Before Tejinder Singh Dhindsa, J.

GURMAIL SINGH—*Petitioner*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

CWP NO. 19213 of 2011

6th August, 2012

Constitution of India, 1950 - Art.226 - Punjab Civil Service Rules - Rls.3.12, 3.17-A(2), 4.22, 4.23 - Petitioner joined service on 4.4.1962 -Applied for leave w.e.f. 6.5.1970 to 18.10.1970 - Thereafter willfully absented himself - His services terminated on 15.6.1971- Reinstated on 17.3.1972, as a fresh recruit and superannuated on 31.12.1999 - Petitioner's claim for counting service prior to interruption in service for the purpose of pension not allowed by authorities - Writ filed - Held, interruption in service caused by willful absence as contemplated in Rl. 3.17-A(2) will disentitle the petitioner from counting his service before the interruption for the purpose of pension - Writ petition dismissed.

Held, that Rule 3.17-A(2) is couched in clear and unambiguous language. The mandate of the aforementioned rule is that an interruption in the service of a Government employee caused by willful absence from duty and unauthorized absence without leave shall entail forfeiture of the past service. There is no dispute as regards the fact that the petitioner had willfully absented from 18.10.1970 onwards and it was on account of such basis that his services had been terminated vide order dated 15.6.1971. He was taken back in service on 17.3.1972 as a fresh recruit.As such, the interruption in the service of the petitioner was clearly on account of him being willfully absent from duty. The direct consequence by virtue of the operation of Rule 3.17-A(2) would be that the past service i.e. from 4.4.1962 to 18.10.1970 would stand forfeited and not count towards qualifying service for pension.

(Para 11)

Further held, that a bare perusal of the Rule would make it clear that there is a specific bar contained therein whereby an interruption between two spells of service rendered under the State Government shall not be

condoned where such interruption has been caused by resignation/dismissal or removal from service. The claim of the petitioner seeking condonation of the interruption in service on account of his termination would stand defeated in terms of the clear embargo contained in Rule 4.23 reproduced hereinabove.

(Para 11)

Alka Chatrath, Advocate, *for the petitioner.*

Vivek Chauhan, Assistant Advocate General, Punjab, *for the respondents.*

TEJINDER SINGH DHINDSA, J.

(1) Gurmail Singh, Divisional Head Draftsman (retired), Irrigation Works, Punjab has filed the present petition under Article 226 of the Constitution of India impugning the order dated 9.9.2011, Annexure P10, whereby his claim for counting of service from 4.4.1962 to 18.10.1970 for computation of pensionary benefits has been rejected by the respondent-authorities. Further prayer in the petition is for the issuance of a writ of mandamus directing the respondents to count the services rendered by the petitioner under the Punjab Irrigation Department from 4.4.1962 to 18.10.1970 towards qualifying service for pensionary benefits.

(2) Facts in brief, which are not in dispute, would require notice.

(3) The petitioner initially joined service with the Punjab Irrigation Department on the post of Tracer on 4.4.1962. He applied for leave w.e.f. 6.5.1970 to 18.10.1970. Thereafter, the petitioner remained wilfully absent from 19.10.1970 to 16.3.1972. His services were terminated on 15.6.1971. He was, however, reappointed as Tracer on 17.3.1972 as a fresh recruit and thereafter on 31.12.1999, the petitioner retired upon attaining the age of super-annuation. The petitioner was sanctioned pension, DCRG and other retiral benefits for the service rendered from 17.3.1972 to 31.12.1999. Apparently, the petitioner filed numerous representations to the Department for counting of his service from 4.4.1962 to 17.3.1972 as qualifying service for pension. The petitioner preferred Civil Writ Petition No.4352 of 2011 in this Court and such petition was disposed of on 10.3.2011 with a direction to the competent authority to take a decision as regards his claim

in terms of passing a speaking order. It is in deference to the directions issued by this Court vide order dated 10.3.2011 that the impugned order dated 9.9.2011 has been passed by the Chief Engineer (Canals) Irrigation Works, Punjab rejecting the claim of the petitioner for counting of his service from 4.4.1962 to 18.10.1970 towards qualifying service for determining the pensionary benefits.

(4) I have heard Ms.Alka Chatrath, Advocate for the petitioner and Mr. Vivek Chauhan, Assistant Advocate General, Punjab for the respondents at length.

