

CWP No.18562 of 2009

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

CWP No.18562 of 2009
Date of decision: 23.01.2015

Sarbjeet Kaur

....Petitioner

Versus

The State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. R.K. Arora, Advocate, for the petitioner.
Dr. Deepa Singh, Addl. A.G., Punjab.

PARAMJEET SINGH, J.

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari/mandamus for declaring the action of the respondents in not releasing the family pension to the petitioner on account of death of her husband as patently illegal, arbitrary, mala fide and unconstitutional and further for a direction to the respondents to release family pension to the petitioner along with all consequential benefits from the date of death of her husband i.e. 10.06.2007 .

Brief facts of the case are that Jagtar Singh s/o Bhajan Singh – husband of the petitioner – was working as Pump Operator under respondent No.3. He joined as daily wage Pump Operator on 01.01.1989. In terms of the Punjab Government Instructions dated

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23.01.2001, Jagtar Singh was entitled to be regularized on completion of three years service. However, his services were regularized w.e.f. 07.06.2007 and he died on 10.06.2007 while in service. Grievance of the petitioner is that due to untimely death of her husband, she is entitled to family pension in terms of Rule 6.17 of the Punjab Civil Services Rules, Volume-II. The family pension case of the petitioner was forwarded to the Accountant General (A&E), Punjab, Chandigarh by respondent No.3. However, same was returned with the remarks that case may be sent after consultation with the Finance Department. Thereafter, petitioner served a notice of demand for justice dated 30.09.2009 through registered post upon the respondents for release of family pension. However, till date no action was being taken by the department. Hence, this writ petition.

In pursuance of notice of motion, respondents filed reply. It is averred by respondents No.1 to 3 that husband of the petitioner became regular employee on 07.06.2006 and according to the Government of Punjab letter No.3/72/2003-03-FPPC/7280 dated 12.12.2006 new defined contributory pension scheme is applicable to the petitioner. Thus, petitioner is not entitled to family pension.

I have heard learned counsel for the parties and perused the record.

This case is squarely covered by the judgment of Hon'ble Division Bench of this Court: ***State of Punjab and others v. Mukhtiar Singh 2012(4) RSJ 164*** wherein it has been held as under: -

“18. It is pertinent to notice that their Lordships’ of the Full Bench have kept in the background two principles that the right to pension is not a bounty payable on the sweet will and pleasure of the Government. That right of superannuation pension including its amount is a valuable right vesting in a government servant. The Full Bench of this Court in K.R. Erry v. The State of Punjab, ILR (1967) 1 Punj Har 278, has laid down the aforesaid principle, which was approved by their Lordships’ of Hon’ble the Supreme Court in the case of Deokinandan Prasad v. The State of Bihar, AIR 1971 SC 1409. Likewise, the Full Bench in Kesar Chand’s case (supra) has also kept in view the nexus theory to test the constitutional validity of any provision of law, as propounded and evolved by Hon’ble the Supreme Court in the case of Ram Krishna Dalmia v. S. R. Tendolkar, AIR 1958 SC 538. It is trite to observe that Article 14 forbids discrimination and any law making classification has to fulfil two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group, and (ii) that differentia has a rational relation to the objects sought to be achieved by the statute in question. Once, both the aforesaid principles are kept in view then a daily rated employee, who has worked for more than 10 years, would become entitled to count his service rendered as such on a post, if it is followed by regularisation. The very fact that an order of regularisation has been passed in his favour would be an admission on the part of the State that work has been available which is of perennial nature and he was rendering service against a post. If a work-charged employee is to be granted benefit of such service then there cannot be any rationale basis to exclude a daily rated employee like those

who are before this Court. It is incidental that in Kesar Chand's case (supra) the employees who have sought the relief, were work-charged and not daily wager. We are sure that had it been a case of a daily wage employee, who had rendered more than 10 years service as such, which is followed by regularisation, then the same result would have followed which has been recorded by the Full Bench in the case of work-charged employees.

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22. As a sequel to the above discussion, the appeals filed by the State of Punjab are dismissed and the writ petitions are allowed. The departmental authorities are directed to count the work charged/daily wage service rendered by the petitioner(s) as qualifying service. The needful shall be done within a period of one month from the date of receipt of certified copy of this order. The petitioner(s) shall also be entitled to interest @ 12% per annum from the date the amount is payable to the date of its actual payment. The action of the authorities is patently against Rule 3.17-A of the Rules, therefore, the petitioner(s) are held entitled to their costs, which is determined at Rs. 2,500/- per petitioner. The amount of cost shall be sent to the petitioner(s) by cheque along with other retiral benefits.”

The Hon'ble Division Bench has referred to a catena of judgments of the Hon'ble Supreme Court and High Courts and held that work-charge service of more than ten years followed by regularization is to be counted for pension. In the present case, the husband of the petitioner rendered work-charge service for more than 18 years which was followed by regularization. Otherwise also, his services were

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required to be regularized much before in view of Government instructions, referred to above, and for delay in doing so the petitioner cannot be made to suffer. Thus, the case in hand is fully covered by the judgment of the Hon'ble Division Bench in ***Mukhtiar Singh*** (supra).

Accordingly, the present writ petition is disposed of in same terms as contained in para 22 of the judgment of Hon'ble Division Bench, extracted above.

(Paramjeet Singh)
Judge

January 23, 2015
R.S.