

HRFT020000652023



Presented on : 18-01-2023
Registered on : 18-01-2023
Decided on : 07-08-2026
Duration : 3 years, 6 months, 20 days

IN THE COURT OF
Civil Judge (Junior Division) AT Fatehabad
Presided Over by Ms. Jasmine Bawa

CS/59/2023

Naurang Ram aged 60 years son of Harnam, resident of Village
Kukranwali, Tehsil and District Fatehabad.

.....Plaintiff.

Versus

1. State of Haryana through Collector, Fatehabad.
2. Director, Secondary Education, Haryana, Panchkula.
3. District Education Officer, Fatehabad.
4. Block Education Officer, Fatehabad.
5. Principal, Government Senior Secondary School, Jhalnia, Tehsil
& District Fatehabad.

..... Defendants.

SUIT FOR DECLARATION AND MANDATORY INJUNCTION

Present : Sh. Rajbir Singh, Advocate for the plaintiff.
Ld. GP for defendants No.1 to 5.

JUDGMENT :

Instant suit has been filed by the plaintiff seeking decree for
declaration and mandatory injunction.

2. Succinctly, facts of the present case are that on 05.01.2001

the plaintiff had joined his services in Government Primary School in Dhani Chanan, Tehsil & District Fatehabad. As per the policy of Government of Haryana, the services of the plaintiff were regularized as Sweeper-cum-Chowkidar w.e.f. 01.04.2011. The plaintiff has retired from his services on 31.01.2022 on attaining the age of superannuation from Senior Secondary School, Village Jhalnia, Tehsil & District Fatehabad. In view of the above, the plaintiff is entitled for all the pensionary benefits of Old Pension Scheme and further the plaintiff is also entitled for getting his services computed from 05.01.2001 to 31.01.2022 as qualifying service for grant of pensionary benefits. It is submitted that as per the decision as mentioned in CWP No.1048-2016 passed by the Hon'ble Punjab & Haryana High Court, Chandigarh in case titled as Jai Bhawan Vs State of Haryana decided on 01.03.2019 the plaintiff is entitled to all the benefits mentioned above.

2(ii) It is further submitted that the plaintiff has not been given the pensionary benefits as detailed above as per Old Pension Scheme to which the plaintiff is legally entitled to after getting computed his services from 05.01.2001 to 31.01.2022 as qualifying service for grant of pensionary benefits. The plaintiff has repeatedly requested the defendant in this regard but all the requests of the plaintiff fell on your deaf ears.

2(iii) Plaintiff has served the defendants a notice dated 26.09.2022, through registered post through his counsel Sh. Rajbir Singh, Advocate, District Courts, Fatehabad thereby calling upon the

defendants to give the pensionary benefits as detailed above to the plaintiff after computing his services from 05.01.2001 to 31.01.2022 as qualifying service for grant of pensionary benefits to the plaintiff as per the Old Pension Scheme and release the plaintiff the benefits of all the arrears along with interest at the rate of 9% per annum with effect from due date to the date of actual payment to the plaintiff. The defendant No.5 has given the reply vide reply dated 07.11.2022 which is false and frivolous.

2(iv) Plaintiff in spite of service of the notice upon the defendants has not been given the sought benefits as the defendants have not admitted the claim of the plaintiff. Hence, the instant suit.

3. Upon notice, the defendant No.5 appeared and filed joint written statement on behalf of defendants No.1 to 5 taking preliminary objections regarding maintainability, locus standi, not coming to Court with clean hands etc. It was submitted that the service of plaintiff was regularized as Sweeper-cum-Chowkidar w.e.f. 01.04.2011. In compliance of order dated 19.07.2019 of the Hon'ble High Court, the department issued the instructions vide order No.13/91-2016 HRME-1(4) dated 10.09.2019 to all the District Education Officer of the State, vide which it was directed to constitute a committee at District Level headed by DEOs to re-examine the cases of regularization of part time of all cases-IV employees. Accordingly, the cases of regularization were examined and found that the plaintiff was inadvertently regularized w.e.f. 01.04.2011 as per the policy 11.11.2003/27.02.2004 and the same

has been rectified vide order dated 06.02.2020 where in the plaintiff was regularized w.e.f. 25.08.2014 as per his seniority, eligibility and availability of vacant sanctioned post.

