

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10699-2016

Date of decision: 17.11.2018

Rajesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Samrat Malik, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Ritu Bahri, J. (Oral).

The petitioner is seeking quashing of the order dated 12/18.05.2015 (Annexure P-3) to the extent that petitioner has been deprived of the salary for the period of 11.02.2009 to 12.06.2015 and the petitioner be granted full salary for the above said period.

The petitioner was appointed as Driver on contract basis on 01.08.2003 after due advertisement by considering the claim of all eligible persons. Order dated 25.09.2003 showing the position of the petitioner and his juniors to this effect is attached as Annexure P-1. The services of the petitioner were terminated on 11.02.2009 vide termination order dated 11.02.2009 (Annexure P-2). The petitioner filed his appeal before the Joint Commissioner and he was reinstated vide order dated 18.05.2015 (Annexure P-3). The petitioner has placed on record notification dated 04.08.2003 (Annexure P-4) whereby all the Drivers at the first instance will be appointed on contract basis as Class-B and after 2 years they will be

appointed as Driver Class-A and after 2 years they will be appointed as Driver Grade-II and after rendering 8 years of service they will be appointed as Driver Grade-I. Another notification was issued by Government on 18.03.2004 (Annexure P-5) to the effect that originally Drivers will be appointed as Driver Class-B on contract basis and after 2 years they will be appointed as Driver Class-A and after 2 years they will be appointed as Driver Grade-II and after two years they will be appointed as Driver Grade-I.

Learned counsel for the petitioner has argued that Shiv Kumar, who was junior to the petitioner has been granted regular pay scale after 6 years of service as per order dated 16.08.2010 (Annexure P-7) and similarly Jagdish Chander, who was also junior to the petitioner has been granted regular pay scale after rendering 6 years of service as per order dated 09.12.2009 (Annexure P-8). Learned counsel for the petitioner has further argued that dismissal order dated 11.02.2009 was set aside, however, he has not been given any financial or any other benefit of the period for he was out of service and on account of this condition, juniors were getting higher pay than the petitioner as per orders dated 16.08.2010 and 09.12.2009 (Annexures P-7 to P-8) and the order dated 18.05.2015 (Annexure P-3) is liable to be set aside.

On notice of this petition, Mr. Harish Rathee, Senior Deputy Advocate General, Haryana, has argued that the petitioner was out of service from 11.02.2009 to 12.06.2015 and the principle of **No Work No Pay** has been applied. Hence, the petitioner has been rightly denied for the salary/remuneration for this period. The case of the petitioner has been

analysed keeping in view the letters dated 20.11.2017 and 24.11.2017 issued by the Director General, State Transport, Haryana and he was found fit for regular pay scale from the initial date of appointment i.e. 01.08.2003 revised w.e.f. 01.01.2006 in the pay scale of 5200-20200 with grade pay of 2400 and further revised w.e.f. 01.01.2016 and the pay has been fixed as under:-

Sr. No.	Date	Allowed Pay	Scale
1	01.08.2003	4000	4000-6000
2	01.01.2006	7440+2400	5200-20200+2400 GP
3	01.01.2016	25500	F.P.L-4

and no other allowances including increments for this period will be granted and actual arrears will be paid w.e.f. 12.06.2015 i.e. the date of joining on reinstatement of service pursuant to order dated 18.05.2015.

In the present case, when notice of motion was issued on 26.05.2016, learned counsel for the petitioner has restricted his claim to grant of continuity of service and notional fixation of pay at par with his juniors.

Learned counsel for the petitioner has further informed the Court that the notifications dated 04.08.2003 and 18.03.2004 (Annexures P-4 to P-5) were challenged in the case of ***Mohinder Singh V/s. State of Haryana*** and this Court had quashed the said notifications and held that Drivers/Conductors were entitled to regular pay scale from the dates of their initial appointments and arrears were restricted to three years two months prior to filing of writ petition. An SLP against the said judgment was dismissed by the Supreme Court in case of ***State of Haryana V/s. Mohinder Singh*** 2017(2) SCT 185 and while dismissing, the Supreme Court had given

reference to the judgment of *State of Punjab V/s. Jagjit Singh*, 2016(4) S.C.T. 641 wherein it has been held that wages even to contractual employee has to be of the minimum pay scale on the principle of equal pay for equal work. Keeping in view the above judgment of the Supreme Court, the pay of the petitioner has been fixed by the respondents vide order dated 04.01.2018 (Annexure R-1).

The only prayer of the petitioner is that once his dismissal order has been set aside, the petitioner is entitled to the consequential benefits of counting this period towards his service. Since the petitioner is seeking benefit of continuity of service and notional fixation of pay, this prayer is genuine keeping in view the full Bench judgment in *RSA-402-1973 Radha Ram V/s. Municipal Committee Barnala* in which the following has been observed in para 12:-

Once the relief of setting aside or quashing the order of termination has been granted, or a declaratory decree has been passed to the similar effect, it necessarily follows that the employee in the eye of law continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from that status.

The writ petition is being partly allowed and the petitioner is held entitled for continuity of service w.e.f. 11.02.2009 to 12.06.2015 and his pay shall be refixed after giving him benefit of increments and ACP notionally. The actual arrear shall be made to him w.e.f. 12.06.2015 as per order dated 04.01.2018 (Annexure R-1).

17.11.2018

Divyanshi

**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned
Whether reportable

:
:

Yes/No
Yes/No