

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

**CWP No.16102 of 2013 (O&M)**

Date of Decision: 18.2.2015

Waryam Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr.Rakesh Kumar, Advocate for the petitioner

Mr.Sushant Maini, Sr.DAG, Punjab

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

**RAJIV NARAIN RAINA, J. (Oral)**

By the award dated 19<sup>th</sup> February, 1985 passed by the Presiding Officer, Labour Court, Amritsar, the petitioner, who died during the pendency of this petition, was reinstated into service with continuity and full back-wages. Therefore, the period when he was out of service has to be treated by fiction as continuous service w.e.f. 17<sup>th</sup> December, 1979, when his services were illegally terminated, till reinstatement awarded by the Labour Court. The award has attained finality. The decedent petitioner had to his credit, prior to his retrenchment in 1979, service rendered as a worker on daily wages from 1974.

The moot question here is whether the period of daily wage service, including the period for which continuity of service has been granted by the

award, reckonable towards length of service towards pension and pensionary benefits. In **Kesar Chand vs. State of Punjab, 1988 (2) PLR 223** and several cases following suit, it has been held that the period of daily wage service followed by regular service with the same employer is countable towards pension. The same view has been taken by two Division Benches of this Court, in one of which I was a member, where the same principle has been culled out and re-affirmed. These rulings are **Bhakra Beas Management Board and others vs. Hari Chand, 2012 (2) SLR 404** and **State of Haryana and others vs. Devi Singh, 2012(3) SLR 719**.

Instead of granting relief to the petitioner based on the law declared, the respondent-government has granted pension by counting the period reckonable for pension from 1991 onwards [and not 1974] for the reason that the services of the deceased petitioner were regularized by the department in that year.

The other argument raised by the learned counsel for the State contesting the petition is that sanctioned posts became available only in 1991 from which point the petitioner was accommodated and there is good reason for doing so. I would not accept the argument of the learned State counsel for the reason that availability of sanctioned post has nothing to do with the length of service as daily wager prior to regularization by the same employer. The date of regularization can at best work for fixing seniority etc. in the cadre. The petitioner died during the pendency of the writ petition on 1<sup>st</sup> September, 2013 and his L.Rs have been brought on record and they are claiming the monetary benefits which the petitioner would have received, had he not died. The cause of action did not abate on the death of the petitioner as the LR's would be entitled to monetary benefits flowing from a declaration in favour of the late petitioner.

For the foregoing reasons, this petition is allowed. The impugned order dated 1<sup>st</sup> April 2013 is quashed. The LRs of the petitioner are held entitled to payment of monetary benefits arising out of pay re-fixation in terms of this order. The arrears would run till the date of death of the petitioner after which the petitioner's rightful dues would be re-calculated and the difference would be handed over to the LRs of the petitioner within two months from the date of receipt of a certified copy of this order. The State is directed to fix family pension which will be released to the widow or whosoever is found entitled to the same, so that the family's future is secured with a valid source of livelihood. The LRs of the petitioner would also be entitled to simple interest on arrears at the rate of 12% per annum. There will be no order as to costs.

**18.2.2015**  
**MFK**

**(RAJIV NARAIN RAINA)**  
**JUDGE**