



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. : 3841 of 2022

Reserved on : 17.04.2023

Decided on : 19.04.2023

Dr. Umesh Kumar

....Petitioner.

Versus

State of Himachal Pradesh and Anr.

...Respondents.

Coram

The Hon'ble Ms. Justice Sabina, Acting Chief Justice.

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes

For the petitioner : Mr. Sanjeev Bhushan,
Sr. Advocate, with Mr.
Rajesh Kumar, Advocate.

For the respondents : Mr. Mohinder Zharaick,
Additional Advocate
General.

Satyen Vaidya, Judge

By way of instant petition, petitioner has
prayed for following substantive reliefs:-

- i) *That appropriate writ, order or direction may very kindly be issued and the impugned communication dated 18.10.2021(Annexure P-5) may very kindly be quashed and set aside by*

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

further directing the respondents to govern the services of the petitioner under Old Pension Scheme i.e. Scheme which was prevalent prior to the Contributory Pension Scheme, in the interest of law and justice.

ii) That respondents may very kindly be directed to govern the service of the petitioner under Central Civil Services (Pension) Rules, 1972 as applicable prior to 15.05.2003, in the interest of law and justice.

(iii) That appropriate writ, order or direction may very kindly be issued directing the respondents to grant pension to the petitioner under Old Pension Scheme from the date of his superannuation alongwith arrears and interest @ 12% per annum.

2. Brief facts necessary for adjudication of the petition are that petitioner was appointed as Medical Officer in the department of Health, Government of H.P., on contract basis w.e.f. 31.01.1997. His contract employment continued for about ten years, whereafter services of the petitioner were regularized w.e.f. 05.03.2007. Though, the initial appointment of the petitioner was on contract basis, but he was being paid regular pay scale with all allowances admissible to Medical Officers appointed on regular basis. Petitioner

was also paid increments at par with regularly appointed Medical Officers. Noticeably, the initial appointment of the petitioner on contract basis was made after undergoing selection process in which he was interviewed by a duly constituted selection committee. As many as thirty-four Medical Officers were appointed on contract basis alongwith petitioner.

3. In 2010, petitioner alongwith similarly situated Medical Officers were directed by respondents to switch over to Contributory Pension Scheme, which was introduced, vide notification dated 17.08.2006. Petitioner alongwith others approached this Court by way of CWP No. 4799 of 2010, raising challenge to the aforesaid direction of the respondents. By way of an interim order, respondents were restrained from compelling the petitioner to join Contributory Pension Scheme. Finally, CWP No. 4799 of 2010 was decided by a Division Bench of this Court, vide judgment dated 30.11.2010, in following terms:-

“9. Having regard to the factual matrix and legal position as referred to above, whereby the appointments though on adhoc/contractual/tenure

basis having been made prior to 15.5.2003 and which appointments having been given effect by way of regularization with effect from the date of adhoc/tenure /contractual basis, the contentions as referred to above, assume significance and force. Therefore, these writ petitions are disposed of directing the first respondent to consider the case of the petitioners afresh and take appropriate action in the matter expeditiously. Till the orders are passed as above, interim order passed in this case will continue.”

4. Petitioner superannuated on 31.12.2020 and till such date no decision could be taken by respondents in pursuance to directions issued by this Court, vide judgment dated 30.11.2010. On 18.10.2021, a communication was sent from the office of respondent No. 1 to respondent No. 2 informing that the case of the petitioner had been rejected. Thus, petitioner is before this Court assailing communication dated 18.10.2021, Annexure P-5.

5. We have heard learned counsel for the parties and have gone through the record of the case carefully.

6. It has been contended on behalf of the petitioner that the initial appointment of the petitioner on contract basis was for three years, which came to be

extended till expiry of about ten years and was thereafter followed by regularization of his services. Petitioner was paid regular pay scale with all admissible allowances and increments as admissible in the case of regularly appointed Medical Officers. His contractual appointment was considered for the purposes of seniority. Even vide judgment dated 30.11.2010, passed by a Division Bench of this Court in bunch of petitions filed by petitioner and other similarly situated persons, it was observed that the case of the petitioner required reconsideration by the State Government as the scheme introduced, vide notification dated 17.08.2006, would apply to appointees appointed after 15.05.2003.

