107

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5338 of 2015 (O&M)
Date of decision: January 29, 2016

D.H.B.V.N.L. And others
.......Appellants

Versus

Krishan Chand
.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Ms. Geeta Sharma, Advocate
for the appellants.

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SABINA, J

Respondent had filed suit for declaration that his work charge service was liable to be counted towards increments and pensionary benefits.

The case of respondent, in brief, was that he was working as a Lineman with defendant No.3 and had retired on 31.08.2002. Respondent had served with the Electricity Board on work charge basis w.e.f. 1970 to 1974 and 1977 to 1979. However, the said service period had not been counted towards increments and pensionary benefits. The said period was counted by the defendants for the purposes of regularisation of services of the respondent w.e.f. the year 1979. Respondent had represented to the defendants vide letter dated 11.09.2002 and had also served a legal notice but the relief claimed by him had not been granted to him. Hence, the suit was filed by the respondent.

Appellants in their written statement denied that the respondent had continued in served from the year 1970 to 1974. It was averred that the respondent was not entitled to the relief sought by him.

On the pleadings of the parties, following issues were framed by the trial Court:-

> "1. Whether the plaintiff is entitled to decree of declaration to the effect that he is entitled to get the work charge service w.e.f. 1970 to 1974 and 1977 to 1979 counted towards increment and pension and pensionary benefits?OPP
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> 2. Whether the plaintiff is entitled to mandatory injunction as prayed for?OPP
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> 3. Whether the plaintiff is not entitled to alleged increment, salary benefits for want of continuing service?OPD
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> 4. Whether the plaintiff has not given his consent for depositing the PF amount?OPD
>
> 5. Whether the plaintiff has no locus standi to file the present suit?OPD
>
> 6. Relief."

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decree dated 24.02.2012 decreed the suit of the respondent and held that the work charge service rendered by the respondent was liable to be counted towards pensionary benefits. The said judgment/decree were upheld by the First Appellate Court vide judgment/decree dated 20.04.2015 in an appeal filed by the defendants. Hence, the present appeal by the appellants-defendants.

I have heard learned counsel for the appellants and have gone through the record available on the file carefully.

In order to prove his case, respondent examined PW1 Dharam Singh Clerk, who proved the details of work charge service rendered by the respondent. Respondent while appearing in the witness-box as PW2 deposed as per the contents of the plaint. Thus, respondent had been successful in establishing that he had rendered service on work charge basis with the appellants for the period in question.

It has been held in *Ram Dia and others versus Uttar Haryana Bijli Vitran Nigam Ltd. and another*, 2005(4) S.C.T. 387, as under:-

> “In Kesar Chand's case (supra),the Full Bench while dealing with a similar controversy held as under:-
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> > “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 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 eligible for pension and those who started work-charged employees and their service regularised subsequently, and the other is not based on any 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 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 reads as under:-

3.17(A)

(1) Subject to the provision 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 form contingencies :

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

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

(b) Service paid from contingencies should have 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 form 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 form duty or unathorised 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 form 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 purpose,”

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 under:-

“I am, therefore, of the opinion that the works “half the period of service of such persons paid from contingency” occurring in sub-clause () 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 reveals 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.”

In view of the above, we are of the view that service rendered by the petitioners on daily-wage-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."

Thus, work charge service rendered by the respondent was liable to be counted for the purposes of pensionary benefits. In these circumstances, the Courts below rightly decreed the suit of the respondent.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

(SABINA)
JUDGE

January 29, 2016
mahavir