 (copy appended as Annexure P.1 to the writ petition). The petitioner after superannuation applied for the payment of his retirement benefits and his case was submitted to the Accountant General Haryana vide Annexure P3 to the writ petition. The Accountant General, however, rejected the petitioner's claim on the ground that the petitioner while being paid as a daily wage worker was receiving his salary from the Contingency Funds and, as such, only half of the period of service put in from 29th July 1981 to 31st March, 1987 was to be treated as qualifying service for the purposes of pension and the petitioner not having put in ten years' service in all up to 31st May, 1993 was not entitled to the payment of any pension. The decision of the Accountant General has been appended as Annexure P4 to this petition and has been impugned before me.

(2) Written statement has been filed by the respondents and the petitioner's claim has been denied for the reasons already mentioned above, and relying on rule 3.17-A(F) of the Punjab Civil Service Rules Volume II (hereinafter referred to as the Rules) it has been urged that the petitioner was not entitled to the payment of pension as he did not have the requisite period of qualifying service.

(3) Mr. R.K. Malik, the learned counsel appearing for the petitioner, has urged two points before me. Firstly, that the stipulation in rule 3.17-A(F) in so far as it provided that only half the service was arbitrary and liable to be struck down and, secondly that the breaks in service from 14th July, 1981 to 29th July, 1981 had not been occasioned on account of any lapse on the part of the petitioner and as such he was entitled to the condonation thereof in terms of rule 4.23. As against this, Mr. Rathi, the learned State counsel has urged that the portion of rule 3.17-A(F) which had been impugned by Mr. Malik was based on the logic that a person who was being paid from contingency funds was only a daily wager and, as such, irregular in his employment and, therefore, the rule-making authority had assessed the period of service as half for the purpose of being counted towards qualifying service.

(4) I have heard the learned counsel for the parties and gone through the record.

(5). Rule 3.17-A (f) and (g) of the Rules are reproduced below :—

"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) to (e) X X X

X X X X

X X X X

(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 employees 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 in a type of work or job for which regular post should have been sanctioned, eg., malis, chowkidars, Khalasies 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 analgous 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 :— X X X X

X X X X

(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

(ii) such service is a whole time employment and not part-time or portion of day.)

It will be evident from the aforesaid rule that it provides for the method by which the qualifying service is to be determined. Sub clause (i) of clause (f) of rule 3.7-A of the said Rules provides that even persons paid from contingencies are entitled to count half of their service as qualifying service provided the four conditions laid down in sub clause (i) are fulfilled. It is the admitted position that the petitioner had worked for about 23 years in the respondent department but for two breaks that were not due to any default on his part. It will also be seen that the stipulation in sub clause (i) that half the period of service is to be counted towards qualifying service is to be read along with the subsequent four conditions in the same rule. These conditions read together clearly show that a person claiming qualifying service should have been working as a whole-time employee against a job for which a regular post should have been sanctioned with the payment of salary being made on a monthly or daily basis and that the service paid from contingency should have been continuous and without any break. To my mind, the facts of the case clearly spell out that the petitioner fulfilled these four conditions. I am also of the opinion that the stipulation in sub-clause (i) of clause (f) of rule 3.17-A that only half the period of service is to be counted as qualifying service is arbitrary and no logic or reason can be spelt out in it. In *Keser Chand* vs. *State of Punjab & others* (1) this Court while considering rule 3.17 of the Punjab Civil Service Rules Vol. II which provided that if work charged service was followed by regular employment, the period of work charge service could not be taken into account for the purpose of determining the qualifying service was quashed being arbitrary and unjust. It was observed as under:—

"Once the services of a work-charged employee have been regularised, there appears to be hardly any logic to deprive him for the pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of equal laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrary involves the negation of equality.

(1) 1988(5) S.L.R. 27

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 regularised, 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, and for these reasons the 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."

I am, therefore, of the opinion that the words "half the period of service of such persons paid from contingency" occurring in sub clause (i) of clause (f) of rule 3.17A are bad in law and are accordingly struck down.

(6) Mr. Malik has also urged that the break in service from 14.7.1981 to 29.7.1981 was liable to be condoned in the light of rule 4.23 of the Rules. This rule is reproduced below:—

"4.23. Interruption in service (either between two spells of permanent or temporary service or between a spell of temporary service and permanent service or vice versa), in case of an officer retiring on or after 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.

The period of interruption condoned shall not count as qualifying service.

In intrupption between two spells of service rendered under the State Govt. shall be treated as automatically condoned except where the interruption has been caused by resignation, dismissal or removal from the period of interruption itself shall under no circumstances be reckoned (counted) as qualifying pension."

(7) The above provision came up for consideration before a Division Bench of this Court in *Kartar Singh* v. *State of Haryana* (2), and it was observed as under :—

"We also find that the respondents have not assigned any reason on the basis of which it can be said that the petitioner is not entitled to condonation of break in his service between November, 1949 to 31st February, 1995. Though the language used in rule 4.23 prima facie suggests that the discretion vests in the competent authority to condone the break in service but a careful reading of the rule shows that this discretion is not absolute and in a case where interruption in service has been caused by reasons beyond the control of the Government employee, the condonation of break in service cannot be denied. In the case of the petitioner also, the interruption has been occasioned due to the termination of his service on the ground of abolition of the post held by him. Therefore, it can be said that the interruption was for the reasons beyond his control and in our opinion, he is entitled to the benefit of condonation of interruption in service."

It is clear from the facts of the present case that the break in service for the aforesaid period had not been occasioned on account of any fault on the part of the petitioner but it was beyond his control. In the light of the observations of the Division Bench quoted above, I am of the view that this interruption in the service has to be condoned. *Ipso facto* , it has to be held that the petitioner shall be entitled to count his service from 24th October, 1979 to 31st May, 1993 as qualifying service for the purpose of pension. This petition is accordingly allowed, the communication Annexure P4 is quashed and a direction is issued to the respondent State of Haryana to make the necesary payment to the petitioner within a period of four months from the date of the receipt of a copy of this order. There will, however, be no order as to costs.

R.N.R.

(2) 1996 (1) A.I.J 318