7. It is further submitted that the petitioner has served the respondents continuously for about ten years prior to the date of regularisation of his services, therefore, he will be discriminated in case his service, for the purposes of grant of pension, is calculated only from the date of his regularisation.

8. On the other hand, learned Additional Advocate General, has contested the claim of the

petitioner, on the ground that the State Government, vide notification dated 17.07.2006, made Himachal Pradesh Civil Services Contributory Pension Rules, 2006, applicable retrospectively and as per said rules, the employees appointed after 15.05.2003, were to be governed by Contributory Pension Scheme. The case of the petitioner was also considered and since, the services of the petitioner were regularized w.e.f. 05.03.2007, his date of appointment was to be considered from such date. Thus, he was not entitled for addition of his contractual service towards qualifying service under CCS (Pension) Rules, 1972.

Respondents have sought to defend impugned communication dated 18.10.2021, Annexure P-5, on the aforesaid grounds.

9. The facts are not in dispute. It is not in dispute that petitioner was duly qualified and was appointed on contract basis after he had undergone the selection process in which thirty-four other Medical Officers were selected. All of them had appeared before duly constituted selection committee and were finally

appointed on recommendations of such committee. The continuance of petitioner on contract basis for about ten years is also a fact which has not been disputed. The grant of pay scale, allowances and increments etc. to the petitioner at par with Medical Officers appointed on regular basis, have also not been denied.

10. Rule-13 of CCS (Pension) Rules, 1972, reads as under:-

“13. Commencement of qualifying service Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post :

Provided further that –

(a) in the case of a Government servant in a Group `D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years

shall not count, except for compensation gratuity.

(c) the provisions of clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19.”

11. Thus, qualifying service of a government servant commences from the date he takes charge of the post to which he has first appointed either substantively or in an officiating or temporary capacity. It is further provided that an officiating or temporary service should be followed without interruption by substantive appointment in the same or another service or post. In the given facts of the case, the initial appointment of the petitioner, though, in temporary capacity continued for about ten years and was followed without interruption by substantive appointment on the same post. In such view of the matter, the contract service of the petitioner is liable to be counted towards qualifying service for the purposes of applicability of CCS (Pension) Rules, 1972. Admittedly, it is not a case where the initial

appointment of the petitioner was for a short period or for limited purpose.

12. In CWP No. 5400 of 2014, titled as Veena Devi Vs. Himachal Pradesh State Electricity Board Ltd. & Anr., decided on 21.11.2014, a Division Bench of this Court had held that the contract service followed by regular appointment was required to be counted for the purpose of pension. Similarly in CWP No. 8953 of 2013, titled as Joga Singh & Ors. Vs. State of H.P. & Ors., decided on 15.06.2015, the same proposition was reiterated by a Division Bench of this Court. In CWP No. 2384 of 2018, titled as State of Himachal Pradesh & Ors. Vs. Sh. Matwar Singh and Anr., decided on 18.12.2018, another Division Bench of this Court held even the work charge status followed by regular appointment to be counted as a component of qualifying service for the purposes of pension and other retiral benefits.

13. In light of above discussion, this petition deserves to be allowed and is accordingly allowed. The impugned communication dated 18.10.2021,

Annexure P-5, is quashed and set aside. Respondents are directed to consider the contractual service of the petitioner as a component of qualifying service for the purpose of pension under CCS (Pension) Rules, 1972 and to grant him pension strictly in terms of CCS (Pension) Rules, 1972, with effect from the date of his superannuation alongwith arrears within six weeks from today, failing which arrears shall entail interest @ 12% per annum, till the date of actual payment.

14. The petition is accordingly disposed of, so also the pending miscellaneous application(s), if any.

(Sabina)
Acting Chief Justice

(Satyen Vaidya)
Judge

19th April, 2023
(sushma)