3(ii) It is specifically denied that plaintiff is entitled for all the pensionary benefits of Old Pension Scheme and further the plaintiff is also entitled for getting his services computed from 05.01.2001 to 31.01.2022 for services for grant of pensionary benefits. It is pertinent to mention here that as per the service of the plaintiff was regularized w.e.f. 25.08.2014, thus the computing services in case of the plaintiff is covered under New Pension Scheme, 2008 from 25.08.2014 to 31.01.2022. Further Rule 3.17, A(g)(iii) of Punjab CSR vol.2 provides that the service rendered by an employee on part-time basis cannot be reckoned towards retiral benefits. Rule 3.17, A(g)(iii) of Punjab Civil Services rules vol.2 is reproduced here as under:

“Rule 3.17A(g): The entire service rendered by an employee as work charge 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 services or the interruption fall within condonable limits: and
- (iii) Such services is a whole time employment and not part-time or portion of day.”

3(iii) It is further averred that the plaintiff was regularized w.e.f. 25.08.2014, thus the computing service in case of the plaintiff is covered under New Pension Scheme, 2008 from 25.08.2014 to 31.01.2022.

Further Rule 3.17, A(g)(iii) of Punjab CSR vol.2 provides that the service rendered by an employee on part-time basis cannot be reckoned towards retiral benefits. Hence, in view of the aforesaid submissions, the suit of the plaintiff is liable to be dismissed.

4. Replication not filed. On the basis of pleadings of parties following issues were framed for adjudication vide order dated 27.03.2023 :

1. Whether the plaintiff is entitled for decree to the effect that he is entitled to the pensionary benefits as per Old Pension Scheme and is also entitled to get computed his services from 05.01.2001 to 31.01.2022 as qualifying service for grant of pensionary benefits and is also entitled to arrears of all the benefits along with interest @ 9% per annum?OPP (correction made vide order dt. 07.08.2026)
2. Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD
3. Whether the suit of the plaintiff is not maintainable?OPD
4. Whether plaintiff has not come to the Court with clean hands and concealed the true facts from the Court? OPD
5. Relief.

Plaintiff Evidence :

5. Plaintiff in order to prove its case examined **himself as PW1**. He deposed through affidavit Ex.PW1/A and placed on record following documents:

Identification Marks	Description
Ex.P1	Copy of legal notice dt. 26.09.2022
Ex.P2 to P6	Postal Receipts
Ex.P7	Letter from GSSS, Jhalnia to Sh. Rajbir Singh,

	Advocate dt. 07.11.2022
Ex.P8 & Ex.P9	Copy of Joining Report

Thereafter, the ld. Counsel for plaintiff closed the evidence of plaintiff vide separate statement dated 17.07.2023.

Defendants' Evidence :

6. Thereafter, the case was fixed for evidence of defendants. In their support the defendants have examined **DW1 Vijay Kumar Principal who deposed through an affidavit Ex.DW1/A**. In documentary evidence defendants have placed on record following documents :

Identification Marks	Description
Ex.D1	Copy of letter from Finance Department
Ex.D2	Copy of Notification under New Pension Scheme

Thereafter, Sh. Vijay Kumar, Principal closed the evidence of defendants vide separately recorded statement dt. 22.08.2023.

7. No rebuttal evidence was led and same was closed by Court order of even date.

8. Ld. Counsel for plaintiff argued that the plaintiff is entitled for all the pensionary benefits of Old Pension Scheme and further the plaintiff is also entitled for getting his services computed from 05.01.2001 to 31.01.2022 as qualifying service for grant of pensionary benefits. It is submitted that as per the decision as mentioned in CWP No.1048-2016 passed by the Hon'ble Punjab & Haryana High Court,

Chandigarh in case titled as Jai Bhawan Vs State of Haryana decided on 01.03.2019 the plaintiff is entitled to all the benefits mentioned above. Plaintiff has not been given the pensionary benefits as detailed above as per Old Pension Scheme to which the plaintiff is legally entitled after getting computed his services from 05.01.2001 to 31.01.2022 as qualifying service for grant of pensionary benefits. Before regularization, plaintiff performed same duties as performed by other employees. Thus, he prayed for decreeing the suit.

