

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 19670 of 2016 (O&M)
Date of Decision : 14.12.2018

Prem Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. S.K. Malik, Advocate for the petitioner.

Mr. Sunil Kumar Vashisht, Deputy Advocate General, Haryana.

Harsimran Singh Sethi, J.(Oral)

1. In the present case, the petitioner has approached this Court challenging the order dated 19.10.2010 (Annexure P-4) by which the benefit of pension was denied to the petitioner on the ground that the qualifying service of the petitioner is less than 10 years.

2. As per the averments, which have been made in the petition, the petitioner was appointed as Mali-cum-Chowkidar on 01.01.1990 on daily wage basis and she continued working till she superannuated on 31.12.2010. As per para 4 of the petition, the services of the petitioner were regularized by the respondents vide letter dated 16.10.2006 (Annexure P-2) with effect from 01.10.2003. By the impugned order, the respondents denied the benefit of pension only on the ground that after the regularization of her services, the petitioner only had seven years and three months and, therefore, she was not entitled for the pension or the pensionary benefits as

the service of the petitioner was less than ten years. The petitioner prayed that her full service from 1990 onwards is to be taken into account for calculating the pensionary benefits in view of the law laid down by this Court in the case of ***Kesar Chand Vs. State of Punjab, 1998(2) PLR 223.***

3. During the pendency of the writ petition, an affidavit has been filed by Sh. Rajesh Kumar Chugh, HFS Divisional Forest Officer, District Rewari on 23.03.2018. The said affidavit reads as under :-

- “1. That in view of judgment titled Joginder Singh versus State of Haryana in CWP No. 5652 of 1995 decided on 12-12-1997 annexure P-10 and Kesar Chand Vs. State of Punjab and others in CWP No. 2864/1983 decided on 02-06-1988 annexure P-11 the daily wages services w.e.f. 01-01-1990 to 31-10-2003 of the petitioner Smt. Prem Devi has been allowed to count towards pensionary benefits vide letter no. 3101 dt. 21-02-2018 copy annexed as annexure R-1.*
- 2. That for pensionary benefits of the petitioner Smt. Prem Devi total qualifying service will be w.e.f. 01-01-1990 to 31-12-2010.*
- 3. That the case of the petitioner has been forwarded to the Accountant General Haryana Chandigarh for pensionary benefits on 21-02-2018 annexure R-1. Now the Accountant General Haryana Chandigarh has to release the pensionary benefits to the petitioners.”*

4. In view of the above affidavit, it is clear that the respondents have admitted the claim of the petitioner for the grant of pensionary benefits by calculating the total service rendered by her from 01.01.1990 till 31.12.2010 and the case of the petitioner had already been forwarded to the respondents for release of the pensionary benefits.

5. Learned counsel for the petitioner states that despite an

affidavit has been given and the case had already been forwarded to the Accountant General Haryana for release of the pension and other pensionary benefits, nothing has been done so far.

6. Learned counsel for the respondents states that once the order has been passed by the competent authority, it must have been complied with by now.

7. Be that as it may, once an order has been passed by the competent authority on 21.02.2018 (Annexure R-1) directing the Accountant General Haryana to make the payment of the pensionary benefits to the petitioner, it should have been done immediately. If the said order has not been implemented so far, the respondents shall implement the said order without any further delay and release all the pensionary benefits for which the petitioner is entitled for, within a period of three months from the date of receipt of certified copy of this order.

8. Once the respondents themselves have now come to the conclusion that their action of denial of pension to the petitioner by passing the impugned order dated 19.10.2010 was wrong and as per the settled proposition of law, even on that date of superannuation, the petitioner was entitled for pension by counting her daily wage service, the petitioner will also be entitled for interest on the pensionary benefits in view of the settled proposition of law settled by this Court in the case of ***J.S. Cheema Vs. State of Haryana and others***, 2014(13) RCR (Civil) 355, wherein it has been held that wherever there is a delay which is unexplained and not justified, the employee will be entitled for the interest on the said delayed payments. The relevant paragraph of the judgment reads as under :-

“The jurisprudential basis for grant of interest is the fact that

one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

9. The case of the petitioner is squarely covered by the above said decision of this Court in ***J.S. Cheema's case (supra)***, for the grant of interest.

10. In view of the above, the present writ petition is allowed. The respondents are directed to calculate the amount of interest on the pensionary benefits from the date it became due i.e. 01.11.2011 till the same is paid to the petitioner @ 6% per annum. Let the calculation be done within a period of three months from the date of receipt of certified copy of this order and the payment of the calculation so done, will be released to the petitioner within a period of next one month.

December 14, 2018
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No