

The petitioner joined the Punjab State Electricity Board (now re-designated as Punjab State Power Corporation Limited) at Rihana Jattan Sub Division on daily wage basis on 1.1.1987. He was appointed as work charge T-Mate with effect from 16.5.1989. The services of the petitioner were terminated by the Additional Superintending Engineer (Distribution), Sub Urban Division, Hoshiarpur, vide order dated 18.11.2002, on the ground that the petitioner did not complete 500 days of service on daily wage basis before he being appointed on work charge basis and had worked only for 233 days in the year 1987 as daily wager. The petitioner thereafter raised industrial dispute under Section 10 of the Industrial Disputes Act, 1947, which was referred to the Industrial Disputes Tribunal-cum-Labour Court, Jalandhar, (in short 'the Tribunal') for adjudication by the Government. The Tribunal, vide award dated 26.11.2008 (Annexure-P-1), held that the termination order is not sustainable in the eyes of law and gave

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the following directions :-

“10. As a result of the above discussion the respondent is directed to offer the workman his job as per daily wager subject to availability of work, on which he was working prior to his appointment as work charge. However, it may clear that respondent management shall be within its right to deny to the workman, under the Rules, the benefit of bogus working day, which was extended to him, while offering the post of work charge. The workman shall also not be entitled to back wages because the posting which he got on the basis of bogus working days could not be given to him. The workman shall report for duty within one month after the publication of the award. Issues No. 1 and 2 are accordingly decided.”

Consequent thereto, the petitioner was reinstated in service as a daily wager with effect from 22.1.2009. He ultimately retired from the job on 8.12.2014 on attaining the age of superannuation. During his service, the petitioner had filed CWP No. 23676 of 2014, seeking the writ of mandamus for directing the respondents to consider his earlier service and directing the respondents to complete the old service book of the petitioner, which was available with them with consequential service benefit of re-fixation of pay, promotion, increments etc. The said writ petition was disposed of by this Court, vide order dated 19.11.2014 (Annexure-P-9), by directing the respondents to consider and decide the claim of the petitioner, as contained in legal notice (Annexure-P-8), by passing a speaking order. Thereafter, the respondents passed the order dated 12.2.2015 (Annexure-P-11), denying the claim of the petitioner on the ground that he was re-appointed as daily wager on 22.1.2009 as fresh appointee and his previous service cannot be counted. The petitioner thereafter served a legal notice dated 2.3.2015 (Annexure-P-12) upon the respondents, on which, the same order dated

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7.4.2015 (Annexure-P-13) has been passed. Now, the petitioner by way of present writ petition seeks quashing of the order dated 12.2.2015 (Annexure-P-11) and reply dated 7.4.2015 (Annexure-P-13) and seeks mandamus for directing the respondents to count his past service from 1.1.1987 till his termination on 18.11.2002 for the purpose of service benefits and re-fix the pay with effect from 22.1.2009 after counting the past service and accordingly pay arrears of salary and other retiral benefits with interest.

In the reply, the respondents have not denied the factual position. It was stated in the reply that the services of the petitioner were terminated on 18.11.2002 on the ground that at the time of appointment of the petitioner on work charge basis as work charge T-Mate on 18.5.1989, he was not having 500 working days to his credit. The fresh appointment of the petitioner on 22.1.2009 on daily wage basis on account of the award of the Tribunal was not denied. It was admitted that the petitioner was appointed on 24.5.2011 on work charge basis after counting his service rendered by him on work charge basis i.e. after fresh appointment on 22.1.2009. It was stated that the service of 20 years rendered from 1.1.1987 cannot be said to be valid service as per the award of the Tribunal dated 26.11.2008 and the period during which the petitioner remained in service from 18.11.2002 to 22.1.2009 also cannot be counted as continuous service.

I have heard the learned counsels for the parties and have also carefully gone through the file.

The factual position is not disputed. The petitioner was initially appointed on daily wage basis with effect from 1.1.1987. He was

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later on appointed on work charge T-Mate on 18.5.1989. However, it was later on found that he had claimed 267 bogus working days and, therefore, he was not eligible to be appointed on work charge basis. Therefore, his service were terminated on 18.11.2002. In an award, passed by the Tribunal on 26.11.2008, the said order of termination was held to be not justified. Accordingly, the petitioner was ordered to be appointed as daily wager, subject to availability of work. Since the work was available, the petitioner was appointed on daily wage basis with effect from 22.1.2009 and he was later on appointed on work charge basis with effect from 13.6.2011 and he retired from service as such on 8.12.2014 on attaining the age of superannuation.

Now, the question is as to whether the period from 1.1.1987 till termination on 18.11.2002 is to be counted for the purpose of grant of fixation of pay and the pensionary benefits ?

Secondly, the question would arise as to whether the period from the date of termination i.e. 18.11.2002 till reinstatement in service on 22.1.2009 is to be treated as continuous service and is to be computed for the purpose of grant of service and other benefits ?

After considering the award of the Tribunal, I am of the view that the order passed by the punishing authority was found to be not sustainable in the eyes of law and it was held to be not justified, though in many words, it was not stated that the said order is set aside. The overall reading of the award of the Tribunal shows that the order of termination was set aside. The effect of the setting aside of the termination order is that the entire effect of the termination will go. Since the petitioner continuously worked first on daily wage basis from 1.1.1987, thereafter worked from

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16.5.1989 to 18.11.2002 on work charge basis and then worked from 13.6.2011 till his retirement i.e. 8.12.2014 on work charge basis, therefore, for all intents and purposes, he having served regularly, is deemed to be a regular employee. That would mean that the petitioner is deemed to be in continuous service from 1.1.1987 till his reinstatement in service on 22.1.2009 and the said period is to be treated as qualifying period for the purpose of computing the pension. The pay of the petitioner is also to be accordingly re-fixed with effect from 22.1.2009. However, the arrears from 18.11.2002 to 22.1.2009 are not to be paid to the petitioner as the back wages were declined by the Tribunal. In view of the award of the Tribunal, the result would be that after counting the said past service before 22.1.2009, the petitioner will be entitled to arrears of retiral benefits, admissible to him under the rules. In terms of the award of the Tribunal, the period of 267 bogus workings days is to be excluded, during which these were claimed, while computing the qualifying period. Since there was a bonafide dispute between the parties, therefore, the interest on the arrears is declined.

The present writ petition is partly allowed.

(KULDIP SINGH)
JUDGE

5.10.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No