

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

**Regular Second Appeal No.837 of 2015 (O&M)
Date of decision:12.03.2015**

Punjab State and others

.....Appellants

Versus

Karnail Singh

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vaibhav Sharma, DAG, Punjab,
for the appellants.

Ritu Bahri, J.

State of Punjab-defendant has come up in regular second appeal against the judgment of reversal dated 21.10.2014 passed by the Additional District Judge (Adhoc), Fast Track Court, Amritsar, whereby appeal filed by the plaintiff-respondent against the judgment and decree dated 30.10.2012 passed by the Civil Judge (JD), Amritsar, has been accepted and his suit for declaration has been decreed to the effect that he was entitled to the counting of his service rendered by him as work charge employee w.e.f. 01.12.1968 except interruption in service w.e.f. 04.09.1980 to 31.12.1982 as qualifying service towards pensionary benefits.

Karnail Singh-plaintiff was had joined the service as work charge employee on 01.12.1968. He served continuously, except interruption w.e.f. 04.09.1980 to 31.12.1982. On 01.01.1983, he was taken back in service as regular employee. Thereafter, he retired from service on 30.04.2009. Grievance of the plaintiff-respondent was that his previous service rendered w.e.f. 01.12.1968 to 31.12.1982 (excluding the interruption period) had not

Upon notice, the defendants-appellants filed written statement and controverted the allegations levelled by the plaintiff.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to declaration as prayed for?
OPP
2. Whether the suit is bad for non joinder of necessary parties?
OPD
3. Whether the plaintiff has not come to the court with clean hands? OPD
4. Whether the plaintiff is estopped from filing suit due to his own act and conduct? OPD
5. Whether the present suit is not legally maintainable? OPD
6. Whether the suit is time barred? OPD
7. Whether the plaintiff has no locus standi to file the present suit?
OPD
8. Relief.

The trial Court, after going through the evidence led by the parties, dismissed the suit vide judgment and decree dated 30.10.2012.

However, on appeal, the lower appellate Court, while referring to the judgment passed by this Court in **Kesar Chand Vs. State of Punjab**, 1988 (5) SLR 27, held that once the services of work charge employees are regularised they became public servants and the period spent as work charged employees was to be counted towards qualifying service for awarding pension and gratuity. There is no logic to deprive the work charge employees from the pensionary benefits as are available to the public

servants under Rule 3.17. Ultimately, the appeal filed by the plaintiff-respondent was accepted and the judgment of the trial Court was set aside. A direction was given to count the service rendered by the plaintiff-respondent as work charge employee w.e.f. 01.12.1968, except interruption in service w.e.f. 04.09.1980 to 31.12.1982, as qualifying service towards pensionary benefit along with interest at the rate of 10%. Hence, this appeal.

A Co-ordinate Bench of this Court in **Shanno Devi Vs. State of Haryana and others**, CWP No. 15081 of 2011 (decided on 11.04.2013, had allowed the petition of an employee, who was appointed on adhoc basis, by giving directions to the State of Haryana to count the period of adhoc service towards qualifying service for pension and gratuity. Reference was made to a Division Bench judgment of this Court in **Kesho Ram Vs. State of Haryana and others**, 2006 (6) SLR 334, wherein it was held as under:-

“.....The matter is no longer res-integra as unamended Rule 3.17 which confined the qualifying service only to the period of regular service was struck down by a Full Bench of this Court in the case of Kesar Chand V. State of Punjab 1988 (3) PLR 223. Rule 3.17 (ii) as applicable in the State of Punjab had specifically provided that the period of service in work charge establishment was not to be taken into account for determining qualifying service of an employee. The afore-mentioned rule was declared as ultra vires of Article 14 of the Constitution. The view of the Full Bench is discernible from para 19 of the judgment which reads as under:

“.....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 of 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 are eligible for pension and those who started as work charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work charged employee have been regularized, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these 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.”

We further find that the afore-mentioned view taken by the Full Bench has been followed by a Division Bench of this Court in the case of Mangat Ram v. Haryana Vidyut Prasaran Nigam Ltd. and others, 2005 (5) SLR 793 wherein again it has been held that the services rendered by a daily wager followed by regularization of his service deserved to be considered as qualifying service for the purpose of pension and other retiral benefits. The view taken by this Court has led to addition of Rule 3.17 (a) of the Punjab Civil Service Rules, Volume II (as applicable to Haryana) which provides that all service interrupted or continuous followed by confirmation shall be treated as qualifying service and the period of break are to be omitted while working out the aggregate service. Accordingly we are of the considered view that this petition deserves to be allowed.”

In view of the aforesaid judgment(s), this Court is of the view that the lower appellate Court has rightly held the plaintiff-respondent entitled for counting his service rendered by him as work charge employee w.e.f. 01.12.1968 except interruption in service w.e.f. 04.09.1980 to 31.12.1982 as qualifying service towards pensionary benefits. No illegality, much less perversity has been found in the impugned judgment, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

12.03.2015

ajp

(RITU BAHRI)
JUDGE