IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 5009 of 2013(O&M)

Date of Decision: October 12 , 2015.

Mohinder Singh ...... PETITIONER (s)

Versus

Punjab Mandi Board and others

...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sharwan Sehgal, Advocate
for the petitioner.

Mr. Tarun Veer Singh Lehal, Advocate
for the respondents.

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1. Whether reporters of 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?

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LISA GILL, J.

Prayer in this writ petition is for quashing of order dated 06.02.2013, Annexure P5 passed by respondent No.1 – Punjab Mandi Board whereby daily wage service of the petitioner has not been counted towards qualifying service for the purpose of grant of pensionary benefits.

Admitted facts are that, petitioner was appointed as a Chowkidar by Market Committee, Khanna on 19.08.1991 on daily wage basis in the Mechanical Handling Unit. He was transferred to Market Committee, Jagraon on 16.02.1994. Minimum pay-scale was afforded to him vide resolution No.3 passed by Market Committee, Jagraon w.e.f. 01.04.1995. He was transferred to Market Committee, Hathur qua vacant post of Chowkidar. Petitioner's services were regularized vide resolution No.3 dated 22.09.2008. He retired from service on 31.08.2011 on attaining the age of superannuation from Market Committee, Hathur. His case for grant of retiral benefits was recommended by the Market Committee, Hatur, Annexure P1. When no action was taken, legal notice dated 23.04.2012, Annexure P2 was served by the petitioner. Reply thereto was given by Market Committee, Hathur only, denying right of the petitioner to retiral benefits or pension. Reliance was placed on instructions dated 12.12.2006 issued by the Government to the effect that New Restructured Defined Contributory Pension Scheme has been made applicable to employees who have been appointed on or after 01.01.2004. Date of regular appointment of the petitioner is 22.09.2008. His service being two years, three months and ten days only, no pensionary benefits can be released to him.

CWP No.12328 of 2012 was preferred by the petitioner which was disposed of on 04.07.2012, Annexure P4 with a direction to respondent-Board to decide the legal notice issued by the petitioner. Pursuant to said direction, impugned order dated 06.02.2013, Annexure P5 was passed whereby reliance was placed on Government instructions dated 12.12.2006 to deny the petitioner's claim.

Learned counsel for the petitioner submits that it is a settled position of law that service rendered by an employee as a daily wager has to be counted for calculation of pensionary benefits once the service culminates into regularization of the employee. Reliance is placed on Division Bench judgments of this Court in **Harbans Lal v. State of Punjab and others,** ***2012 (3) SCT 362*** and **Ram Dia and others v. Uttar Haryana Bijli Vitran Nigam Ltd. and another,** ***2005(4) SCT 387***. It is submitted that petitioner has always represented to the respondents that necessary deductions be made qua his contribution from the benefits to be released to him. However, his claim has been wrongly denied.

Learned counsel for respondents however, defends the action of the respondents while arguing that as per Punjab Government instructions dated 12.12.2006 New Restructured Defined Contributory Pension Scheme for the new entrants of the Punjab Government was introduced. Employees appointed to the posts of categories (1) to (5) mentioned under the Civil Services Rules, on or after 01.01.2004 shall be governed by the said scheme. The new scheme would work on defined contribution basis. Services of the petitioner being regularized vide resolution dated 22.09.2008, he is not entitled for pension, pensionary benefits and GPF. Furthermore, petitioner was not working on *adhoc* or work-charged basis prior to his regularization but on daily wages, thus no benefit of such service can be afforded to him.

Having heard learned counsel for the parties, it is apparent that the stand taken by the respondents is not justified. It has been held by a Division Bench of this Court in Harbans Lal's case (supra) that the entire daily wage service of the petitioner has to be counted as qualifying service for the purpose of pension. New Restructured Defined Contributory Pension Scheme has been introduced for the new entrants in the Punjab Govt. service w.e.f. 01.01.2004, thus, not applicable to the petitioner. It is the date of his initial induction in service i.e., 19.08.1991 which is to be taken into consideration. In view of the decision in Harbans Lal's case (supra), petitioner will be deemed to be in service prior to 01.01.2004. There is no averment on the part of the respondents that petitioner's service prior to regularization was not continuous or that it was not a whole time employment. In this situation, petitioner is indeed entitled for counting of his service on daily wages from 19.08.1991 till 22.09.2008 when his service was regularized by the respondents. If said service is taken into consideration, the petitioner admittedly fulfills the minimum qualifying service for pension as required under the Civil Services Rules.

In the facts and circumstances, this writ petition is allowed and order dated 06.02.2013, Annexure P5 passed by respondent No.1 – Punjab Mandi Board is set aside. Respondents are directed to count the entire service rendered by the petitioner from 19.08.1991 till 31.08.2011 i.e., the date of his superannuation, as qualifying service for grant of pensionary benefits.

Reliance by learned counsel for the petitioner on **Sher Singh v. State of Haryana and another**, ***2014(8) RCR(Civil) 450*** to claim interest on delayed payment is justified. Petitioner is held entitled to interest at the rate of 7% per annum from 05.10.2012 i.e., three months from the date of passing of order dated 04.07.2012, Annexure P4 in CWP No.12328 of 2012, directing the respondents to decide the legal notice served upon them by the petitioner till release.

Necessary calculations be effected and the amount due to the petitioner be released within a period of two months from the date of receipt of certified copy of this order.

(**LISA GILL**)
JUDGE

October 12 , 2015.
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