(5) Learned counsel appearing for the petitioner has vehemently argued that under Rule 3.12 of the Punjab Civil Services Rules, Vol.II, (hereinafter to be referred as 'PCS Rules') the conditions for qualifying service for pension have been stipulated and in terms thereof, since the service of the petitioner for the period in question i.e. 4.4.1962 to 18.10.1970 was under the Government and he had held the post in question on a substantive basis, such service has to count towards qualifying service. It has further been argued on behalf of the petitioner that on having been permitted to join his duties in the year 1972 as a fresh recruit, he had been given the benefit of previous service towards pay fixation and as such, denying to him the benefit of such service for purposes of computing pensionary benefits would be arbitrary and violative of Article 14 of the Constitution of India. Learned counsel has further referred to Rule 4.22 of the PCS Rules whereby the authority which sanctions the pension has been vested with the power to commute retrospectively the period of absence without leave into leave without allowances or extra-ordinary leave. Based on the strength of Rule 4.22 of PCS Rules, learned counsel would argue that the period of absence i.e. from 19.10.1970 to 16.3.1972 could have been treated as period on extra-ordinary leave and the past period of service i.e. 4.4.1962 to 18.10.1970 has to count for qualifying service for purposes of pensionary benefits. In furtherance of the claim raised in the present petition, learned counsel has placed reliance on the following judgments:

1. **Vijay Laxmi *versus* State of Punjab, (1).**
2. **Lashkar Ram *versus* Union of India and others (2).**

(1) 1994(2) SCT 84
(2) 2009(1) RSJ 35

3. **Harjit Kaur *versus* State of Punjab and others (3)** and

4. **Manohar Lal *versus* State of Punjab and another (4).**

(6) Per contra, learned counsel appearing for the State has justified the passing of the impugned order in terms of submitting that under Rule 3.17-A(2) of PCS Rules, any interruption in the service of a Government employee caused by wilful absence from duty or unauthorized absence without leave would entail forfeiture of past service. Learned counsel would, accordingly, contend that the period prior to the termination of service of the petitioner in the year 1971 cannot count towards qualifying service for computation of pensionary benefits.

(7) For adjudication upon the issue raised in the present petition, it would be apposite to refer to the relevant statutory provisions which deal with the subject of qualifying service for purposes of pension. Rule 3.17-A (1) contained in Chapter II of PCS Rules reads in the following terms:

"3.17-A. (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service :-

(i) Service rendered in work-charged establishment

(ii) Service paid from contingencies;

Provided that after the Ist January, 1973 half of the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions:-

(a) Service paid from contingencies should have been in a job involving whole time employment (and not part time or for a portion of a day).

(b) Service paid from contingencies should be in a type of work or job for which regular post could have been sanctioned e.g. malis, chowkidars, Khalasis etc.,

(4) 2009(1) RSJ 35
(5) 2009(2) RSJ 123

(c) The service should have been one 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;

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

(iii) Casual or daily rates service.

(iv) Suspension adjudged as a specific penalty;

Note: In cases where an officer dies or is permitted to retire while under suspension will not be treated as an interruption.

(v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointed whether temporary or permanent under the Government where service qualified for pension.

(vi) Joining time for which no allowances are admissible under rules 9.1 and 9.15 of CSR, Volume I, Part I.

(vii) If any unauthorized leave of absence occurs in continuation of authorized leave of absence and if the post of the absentee has been substantively filled up, the past service of the absentee is forfeited.

(viii) Transfer to a non-qualifying service in an establishment not under Government control or if such transfer is not made the competent authority and transfer to service in grant-in-aid school.

(a Government employee who voluntarily resigns qualifying service, cannot claim the benefit under this clause).

(ix) Removal from the Public Service for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination will entail forfeiture of past service.

(2) An interruption in the service of a Government employee caused by wilful absence from duty and unauthorized absence without leave shall entail forfeiture of the past service.

(3) Wilful abstinence from performing duties by a Government employee by resort to pen down strike shall be deemed to be wilful absence from duty and shall also entail forfeiture of the past service.

Note: In the case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, the pensionary benefits admissible for service under Central Government would be that admissible under the Government of India rules and the liability for such benefits shall be allocated in accordance with the prevalent orders.

