IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21520 of 2015 (O & M)
Date of decision: 08.04.2016

Surinder Pal ....Petitioner(s)

Versus

State of Punjab and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. K.L. Arora, Advocate,
for the petitioner.

Mr. Avinit Awasthi, AAG, Punjab,
for the applicant-respondents.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 4363 of 2016

Application for placing on record reply by way of counter affidavit on behalf of respondents no. 1 to 3 is allowed, subject to all just exceptions.

The same is taken on record.

CWP No. 21520 of 2015

The petitioner seeks the release of pension and other pensionary benefits with interest @ 18% per annum. It is prayed that the work charge/daily wage service be counted towards regular service for the purpose of qualifying service. The claim is based upon the judgment of the Division Bench in ***CWP No. 18841 of 2007, Sadhu Singh and others vs. State of Punjab and others*** decided on 25.07.2008 (Annexure P-6).

It is the case of the petitioner that he joined on muster roll on 07.07.1987 and was regularized on 17.03.2004 and thereafter retired on

31.08.2012 as a Beldar. It is the specific case of the petitioner and specific averments have been made in para no. 9 (III) of the writ petition that one Amar Chand was also Class IV employee and petitioner no. 3 in the case of *Sadhu Singh's case* (supra) and was of the same division where the petitioner was working and had joined only on 01.05.1988. He was regularized on 29.01.2004 and has been granted the benefits vide the above said judgment and, therefore, the petitioner was also similarly situated. The relevant part of the order reads thus:-

> *"11. In view of the above, writ petition succeeds and the respondents are directed to count the work charged/daily wage service rendered by the petitioners as qualifying service as per Rule 3.17-A of the Rules. The needful shall be done within a period of one month from the date of receipt of certified copy of this order. The petitioners shall also be entitled to interest @ 12% per annum from the date the amount is payable to the date of its actual payment. The action of the respondents is patently against Rule 3.17-A of the Rules. Therefore, the petitioners are held entitled to their costs, which is determined at Rs. 2,500/- per petitioner. The amount of costs shall be sent to the petitioners by cheque alongwith other retiral benefits.*
>
> *Before parting we deem it just and appropriate direct the State of Punjab through the Chief Secretary to take steps that the cases of this nature do not travel to the Court and the rules are complied with. It may be necessary for the State to impart some training to all those officers who deal with such like cases so as to familiarize them with the rules as laid down in the Civil Services Rules. Let appropriate steps be taken in that regard."*

In the reply filed, the defence taken is that the petitioner was regularized after 01.01.2004 and, therefore, his case would be covered under the new restructured defined contributory pension scheme. It has been averred that it is the administrative function of the Finance Department to lay any benefit or not to its employees in view of the financial burden on the State and accordingly, the petitioner is not entitled for the said benefit. However, specific pleadings regarding para no. 9 (III) have not been denied and rather para no. 9 has been admitted being a matter of record.

Counsel for the petitioner has further pointed out that the Division Bench of this Court in *Sadhu Singh's case (supra)* was followed in CWP No. 1933 of 2009, Karnail Singh vs. State of Punjab decided on 06.04.2010 (Annexure P-8) by noticing that the SLP (Civil Appeal No. 5542 of 2009) in the case of *Sadhu Singh (supra)* was dismissed by the Supreme Court on 22.04.2009.

In spite of that, the State of Punjab proceeded to file SLP, State of Punjab and others vs. Karnail Singh which was dismissed on 26.11.2010 (Annexure P-8/1) and directions were issued to the State of Punjab to file affidavit giving the details of such cases whereby, the Government was forcing the employees to litigate. This Court was also directed to sent the list of cases pending regarding the non-payment of retiral dues. It was also noticed that frivolous litigation was being indulged to by the State of Punjab against low paid employes. The relevant observations read thus:-

> *"Delay condoned.*
>
> *The Government of Punjab is known for indulging in frivolous litigation involving low paid employees. This Special Leave Petition is one such piece of litigation in which legality of the order passed*

by the learned Single Judge of the Punjab and Haryana High Court directing payment of pension to the respondent has been challenged.

We have heard Shri Rakesh Khanna, learned Additional Advocate General, Punjab and perused the record. The impugned order is founded on an earlier judgment of the Division Bench of the same Court in Civil Writ Petition No.18814 of 2007, Sadhu Singh and others, vs. State of Punjab and others, decided on 25.07.2008. SLP (C) No. 10456 of 2009 filed by the petitioners against the order of the High Court in Sadhu Singh's case was dismissed. Therefore, we do no find any valid ground much less justification to interfere with the impugned order.

The Special Leave Petition is accordingly dismissed."

Thereafter, on 31.08.2010, the Division Bench in ***Harbans Lal vs. State of Punjab and others, 2012 (3) SCT 362*** has also held to the same effect. The relevant portion reads thus:-

"From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 1.1.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the

> *GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 1.1.2004.*
>
> *In view of the above, the writ petition is allowed. Accordingly respondents are directed to treat the whole period of work charge service as qualified service for pension because accordingly to clarification issued on 30.5.2008 (Annexure P-3), the new defined Contributory Pension Scheme would be applicable to all those employees who have been working prior to 1.1.2004 but have been regularized thereafter. Let his pension and arrears be calculated and paid to him expeditiously, preferably within a period of three months from the date of receipt of copy of this order.*
>
> *No order as to costs."*

A Division Bench of this Court in ***Satbir Singh vs. State of Haryana, 2002 (2) SCT 354*** has also held that the State should give benefit where the issue has been decided in principle and not force the employees to come to this Court for the same relief.

Accordingly, the writ petition is allowed in the same terms as in *Sadhu Ram's case (supra)*. The respondents shall pay the petitioner his entitlement within a period of two months. In this case, the counter affidavit, which has been filed, would go on to show that instead of gracefully accepting the settled principle which has been laid by the Division Benches, the State has taken an obdurate stand to defend its indefensible position. In such circumstances, costs of ₹20,000/- is also imposed upon the State to be paid to the petitioner. It will be open to the State to recover the said costs from the official, who filed the written statement in spite of the settled position.

08.04.2016 (G.S. SANDHAWALIA)
shivani JUDGE