



LPA-2536-2025 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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LPA-2536-2025 (O&M)

Date of decision : 28.08.2025

State of Punjab and others

... Appellants

Versus

Sarabjit Singh

.. Respondent

**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present:- Mr. Akhil Kamra, AAG, Punjab.

Anupinder Singh Grewal, J. (Oral)**CM-6366-LPA-2024**

1. This is an application seeking condonation of delay of 174 days in filing the appeal.

2. Heard.

3. For the reasons stated in the application, the same is allowed and delay of 174 days in filing the appeal is condoned.

CM-6367-LPA-2024

Allowed as prayed for.

CM-6368-LPA-2024

This application is for placing on record the judgment dated 03.08.2010 passed in LPA-899-2010 as Annexure A-1.

2. Heard.



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3. For the reasons stated in the application, the same is allowed and Annexure A-1 is taken on record subject to all just exceptions.

Main case

1. The appellants have challenged the judgment of the Single Bench dated 27.01.2025 whereby the writ petition i.e. CWP-1250-2019 preferred by the respondent seeking quashing of the order dated 15.04.2019 passed by appellant No.2-Director Health and Family Welfare (CC Branch) rejecting the application of the respondent seeking premature retirement on the ground that *ad hoc* service rendered by him cannot be counted towards 'qualifying service' for pensionary benefits, has been allowed.

2. Learned counsel for the appellants submits that the respondent had initially been appointed on *ad hoc* basis as a Class-IV employee without following the procedure laid down in the Rules and therefore, the service which he had rendered on *ad hoc* basis, ought not to be counted towards 'qualifying service' for computation of pensionary benefits.

3. Heard.

4. The respondent is stated to have been appointed on *ad hoc*/temporary basis as a Class-IV employee on 29.05.1996, which was further extended from time to time subject to short interruptions. Thereafter, the services of the petitioner were regularized on 25.11.2003. The respondent, after having put in 20 years of service, vide letter dated 06.02.2018, had sought premature retirement giving three months' prior notice. However, it is only on 15.04.2019 that the impugned order was passed by appellant No.2 rejecting the respondent's request for voluntary retirement on the ground that he



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does not possess 20 years' qualifying service for the reason that his initial appointment was on *ad hoc* basis, which came to be regularized subsequently w.e.f. 25.11.2003 only, and that the 'qualifying service' is to commence from the date of regular appointment only.

5. Admittedly, the respondent had worked uninterruptedly on work charge basis from 01.02.1998 till 24.11.2003 whereon his services were regularized. The issue whether service rendered on *ad hoc* basis prior to regularization is to be counted as 'qualifying service' for pensionary benefits, is no longer *res integra*. A Coordinate Bench of this Court in the case of **State of Punjab and others versus Dr. Bhushan Lal Malhotra, 2010 SCC OnLine P&H 6069**, while relying on the judgment of the Full Bench judgment in the case of **Kesar Chand versus State of Punjab 1988(2)PLR 23**, had held that the service rendered by the respondent therein on *ad hoc* basis is to be counted towards 'qualifying service' when computing the '20 years of qualifying service' under Rule 3(3)(a) of the Punjab Civil Services (Premature) Rules, 1975. The relevant extract of the judgment is reproduced hereunder:-

“Learned Single Judge then opined that the requirement of acceptance of request for ‘voluntary retirement’ in the case of an employee who has completed 20 years’ service does not clothe the appropriate authority with an absolute power to act arbitrarily or at whims and fancies. The plea that the writ petitioner had not completed 20 years ‘regular service’ was also raised before the learned Single Judge by the appellants. In that regard, it has been found that the matter is no longer res integra and covered by the Division Bench judgment of this Court in the case of Dr. Anil Kumar Saluja v. State of Punjab and others (CWP No. 12179 of 2008, decided on 1.8.2008). Accordingly, the writ petition has been allowed. in the same terms. It follows that the order dated 19.01.2009 (Annexure P11) stood quashed and a direction was issued to the appellant-State of Punjab to pass an appropriate



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order for voluntary retirement in respect of writ petitioner-respondent within a period of two months from the date of receipt of a certified copy of that order.

Feeling aggrieved, appellant-State of Punjab has filed the instant appeal. The primary ground pleaded in the instant petition is that the facts of the present case are distinct from the other petitions which have been disposed of by the learned Single Judge. According to the appellants the writ petitioner-respondent has not completed the period of qualifying service.

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Having heard learned State counsel we are of the considered view that there is no merit in the instant appeal warranting its admission. Learned counsel has not been able to cite any judgment contrary to the one rendered by the Division Bench in the case of Dr. Anil Kumar Saluja (supra), relevant extract of which has been quoted and relied upon by the learned Single Judge. The Division Bench in clear terms has held that ad hoc/work charged or any other service followed by regularisation has to be treated as qualifying service for the purpose of pension.

In that regard the Division Bench has placed reliance on a Full Bench judgment of this Court in the case of Kesar Chand v. State of Punjab, 1988 (2) PLR 23, declaring Rule 3.17 of the Rules as ultra vires which exclude the period of work charge and ad hoc service from the definition of expression 'qualifying service'. In the present case, it is conceded position that the writ petitioner-respondent was appointed as Medical Officer on short term basis vide order dated 26.5.1987. He joined the service on 11.9.1987 and continued to work as such up to 25.6.1992. On 31.1.1995, his services were regularised w.e.f. 26.6.1992. He sought voluntary retirement on 14.10.2009 in terms of Rule 3(3) of the Rules and requested that he may be retired w.e.f. 15.1.2010. By counting the period of short term service rendered by the writ petitioner no doubt is left that he has completed more than 20 years of service at the time when he sought voluntary retirement and the judgment in the case of Dr. Anil Kumar Saluja (supra) is fully applicable.