Clarification (1) Even after the introduction of rule 3.17 (A) and deletion of rule 4.21, the following cases do not entail forfeiture of past service:-

(a) authorized leave of absence;

(b) abolition of post or loss of appointment owing to reduction in establishment;

("Post" or "appointment" means a post or appointment service in which qualifies for pension).

(2) While counting such qualifying service for working out aggregate service, the period of break in service shall be omitted."

(8) Rule 3.17-A(2) is couched in clear and unambiguous language. The mandate of the aforementioned rule is that an interruption in the service of a Government employee caused by wilful absence from duty and unauthorized absence without leave shall entail forfeiture of the past service. There is no dispute as regards the fact that the petitioner had wilfully absented from 18.10.1970 onwards and it was on account of such basis that his services had been terminated vide order dated 15.6.1971. He was taken back in service on 17.3.1972 as a fresh recruit. As such, the interruption in the service of the petitioner was clearly on account of him being wilfully

absent from duty. The direct consequence by virtue of the operation of Rule 3.17-A(2) would be that the past service i.e. from 4.4.1962 to 18.10.1970 would stand forfeited and not count towards qualifying service for pension. A Division Bench of this Court in **Chhalinder Singh *versus* State of Punjab and others (5),** had examined the scope of Rule 3.17-A(2) of PCS Rules and had observed in the following terms:

> "It is not possible for us to accept the aforesaid contention of the learned counsel for the respondents, for two reasons. Firstly, any executive/administrative instructions cannot override a statutory rule. In this behalf, it is essential to notice that in terms of the mandate of Rule 3.17-A(2) (extracted above), an interruption in the service of a government employee caused only on account of "wilful absence from duty" or "unauthorized absence without leave" can entail forfeiture of past service. It is the clear and categoric assertion of the petitioner in the writ petition that interruptions in the service rendered by him, were not occasioned as a consequence of any act of omission or commission at the hands of the petitioner. It is not the case of the respondents that the authorised interruptions in the service of the petitioner, were based on either his "wilful absence from duty" or "unauthorised absence without leave". In the facts and circumstances of this case, it is, therefore, apparent that the respondents could not have treated the period of absence in question, as an interruption in the service of the petitioner entailing forfeiture of past service. For the reasons recorded above, it is not possible for us to accept the contention of the learned counsel for the respondents, based on the instructions dated 19.6.1995."

(9) The reliance placed by the learned counsel appearing for the petitioner on Rule 4.22 of PCS Rules is mis-placed. In terms of Rule 4.22, the competent authority is certainly vested with the power to compute retrospectively period of absence without leave into leave without allowances or extra-ordinary leave, but such rule would not hold the field in the light of the peculiar facts of the present case wherein there are two spells of service rendered by the petitioner and wherein an interruption has occurred

(5) 2005(3) RSJ 733

on account of his service having been terminated.

(10) The relevant rule with regard to condonation of interruption and deficiencies is Rule 4.23 contained in Chapter II of the PCS Rules and the same reads as under:

> "4.23. In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered under the State Government shall be treated as automatically condoned, and the pre-interruption service shall be treated as qualifying service for pension purposes, except where the interruption has been caused by resignation, dismissal or removal from service or due to participation in a strike, but the period of interruption itself shall, under no circumstances, be reckoned as qualifying service for pension purpose."

(11) A bare perusal of the Rule would make it clear that there is a specific bar contained therein whereby an interruption between two spells of service rendered under the State Government shall not be condoned where such interruption has been caused by resignation/dismissal or removal from service. The claim of the petitioner seeking condonation of the interruption in service on account of his termination would stand defeated in terms of the clear embargo contained in Rule 4.23 reproduced hereinabove.

(12) Even the judicial precedents cited by the learned counsel for the petitioner would have no applicability to the facts of the present case. None of the judgments cited were in relation to a factual scenario whereby an interruption in the service of such Government employee has been caused on account of a wilful absence from duty/unauthorized absence without leave and which interruption had been made the basis of termination of service of such employee.

(13) For the reasons recorded above, I find no infirmity in the passing of the impugned order dated 9.9.2011, Annexure P10, whereby the claim of the petitioner for counting of his service from 4.4.1962 to 18.10.1970 for computation of pensionary benefits has been rejected. The petition is devoid of merit and is, accordingly, dismissed.

P.S. Bajwa