

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

**CWP No.6966 of 2013**

Date of Decision: 06.04.2015

Puran Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

**BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. K.L. Dhingra, Advocate  
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana  
for the respondent-State.

Mr. Raman B. Garg, Advocate  
for respondent No.2.

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**DAYA CHAUDHARY, J.**

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to grant benefit of past service to the petitioner w.e.f 12.04.1973 to 11.09.1978 towards qualifying service for pension and other retiral benefits. A further prayer has also been made for issuance of a direction that the gap period (interruption) of 79 days between relieving from Haryana Food and Supplies Department and joining in Haryana Urban Development Authority (here-in-after referred to as 'HUDA') be condoned in view of Rule 4.23 of Civil Services Rule (Volume-II) along with

all consequential benefits.

Petitioner was initially appointed as Sub-Inspector in Haryana Food and Supplies Department on *ad hoc* basis and he continued to work there till his services were retrenched i.e on 11.09.1978. He remained in that department for a period of five years and five months. As per decision of the State Government, all retrenched employees were ordered to be absorbed in various departments. Petitioner was also absorbed as a Clerk in the Department of HUDA. There was a break of 79 days after the date of retrenchment and appointment as Clerk in HUDA, which was not due to fault of the petitioner. The pay of the petitioner, which was drawn by him in Haryana Food and Supplies Department, was protected in the subsequent department i.e HUDA. Petitioner got retired from service on attaining the age of superannuation i.e on 28.02.2006. While preparing the pension papers of the petitioner, his total service came out to be 27 years and 8 months but while granting him pension and other retiral benefits, his service from 30.11.1978 to 28.02.2006 was taken into consideration as qualifying service and his previous service under State Government from 12.04.1973 to 11.09.1978 was not taken into consideration as qualifying service for pension and other retiral benefits but it was counted for granting the benefit of pay by protecting his pay of previous service. Petitioner submitted various representations to grant benefit of previous service as qualifying service for pension and other retiral benefits but no action was taken thereupon. The petitioner had issued a legal notice through his counsel on 10.10.2007 but still, no action was taken, hence, the petitioner filed the present petition praying for the same benefits, as has been granted to one Dev Dutt, who was also appointed in the department of HUDA along with him.

Learned counsel for the petitioner submits that the case of the

present petitioner is squarely covered by the judgment of Hon'ble the Apex Court in case ***State of Orissa and another vs Mamata Mohanty*** passed in ***Civil Appeal No.1272 of 2011***, decided on **09.02.2011**.

Learned counsel for the petitioner also submits that as per directions issued in ***CWP No.20912 of 2008*** filed by said Dev Dutt, decided on 05.09.2011 who was also appointed in HUDA along with other retrenched employees, benefits have been granted to him. The case of the present petitioner is squarely covered by decision in cases ***Vijay Laxmi vs State of Punjab 1994(2) RSJ 502*** and ***State of Haryana and another vs Deepak Sood and others*** passed in ***Civil Appeal No.4448 of 2008***, decided on **15.07.2008** as appeal filed by the State was dismissed and judgment of this Court, whereby, the claim of the petitioner was allowed, was upheld.

Learned counsel for respondent No.2 submits that the petitioner has not challenged the order of rejection dated 27.11.2006 when the same was conveyed to him vide endorsement No.11118 dated 07.12.2006. The petition is also liable to be dismissed on the ground of delay and laches as the petitioner retired from service on 28.02.2006 and the present petition has been filed on 02.04.2013 for counting of past service from 12.04.1973 to 11.09.1978. Learned counsel also submits that the pay of the petitioner was protected but there was a gap of 79 days in joining the other department. He further submits that the case of the present petitioner cannot be considered in view of the case of ***Vijay Laxmi (supra)***. There is no provision under the Rule that the past service is to be counted for pensionary benefits.

Heard the arguments of learned counsel for the parties and have also perused the file.

Undisputedly, the petitioner was initially appointed as Sub

Inspector in Haryana Food and Supplies Department and thereafter, his services were retrenched along with other employees on 11.09.1978. As per policy of the State Government, the petitioner was absorbed as Clerk in the Department of HUDA. It is also not disputed that pay of all retrenched employees were protected by counting their past service. The only objection, which has been raised, is that there was a gap of 79 days in joining the subsequent department, which was not due to fault of the petitioner.

Rule 4.23 of the C.S.R. Vol. II as applicable to Haryana State employees is followed by HUDA as well. As per aforesaid provision, in case, the interruption is caused by reasons beyond the control of concerned Government employees and the service proceedings, it should not be less than five years duration. It is also mentioned that in case, there are two or more interruptions in the total service period, pensionary benefits shall be lost, if the interruptions are not condoned. It is also mentioned that interruptions should not be of more than one year's duration. In cases, where there are two or more interruptions, the total period of all interruptions to be condoned should not exceed one year.

In case of the petitioner, there is a gap of 79 days and nothing has been brought on record to show that the delay of 79 days was due to fault of the petitioner. It is also not disputed by learned counsel for respondent No.2 that one Dev Dutt, who was also appointed in HUDA along with the present petitioner filed a Civil Writ Petition No.20912 of 2008 and that petition was allowed. The relevant portion of the order passed in case of Dev Dutt, is reproduced as under :-

“ ....In view of the above, the present petition is allowed and the order dated 08.09.2008 (Annexure P-9) passed by respondent No.1 is set aside. It has been brought to the notice of this Court

that the petitioner has since died and he is survived by his wife-Kaushalya, three daughters and one son. Accordingly, the respondents are directed to grant the benefit of past service rendered by husband of the petitioner in the Food and Supplies Department from 13.04.1973 to 11.09.1978 towards qualifying service in accordance with law.”

In **Vijay Laxmi's** case (supra), the benefit of past service was protected. It was held that once the past service has been considered for the purpose of pay and as such, there is no justification for denying the same benefit towards pension etc.

Similarly, in the judgment of Division Bench of this Court in **Mani Ram vs State of Haryana 1995(3) SCT 49**, it has been held that once the continuity of service has been considered towards pay, the same cannot be denied for retiral benefits.

In view of the facts as well as law position as discussed above, the present petition is allowed and the respondents are directed to grant consequential benefits to the petitioner after counting his previous service in Haryana Food and Supplies Department.

06.04.2015  
**gurpreet**

(DAYA CHAUDHARY)  
JUDGE