9. On the other hand, ld. GP for the State vehemently argued that plaintiff was regularized as Sweeper-cum-Chowkidar w.e.f. 01.04.2011. In compliance of order dated 19.07.2019 of the Hon'ble High Court, the department issued the instructions vide order No.13/91-2016 HRME-1(4) dated 10.09.2019 to all the District Education Officer of the State, vide which it was directed to constitute a committee at District Level headed by DEOs to re-examine the cases of regularization of part time of all cases-IV employees. Accordingly, the cases of regularization were examined and found that the plaintiff was inadvertently regularized w.e.f. 01.04.2011 as per the policy 11.11.2003/27.02.2004 and the same has been rectified vide order dated 06.02.2020 where the plaintiff was regularized w.e.f. 25.08.2014 as per his seniority, eligibility and availability of vacant sanctioned post. It was further argued that the computing services of case of the plaintiff is covered under New Pension Scheme, 2008 from 25.08.2014 to 31.01.2022. Further Rule 3.17, A(g)(iii) of Punjab CSR vol.2 provides

that the service rendered by an employee on part-time basis cannot be reckoned towards retiral benefits. Thus, he prayed for dismissal of the suit.

10. This Court has heard the arguments and gone through the case file very very carefully and minutely.

ISSUE NO.1 :

11. The onus to prove issue No.1 was on plaintiff and onus to prove issues No.2 to 4 was on the defendants.

12. The plaintiff has sought a declaration that his entire service w.e.f. 05.01.2001 till his retirement on 31.01.2022 is liable to be counted for the purpose of pensionary benefits under the Old Pension Scheme. The foundation of the claim is that although he initially joined as a part-time employee, he was subsequently regularized and, therefore, according to the plaintiff, his entire previous service ought to enure to his benefit for the purpose of pensionary computation.

13. PW1/plaintiff, in his examination-in-chief, deposed that he joined his services on 05.01.2001 at Government Primary School, Dhani Chanan and that his services were regularized as Sweeper-cum-Chowkidar w.e.f. 01.04.2011. He further stated that he retired from Government Senior Secondary School, Jhalnia on 31.01.2022 and claimed pensionary benefits by counting his service from 05.01.2001. However, his cross-examination does not substantiate the legal basis for counting the period of his part-time service as qualifying service. Rather, material admissions have surfaced from his testimony qua nature

of his initial employment and subsequent regularization.

14. The documentary evidence on record also assumes significance. Ex.P8 establishes that the plaintiff had joined the school at Dhani Chanan on 05.01.2001 pursuant to the order of the Block Education Officer. The evidence of DW1, read with the documents placed on record by the defendants, establishes that the plaintiff was initially working on part-time basis till he was regularized. The plaintiff himself did not bring any material on record demonstrating that the period from 05.01.2001 till his subsequent regularization was treated by the competent authority as whole-time regular service for the purposes of retirement benefits.

15. It further transpires from the evidence that although the plaintiff was initially shown as regularized w.e.f. 01.04.2011, the said position was subsequently examined by the department pursuant to the directions issued by the Hon'ble High Court and the departmental instructions. The cases of part-time Class-IV employees were re-examined and, vide order dated 06.02.2020, the plaintiff's date of regularization was rectified as 25.08.2014, subject to seniority, eligibility and availability of a sanctioned vacant post. DW1 specifically deposed that the plaintiff was regularized w.e.f. 25.08.2014 and that the earlier regularization w.e.f. 01.04.2011 stood rectified accordingly.

16. Significantly, PW1 has admitted that he was initially working as a part-time employee. DW1 has also categorically deposed that the plaintiff was appointed on part-time basis and that it was only

subsequently that he was regularized. The fact that, after regularization, the plaintiff performed duties similar to those performed by regular employees does not, by itself, convert his earlier part-time engagement into regular whole-time service. The nature of service has to be determined in accordance with the governing service rules and the order of regularization, and not merely from the nature of duties subsequently performed.

