

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

**CWP-418-2014 (O&M)
Date of decision: -9.12.2016**

Piara Singh through LRs

.....Petitioner(s).

Versus

State of Punjab and others

.....Respondent(s).

CORAM: - HON'BLE MR. JUSTICE KULDIP SINGH.

Present: - Mr. R.K. Arora, Advocate for petitioner(s).

Mr. Avinit Awasthi, AAG, Punjab.

Mr. Paramjit Batta, Advocate for respondent No. 2 to 4.

None for respondent No. 5.

Mr. Ajay Singla, Advocate for respondent No. 6.

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Kuldip Singh, J. (Oral)

Petitioner worked as a work charge Chowkidar from 1.4.1986 in Punjab Mandi Board and retired on 30.6.2008. After his retirement, the department had deposited the share of employer's contribution amounting to Rs. 1,34,665/- till the date of retirement with the EPF Department and the petitioner has been getting pension of ₹ 1286/- per month in terms of Employees Provident Fund Pension Scheme 1995 (for short 'the Scheme'). The petitioner approached this Court by way of CWP-7530 of 2011 in which he prayed that his entire work charge service should be regularized. The said writ was disposed of by this Court on 29.4.2011, whereby respondent-Department was directed to consider the claim and pass the order. The Department, accordingly, considered the case of the petitioner and vide circular dated 5.4.2013 (Annexure P-9) regularized the services of

the petitioners w.e.f. 5.4.1999 till the date of retirement i.e. 30.6.2008. Now the petitioner in the present petition claims that his work charge service from 1.4.1986 to 4.4.1999 should be computed as a qualifying service for grant of pension.

Respondent-Department has taken the stand that they have deposited the employer share of contribution as stated above and that petitioner is getting pension in terms of the Scheme @ ₹ 1286/- per month. He cannot get two pensions after regularization in terms of the order dated 27.7.2011 (Annexure P-4). It is stated that the correct order has been passed and petitioner is not entitled to computation of his work charge service as qualifying period for the purpose of pension.

I have heard learned counsel for parties at length.

There is no dispute that w.e.f. 5.4.1999, service of the petitioner has been regularized. There is also no dispute that the petitioner was working as work charge Chowkidar since 1.4.1986 as the said fact has not been specifically denied in the written statement on behalf of respondents No. 2 to 4. Now the question arises for consideration before this court is as to whether the work charge service of the petitioner from 1.4.1986 for regularization of the petitioner from 4.4.1999 is to be computed for the purpose of grant of pensionary benefits? I find reply is affirmative. This Court has repeatedly held that when the work charge service is followed by regularization of service, the same shall be computed for the purpose of grant of pension. The regularization of service of the petitioner from the

particular date is one thing and computing the work charge service period as a qualifying service for the purpose of pension is another thing. As such the present petition is allowed, respondents are ordered to compute the services of petitioner from 1.4.1986 till his regularization on 5.4.1999 as a qualifying service for the purpose of pension and grant the pension accordingly.

Under the circumstances, petition is allowed. Petitioner is directed to refund the amount of pension already received by him along with interest as per the Government instructions. He is also directed to refund the gratuity. Since, the petitioner has died and his widow is unable to refund the amount, therefore, it is directed that respondents No. 2 to 4 while paying the arrears of pension and gratuity, shall deduct the amount of pension already received by the petitioner along with interest and the gratuity already paid to the petitioner and thereafter out of deducted amount, they shall pay the amount of pension along with interest to the EPF Authorities and retain the gratuity with them at the time of releasing the pension and the gratuity after computing his work charge service from 1.4.1986. The arrears shall also carry interest as per Government instructions w.e.f. the date of filing of the present petition i.e. 13.1.2014. Since, it comes out that petitioner has died on 14.5.2014 during the pendency of the present petition, respondents shall also consider and release the family pension to his widow according to law from the said date.

Respondent No. 2 to 4 are directed to pay the arrears within three months from the date of receipt of the certified copy of the judgment.

In the meantime, pension being paid by the EPF Authorities to the petitioner shall be stopped.

Allowed in the above terms.

9.12.2016
preeti

(KULDIP SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>