IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 626 of 2015 (O&M)
Date of decision: 17.03.2015

Zile Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sandeep Singal, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

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Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks directions to the respondents to count the past service of the petitioner from 27.03.1996 to 24.05.2013 towards qualifying service for pension and other retiral benefits and to release the arrears thereof along with interest @ 18% per annum.

It is contended that the petitioner was appointed as part time sweeper on daily wage basis on 27.03.1996 and he worked continuously till 25.03.2000. The services of the petitioner were temporarily dispensed with on 26.03.2000. The learned counsel refers to Annexure P-1 and states that even, thereafter, the petitioner worked without any break on the same post with respondent No.4. On the basis of Govt. Policy, the services of the petitioner were regularized against the regular post of sweeper, vide office order dated 24.05.2013 (Annexure P-2). The petitioner retired on 31.05.2014, however, the service benefits have not been released to him.

On the other hand, the learned State counsel submits that the services of the petitioner were regularized on 24.05.2013 and he remained on regular post for 01 years and 07 days, therefore, he does not fulfill the condition and guidelines to get the retiral benefits as per Pension Rules.

In **<u>Kesar Chand</u>** Vs. **<u>State of Punjab and others</u>**, *AIR 1988, P &H, 265*, it has been held as under:-

> *"19. In the light of the above, let us examine the validity of rule 3.17(ii) of the Punjab Civil Services Rules, Vol. II. This rule says that the period of service in a work-charged establishment shall not be taken into account in calculating the qualifying service. After the services of a work-charged employee have been regularised he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1, 1972, between the workmen and the Chief Engineer, P.W.D. (B. & R), Establishment Branch, Punjab, Patiala, which was published in the Government Gazette dated July 14, 1972. Even otherwise. The matter was settled by the Punjab Government Memo No. 14095-BRI (3)-72/5383 dated 6th February, 1973(Annexure P7) where it*

> *was stated that all those work charged employees who had put in ten years of service or more as on 15th August, 1972, their services would be deemed to have been regularised. Once the services of a work-charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation equality. Even the temporary or officiating service under the State Government has. to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who eligible for pension and those who started work-charged employees and their services regularised subsequently, and the others is based on any intelligible criteria and, before, is not sustainable at law. After the services of a work-charged employee have n regularised, he is a public servant like other servant. To deprive him of the pension is not only unjust and inequitable is hit by the vice of arbitrariness, and for case reasons the provisions of sub-rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."*

Keeping in view the above, the instant petition is allowed in terms of Kesar Chand's case (supra). The respondents are directed to consider the case of the petitioner in terms of Kesar Chand's case (supra) and release the pensionary benefits to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

Disposed of.

17.03.2015 **(JITENDRA CHAUHAN)**

sumit.k **JUDGE**