17. The defendants have specifically relied upon Rule 3.17-A(g)(iii) of the Punjab Civil Services Rules, Volume-II, which governs the service conditions in question. It embodies the provision inter alia, that service can be reckoned towards retirement benefits subject to the prescribed conditions, including that such service is whole-time employment and not part-time or for a portion of the day. The statutory rule thus draws a clear distinction between whole-time service and part-time service for the purpose of reckoning service towards retirement benefits.

18. Plaintiff's initial employment i.e. 05.01.2001 onwards was admittedly on part-time basis. Therefore, in the absence of any statutory provision, specifically conferring the benefit of counting such part-time service towards qualifying service, service of plaintiff cannot be reckoned from back date. The subsequent regularization of the plaintiff will not retrospectively impact rendered by him the nature of service prior to such regularization.

19. The plaintiff has also failed to establish that his service

from 05.01.2001 to 24.08.2014 was regular whole-time service. On the contrary, combined reading of the evidence tendered by PW1 and DW1 and perusal of Ex.P8 and Ex.P9 and the departmental order dated 06.02.2020, establishes that the plaintiff's initial employment was part-time and that his regularization on 25.08.2014. The fact that he was drawing remuneration from the department during the earlier period or that his duties were similar with those performed by regular employees cannot be an overriding factor against statutory requirement contained in Rule 3.17-A(g)(iii). The burden was upon the plaintiff to establish his legal entitlement to the declaration sought.

20. The plaintiff has further sought a declaration that he is entitled to the benefits of the Old Pension Scheme by counting his service from 05.01.2001. However, once it is found that the period of his initial engagement was part-time and that his regularization ultimately stood effective from 25.08.2014, the plaintiff cannot claim that the entire period from 05.01.2001 is to be treated as regular qualifying service merely for the purpose of bringing him within the Old Pension Scheme.

21. The defendants' evidence, particularly the testimony of DW1 and the departmental record, establishes that the plaintiff was regularized w.e.f. 25.08.2014 and was thereafter covered under the applicable pension rules. The plaintiff has not produced any statutory rule which legally mandates that his earlier part-time service must be added to the period of regular service for determining his pensionary

entitlement.

22. The testimony of DW1 reflects that the plaintiff was performing the duties of a regular employee after regularization does not advance the plaintiff's case. The relevant question is not merely what duties were being performed, but under what legal status those duties were being performed and whether the period is reckoned as qualifying service under the applicable rules. On this aspect, the plaintiff has failed to discharge the burden placed upon him.

23. As regards the claim for interest at the rate of 9% per annum, the same is consequential in nature. Once the plaintiff fails to establish the underlying entitlement to the pensionary benefits claimed by him, there arises no question of directing payment of arrears or interest thereon.

24. Accordingly, from the entire evidence on record, this Court finds that the plaintiff initially rendered service on part-time basis; his initial part-time service cannot be treated as regular whole-time qualifying service in the absence of any statutory provision conferring such benefit; his regularization ultimately stood rectified/effective from 25.08.2014; Rule 3.17-A(g)(iii) does not permit part-time service to be reckoned as qualifying service for retirement benefits merely because the employee was subsequently regularized; the plaintiff has failed to establish any statutory or other legal right to have his service from 05.01.2001 to 24.08.2014 counted towards qualifying service.

Issues No.2 to 4 :

25. The onus to prove these issues was upon the defendants. But these issues have not been pressed or argued upon by Learned Counsel for defendants during course of arguments, thus, finding on all these issues is against the defendants.

26. Accordingly, in view of aforesaid discussion issue No.1 is decided against the plaintiff and in favour of defendants. Issues No.2 to 4 are decided against defendants.

RELIEF :

27. As a sequel to my findings on foregoing issues the suit of plaintiff fails and is hereby dismissed with no order as to costs. Decree sheet be prepared accordingly and file be consigned to record room after due compliance.

Announced in open court.

Date :07.08.2026

(Jasmine Bawa)
Civil Judge (Jr. Divn.)
Fatehabad, UID No.HR0784

(Jyoti Sharma, SG-II)

Note : All the pages of this judgment have been checked and signed by me.

(Jasmine Bawa)
Civil Judge (Jr. Divn.)
Fatehabad, UID No.HR0784

(Jasmine Bawa)
CJ(JD), Fatehabad
UID No.HR-0784