So far as the plea of interpretation of Rule 3 of the Rules is concerned, it would first be necessary to examine Rule 3(3) of the Rules, which is applicable to the facts of the present case and the same reads as under:-

“3(3)(a) At any time after any employee has completed twenty years of qualifying service, he may, by giving notice of not less than three months in writing to the appropriate authority retire from service.

(b) The notice of voluntary retirement given under this sub-rule shall require acceptance by the appropriate authority.



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(c) Where the appropriate authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”

A perusal of the aforesaid Rule shows that an employee after completing 20 years of qualifying service may serve a notice of not less than three months to the appropriate authority expressing his intention to retire from service on the expiry of the three months. According to Clause (b), the notice of retirement given under Clause (a) requires acceptance by the appropriate authority, which is mandatory. A perusal of the Clause (c) shows that if the appropriate authority allows three months' period to lapse then the retirement shall become effective from the date of expiry of the said period.

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We cannot accept the contention that requirement of permission in the Rule is mandatory particularly when Clause (c) of Rule 3 says that if appropriate authority has not refused the permission for retirement before the expiry of the 90 days period then the retirement become effective from the date of expiry of the said period, Clause (c), in fact, takes away mandatory character of the Rule. Therefore, the argument that the State can put up any ground for rejecting the prayer of an employee does not commend itself to us. For the reasons aforementioned, the appeal fails and the same is dismissed.”

6. As no order was passed on the request of the respondent for premature retirement even after expiry of three months' notice period, voluntary retirement would become effective from the date, the period of three months' notice had lapsed as set out in Rule 3(3) of the Punjab Civil Services (Premature Retirement) Rules, 1975 which is as under:-

“3. (1) *Premature Retirement:*

(2) xxxxxx

(3) (a) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than three months in writing to the appropriate authority, retire from service.



(b) *The notice of voluntary retirement given under this sub-rule shall require acceptance by the appropriate authority.*

(c) *Where the appropriate authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.*

7. It has also been held by the Supreme Court in the case of ***State of Haryana versus S.K. Singal, (1999) 4 SCC 293***, that where the appointing authority does not refuse the request for retirement under Rule 3(3) of the Punjab Civil Services (Premature Retirement) Rules, 1975, the voluntary retirement would become effective from the date of expiry of notice. The relevant extract thereof is reproduced hereunder:-

“6. The said rule 5.32(B) of the Punjab Civil Services Rules (Vol. II) reads as follows:

“5.32(B)(1) At any time a government employee has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority retire from service. However, a government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reason therefor. On receipt of a request, the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority subject to Rule 2.2 of the Punjab Civil Services Rules Vol. II:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified



in sub-rule (1) supra, the retirement shall become effective from the date of expiry of the said period”

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9. The employment of government servants is governed by rules. These rules provide a particular age as the age of superannuation. Nonetheless, the rules confer a right on the Government to compulsorily retire an employee before the age of superannuation provided the employee has reached a particular age or has completed a particular number of years of qualifying service in case it is found that his service has not been found to be satisfactory. **The rules also provide that an employee who has completed the said number of years in his age or who has completed the prescribed number of years of qualifying service could give notice of, say, three months that he would voluntarily retire on the expiry of the said period of three months. Some rules are couched in language which results in an automatic retirement of the employee upon the expiry of the period specified in the employee's notice. On the other hand, certain rules in some other departments are couched in language which makes it clear that even upon expiry of the period specified in the notice, the retirement is not automatic and an express order granting permission is required and has to be communicated.** The relationship of master and servant in the latter type of rules continues after the period specified in the notice till such acceptance is communicated; refusal of permission could also be communicated after 3 months and the employee continues to be in service. **Cases like Dinesh Chandra Sangma v. State of Assam, B.J. Shelat v. State of Gujarat and Union of India v. Sayed Muzaffar Mir belong to the former category where it is held that upon the expiry of the period, the voluntary retirement takes effect automatically as no order of refusal is passed within the notice period.** On the other hand *H.P. Horticultural Produce Marketing & Processing Corpn. Ltd. v. Suman Behari Sharma* belongs to the second category where the bye-laws were interpreted as not giving an option “to retire” but only provided a limited right to “seek” retirement thereby implying the need for a consent of the employer even if the period of the notice has elapsed. We shall refer to these two categories in some detail.

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13. Thus, from the aforesaid three decisions it is clear that **if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant rules and there is no provision in the rules to**



withhold permission in certain contingencies, the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelat case and as in Sayed Muzaffar Mir case the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelat case and in Sayed Muzaffar Mir case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.

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18. In the case before us sub-rule (1) of Rule 5.32(B) contemplates a “notice to retire” and not a request seeking permission to retire. The further “request” contemplated by the sub-rule is only for seeking exemption from the 3 months' period. The proviso to sub-rule (2) makes a positive provision that “where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the said period. The case before us stands on a stronger footing than Dinesh Chandra Sangma case so far as the employee is concerned. As already stated Rule 2.2 of the Punjab Civil Services Rules Vol. II only deals with a situation of withholding or withdrawing pension to a person who has already retired.”

8. In the case at hand, as the respondent had been working on *ad hoc* basis which was followed by regularization, the period of *ad hoc* service would be counted towards ‘qualifying service’ for computation of retiral benefits.



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9. In the aforementioned facts and circumstances, we do not find any manifest illegality in the judgment of the Single Bench which would warrant interference in the instant appeal.

10. Consequently, the Letters Patent Appeal being devoid of any merit stands dismissed. Pending application(s), if any, shall stand disposed of accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

August 28, 2025
sonia gugnani

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No