

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

(201)

CWP-8362-2004 (O&M)

Date of Decision: December 07, 2018

Pala Singh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. P.K. Goklaney, Advocate, for the petitioner.

Ms. Anju Arora, Addl. A.G., Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

The present writ petition has been filed by the petitioner claiming that the adhoc service which the petitioner rendered from 01.04.1986 till 17.05.2001, should be taken as a qualifying service for the grant of pensionary benefits.

As per the averments made in the writ petition, the petitioner joined as a Mali-cum-Chowkidar on 01.04.1986 and he continued working as such till his services were regularized by the respondents on 18.05.2001. Thereafter, on attaining the age of superannuation, the petitioner retired from service on 30.09.2001. After superannuation, the petitioner was not paid the pension and other benefits on the ground that the petitioner has only regular service of four months and fourteen days and therefore, according to the provisions contained in Rule 3.17 (A) (1) of the Punjab Civil Services Rules, the casual or daily wage service cannot be taken as a qualifying service for the grant of pension. Vide letter dated 30.10.2003, the petitioner was granted the benefits which he was entitled for the period of four months and fourteen days amounting to Rs.2000/- approximately. Aggrieved against this action, the present writ petition has been filed by the petitioner.

Notice of motion was issued on 26.05.2004.

In reply to the claim made by the petitioner, the respondents mentioned that SLP No.19003 of 2004 has been filed by the State of Punjab against the decision rendered by this Court in CWP No.16119 of 2003, where the relief was granted by this Court in the similar circumstances and operation of the order has been stayed by the Hon'ble Supreme Court of India. The case was adjourned sine die to be listed after the decision of the above mentioned SLP.

Learned counsel for the petitioner states that vide order dated 10.09.2009, the Hon'ble Supreme Court of India remanded back three appeals and five writ petitions including CWP No.16119 of 2003 to be decided afresh by this Court.

A Division Bench of this Court decided the cases which were remitted back for fresh decision on 19.04.2011. After considering all the relevant judgments in respect of whether the daily wage service can be counted as a qualifying service for the grant of pensionary benefits or not, the Division Bench vide order dated 19.04.2011, directed that the services rendered by an employee on work charge/daily wage is to be counted as a qualifying service. The writ petitions were allowed and appeals filed by the State of Punjab were dismissed and the respondents were directed to calculate the amount of pension to be paid along with interest @ 12%. The relevant paragraph 22 is as under:-

“As a sequel to the above discussion, the appeals filed by the State of Punjab are dismissed and the writ petitions are allowed. The departmental authorities are directed to count the work charged/daily wage service rendered by the petitioner(s) as qualifying service. The needful shall be done within a period of one month from the date of receipt of certified copy of this order. The petitioner(s) 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 authorities is patently against Rule 3.17-A of the Rules, therefore, the petitioner(s) are held entitled to their costs, which is determined at Rs.2,500/- per petitioner. The amount of cost shall be sent to the petitioner(s) by cheque along with other retiral benefits.”

After the decision was rendered by the Division Bench, the same has been followed by this Court in number of other cases as well. In CWP No.12037 of 2004, decided on 16.05.2013, this Court on the basis of the full Bench's decision in Kesar Chand Vs. State of Punjab and others, AIR 1988, Punjab and Haryana 265 and also the decision of the Division Bench in State of Punjab and others Vs. Mukhtiar Singh (LPA No.189 of 2004) decided on 19.04.2011, directed that the services rendered by an employee on work charge basis/daily wage basis, is to be counted as qualifying service for the grant of pensionary benefits. The relevant paragraph of this judgment is as under:-

“Both the writ petitions address the same issue of the entitlement of an employee to treat a continuous service before regularization as also relevant for determination of terminal benefits.

The issue involved in the writ petition is squarely governed through decision of this Court that laid down that work-charge service will be counted for the purpose of computation of years of service for pension. The grievance of the petitioner is that in spite of definite judicial guidelines available in this score, the State of Punjab has not extended the benefit to the petitioner. Learned counsel relied on the judgment of Full Bench in Kesar Chand vs. State of Punjab and others AIR 1988, Punjab and Haryana 265 in support of his plea, that the length of service of work-charge employee should also be computed for pension. The counsel refers to the decision of Division Bench of this Court in State of Punjab and others vs. Mukhtiar Singh in LPA No.189 of 2004

decided on 19.02.2011 providing for also a right of interest @ 12% per annum from the date when the amount fall due till the date of payment.”

Learned counsel for the respondents has not been able to controvert as to why, the claim made by the petitioner herein, the present writ petition for counting the daily wage service for the purpose of treating as a qualifying service for the grant of pensionary benefits, be not granted. Case of the petitioner is squarely covered in his favour as per the law detailed hereinbefore.

In view of the settled proposition of law, the present writ petition is allowed. The respondents are directed to take into consideration the service which the petitioner has rendered from 01.04.1986 to 17.05.2001 as a qualifying service for computing the pensionary benefits. Let the calculations of the pensionary benefits of the petitioner be done within a period of three months from the receipt of copy of this order and the amount so arrived at, to be paid to the petitioner, shall be paid within next one month. The petitioner will also be entitled for the interest @ 6% per annum from the date when the petitioner became entitled for.

(HARSIMRAN SINGH SETHI)
JUDGE

December 07, 2018

harsha

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No