

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

CWP No.16348 of 2013 (O&M)

Date of Decision: 21.1.2016

Sital Kumar

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. V.K. Shukla, Advocate
for the petitioner

Mr. Nikhil K. Chopra, DAG, Punjab

Mr. Rajnish K. Jindal, Advocate
for respondents no.2 and 3

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

What the petitioner waived off in a compromise entered with the opposite party during the proceeding in execution of the decree in his favour, was interest on the arrears of pay between 1.1.1986 to 26.7.1992. He also gave up his right to promotion and other benefits since 1992 which were based on government instructions. However, he did not give up his right to pension by clubbing the period of *ad hoc* service from 7.4.1983 to 26.7.1992 with regular service rendered thereafter in the department. It was on the statement made by the petitioner that the execution proceedings were closed to the satisfaction of the parties. The contention raised by the respondent-Nagar Panchayat that right to pension for the period prior to 1992 had been surrendered, is not a correct view on facts when the statement of the petitioner was recorded before the execution court of the Civil Judge

(Jr.Divn.), Nakodar on 16.3.2009 when the statement is read in the original

Punjabi from the court file. The right to pension is not based on executive instructions issued under Article 162 of the Constitution. As far as the period of ad hoc service is concerned, it would have to be clubbed with regular service qualifying for pension and related dues in view of the decision of the Full Bench of this Court in **Kesar Chand vs. State of Punjab and others**, AIR 1988 PH 265 as noticed and re-affirmed by the Supreme Court in **Dakshin Haryana Bijli Vitran Nigam and others vs. Bachan Singh**, AIR 2009 SC 2745; (2009) 14 SCC 793. What the petitioner waived off in the compromise has not been sought to be re-opened in this petition.

Consequently, this petition is allowed. The impugned order is quashed. The period of ad hoc service is directed to be clubbed with regular service and the pension be accordingly re-determined by counting the entire period of service as qualifying for pension and pensionary benefits. The last pay drawn be revised and the arrears of pension and pensionary benefits be calculated in terms of this judgment and the monetary benefits be handed over to the petitioner within two months from the date of receipt of a certified copy of this order.

21.1.2016
MFK

(RAJIV NARAIN RAINA)
JUDGE