

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

CWP No. 26505 of 2014

Date of decision : 15.01.2016

Shamsher Singh

...Petitioner

versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Deepak Sonak, Advocate
for the petitioner.

Mr. Parvinder Singh Chauhan, Addl.A.G. Haryana

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

RITU BAHRI , J.

Petitioner has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus for issuance of direction to respondents for counting his daily wage service for grant of family pension.

Petitioner was appointed to the post of Mali cum Chowkidar in the respondent-department on daily wages basis w.e.f 01.10.1994.

Thereafter the Haryana Government framed a policy dated 01.10.2003

whereby all daily wagers who have completed three years of service on 30.09.2003 were held entitled for regularization (P-3). The case of the petitioner was thus considered for regularization for service and vide office order dated 27.05.2004 (P-2), the services of the petitioner were regularized to the post of Mali-cum-Chowkidar. As per Rule 6.16(1) of the Punjab Civil Service Rules, the minimum qualifying period of service for grant of pension is 10 years. Thus, the petitioner who is retired on attaining the age of superannuation on 31.05.2013 is fully entitled for grant of pension after counting his daily wage service, as the petitioner has worked with the department for 19 years and 5 months i.e w.e.f 01.10.1994 to 31.05.2013. But the respondent-department is not granting pension to the petitioner, despite the fact that the petitioner has served a legal notice dated 14.08.2014 to the respondent-department.

On notice, a written statement has been filed on behalf of respondent Nos. 1 to 3 taking a stand that since the petitioner's services were regularized w.e.f 01.10.2003, vide order dated 27.05.2004 in terms of policy of 2003, he is not entitled for grant of pension. Prior to his regularization, he was working as daily wager/casual labour for a period of 10 years and paid from annual maintenance schemes which were sanctioned on year basis.

Learned counsel for the petitioner submits that his case is squarely covered by judgment of full bench of this Court in a case of **Kesar Chand v. State of Punjab AIR 1998 (Punjab) 265** and a judgment passed by Division Bench of this Court in a case of **Ram Dia and others v. UHBVN Ltd 2005(4) SCT 387** wherein it has been held that the daily wage and work charge service period prior to regularization is liable to be counted for the purpose of gratuity and pension.

Learned counsel for the respondent has not been able to cite any judgment contrary to the above mentioned judgments.

The case of the petitioner is also covered by Rule 3.17, 3.17A (f) (i) and 4.23 of Punjab Civil Services Rules, Vol II which has been considered by this Court in **Ram Dia's case (supra)** whereby in para 6 and 7 of the judgment, it has been observed as under:-

6. In Kesar Chand's case (supra), the Full Bench while dealing with a similar controversy held 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 service regularised subsequently, and the other is not based on any

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intelligible criteria and, therefore, is not sustainable at law. After the services of a work-charged employee have been regularised, 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."

It would also be relevant here to refer to Rule 3.17A and 4.23 of the Punjab Civil Services Rules, Volume (2), which read as under :-

"3.17(A)

(1) Subject to the provisions of Rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service :-

(i) Service rendered in work-charged establishment.

(ii) Service paid from contingencies :

Provided that after 1st January, 1973 half of the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions :-

(a) Service paid from contingencies should have been in a job involving wholetime employment (and not part-time or for a portion of the day).

(b) Service paid from contingencies should have been in a type of work or job for which regular post could have been sanctioned e.g. Malis, chowkidars, khalasis etc.

(c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishment.

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

(iii) Casual or daily rated service.

(iv) Suspension adjudged as a specific penalty.

3.17A(2) An interruption in the service of a Government employee caused by willful absence from duty or unauthorized absence without leave, shall entail forfeiture of the past service.

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4.23 In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered under the State Government shall be treated as automatically condoned, and the pre-interruption service shall be treated as qualifying service for pension purposes, except where the interruption has been caused by resignation, dismissal or removal from service or due to participation in a strike, but the period of interruption itself shall under no circumstances be reckoned as qualifying service for pension purposes."

The aforesaid view was further reiterated by this Court in the cases of **Hazura Singh and Nasib Singh (supra)**. In **Joginder Singh's case (supra)**, it has been held as

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under :-

"I am, therefore, of the opinion that the words "half the period of service of such persons paid from contingency" occurring in sub-clause (i) of Clause (f) of Rule 3.17A are bad in law and are, accordingly, struck down."

A conjoint reading of the rules, quoted above and the observations of this court would reveal that it is by now well established that period of service rendered on daily-wage/work-charge prior to regularisation of service is liable to be counted for the purpose of gratuity and pension.

7. In view of the above, we are of the view that service rendered by the petitioners on daily-wage/work-charge basis should be counted as qualifying service for pensionary and other terminal benefits. The petitioners were working as a whole-time employee and were paid wages on monthly basis. Therefore, the period of service rendered by them on daily-wage/work-charge basis has to be reckoned while computing their pensionary and other terminal benefits.

Applying the ratio of the above said judgment, the present writ petition is allowed and a direction is issued to the respondents to count the daily wage service of the petitioner w.e.f 01.10.1994 to 31.05.2013 i.e 19 years and 05 months for grant of family pension and pass appropriate orders within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

15.01.2016

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