

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

CWP No. 5289 of 2013

Date of decision : 31.03.2016

Shashi Bala

...Petitioner

versus

CCS, HAU, Hissar and anr.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vivek Khatri, Advocate
for the petitioner.

Mr. Aman Pal, Advocate
for the respondents.

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 release all the service benefits of deceased Hem Raj to the petitioner by taking into consideration the benefit given to him by the Labour court as well as by this court with regard to continuity of service from 1986 to 2009 as well as all other consequential benefits.

The brother of the petitioner i.e Hem Raj was appointed as

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integrity of this document

Messenger in the office of respondent No. 2 on 07.01.1986 but on 02.04.1988 respondent No. 2 did not allow the petitioner to join on duty. Subsequently, the brother of the petitioner raised a dispute and the matter was referred to the Industrial Tribunal cum Labour Court, Hisar, who answered the reference in favour of the petitioner, vide award dated 03.03.1992 and direction was given to the respondents to reinstate the petitioner in service with continuity of service along with full back wages as well as other consequential benefits. Subsequently, the department filed C.W.P No. 5208 of 1992 against the award of the Labour Court, which was admitted and operation of impugned award was stayed. On 28.04.2011, the above writ petition came up for hearing and this Court dismissed the writ petition and upheld the order passed by the Labour Court (P-2). Thereafter, respondent No. 2 has issued a letter dated 24.06.2011 to Hem Raj to join the duty on same post in the office of respondent No. 2 and also by submitting that during the period he was out from service, has not been deployed in any department (P-3). In reply to the aforesaid letter, the petitioner stated that her brother Hem Raj expired on 18.05.2009 and she is the only legal heir left by the deceased as he was unmarried. Further father and mother of the petitioner has also been expired before the death of Hem Raj. Thus, the petitioner requested to release all the service

benefits of deceased Hem Raj to her (P-4). Copy of death certificate is Annexure P-5. Thereafter, respondent No. 2 issued a letter to the petitioner dated 05.08.2011 to bring a certificate from a Court or any competent authority of having being the only legal heir of Hem Raj (P-6). Thereafter, petitioner filed a petition for issuance of Succession Certificate being the only legal heir of deceased Hem Raj, which was issued to him vide order dated 24.04.2012 passed by learned A.C.J (S.D) Hisar (P-7). Thereafter, petitioner filed a letter dated 02.05.2012 before respondent No. 2 to prove all the service benefit of deceased Hem Raj (P-8). Respondent No. 2 then issued a letter dated 17.09.2012 stating that an amount of Rs.4,19,900/- be released to the petitioner on account of back wages. Petitioner in response to the above said letter filed a representation dated 02.11.2012 that as per order of Labour Court as well as by this court, the services rendered by deceased Hem Raj has held to be from 1986 till 2009 and Hem Raj is not only entitled for back wages for the aforesaid period but was entitled for continuity of service as well as all other consequential benefits. However, respondent No. 2 in response to the above said representation stated vide letter dated 05.12.2012 (P-11) that the payment in respect of full back wages has already been released, as per judgment of this Court.

On notice, respondent Nos. 1 and 2 filed a reply taking a

stand that the releasing of amount towards retiral benefits (amount towards pension and gratuity) are not applicable to a daily paid worker.

Reference at this stage can be made to a judgment passed by this Court in a case of ***Ramesh Kumar Aggarwal v. Haryana Diary Dev. Co-op Fed. Ltd and anr, 2014 (2) RSJ 432*** whereby it has been held that once the termination of the petitioner was held to be illegal and he was reinstated in service with continuity of service, he cannot be denied the benefit of this period for the purpose of calculation of gratuity payable to him on retirement. In para 5 of the judgment, it has been observed as under:-

“5. Once Hon'ble the Supreme Court had granted the petitioner continuity of service and even directed for computing all the increments by treating the petitioner to have been appointed in regular time scale, he cannot be denied the benefit of this period for the purpose of calculation of gratuity payable to him on the retirement. Merely because Hon'ble the Supreme Court did not direct for payment of entire backwages, it will not wipe off the period for which continuity of service was granted for the purpose of all other benefits. That service has to be counted for the purpose of calculation of gratuity payable to the petitioner.”

Learned counsel for the petitioner has made reference to a judgment passed by this Court in a case of ***State of Punjab v. Gurkeerat Singh, 2002(4) SLR 294*** wherein it has been held that a person becomes entitled to pension on completion of 10 years qualifying service.

In the present case, brother of the petitioner was appointed on 07.01.1986 but on 02.04.1988 respondent No. 2 did not allow the petitioner to join on duty. The brother of the Petitioner raised the dispute before Labour Court, which was answered in his favour and the respondents were directed to reinstate the petitioner with continuity of service. Subsequently, brother of the petitioner namely Hem Raj expired on 18.05.2009. For all intents and purposes, petitioner was deemed to be in service w.e.f 07.01.1986 till 18.05.2009 and thus he served with the department for 23 years approximately and should have been granted consequential benefits treating him to be regular employee w.e.f 07.01.1986, as per award of the Labour Court.

Reference at this stage can be made to a judgment of this Court in a case of ***Sohan Singh vs. State of Punjab and others, 2010 (4) SCT 486*** wherein service of the petitioner was not regularized despite 25 years of uninterrupted service with good record. This Court allowed the writ petition and directed the respondents to regularize the

services of the petitioner w..ef 10.04.2006 in terms of Government policy and grant him all consequential benefits including pension and pay the arrears with 7% interest with costs of litigation.

Thus, in the present case, petitioner is entitled for regularization of his services, in view of the policies framed by State of Haryana time to time

Reference at this stage can further be made to a judgment passed by this Court in a case of ***Usha Rani vs. State of Haryana and others, 2005 (1) SCT 410*** wherein husband of the petitioner late Ravinder Singh was appointed as Mali cum Chowkidar on work charge basis/daily wage basis w.e.f March 1994 and died on 20.08.1999. Her wife was not released pensionary benefits like family pension, gratuity etc. This Court allowed the writ petition by relying on the provisions of Rules 3.12 and 3.16 (b) of CSR, Volume 2. It was held that in view of fact that family pension scheme is applicable to a government employee who has rendered one year of continuous permanent/temporary service. Petitioner was held entitled to family pension, moreover, when respondent is a pensionable establishment and employee had rendered five years of continuous service.

Applying the ratio of the above said judgments, the present writ petition is allowed and a direction is issued to the respondents to

regularize the service of the brother of the petitioner in view of notification dated 01.10.2003 of State of Haryana and thereafter, grant him consequential benefits including pension/family pension as per Rules. The arrears shall be calculated @9% per annum after regularization till the actual payment is made. The exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

31.03.2016

G Arora