

CWP No.26627 of 2014

[1]

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

Sr. No.215

**Civil Writ Petition No.26627 of 2014
DECIDED ON: April 17, 2018**

RANBIR SINGH

..PETITIONER

VERSUS

**PEPSU ROADWAYS TRANSPORT CORPORATION THROUGH
ITS SECRETARY, PATIALA AND ANOTHER**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ashok Kumar Nabhewala, Advocate,
for the petitioner.

Mr. Aman Sharma, Advocate,
for the respondents.

JASPAL SINGH, J.

By virtue of the instant civil writ petition, preferred under Articles, 226/227 of the Constitution of India, petitioner-Ranbir Singh has sought issuance of a writ of Certiorari quashing the order dated 13.08.2014 (P-11) WITH FURTHER issuance of a writ of Mandamus directing the respondents to release the following benefits (i) one special increment for

CWP No.26627 of 2014

[2]

non-participation in the General Strike on 08.02.1978, consequently fixation of pension and release all pensionary benefits; (ii) one increment under the ACP Scheme after completion of 32 years of service and consequently fixation of pension and release all pensionary benefits and (iii) counting of five years and seven months of service as qualifying service towards total period for fixation of pension and release all pensionary benefits.

2. The contention of learned counsel for the petitioner is that as far as non-grant of one special increment on account of non-participation of the petitioner in the general strike on 08.02.1978 is concerned, the same is absolutely against the legal facts and various instructions issued by the State of Punjab. In fact, petitioner was on earned leave w.e.f. 12.12.1977 to 11.03.1978 and as such, the question of participation in the general strike does not arise at all. While placing reliance upon the judgment of the Division Bench of this Court delivered in ***Darshan Singh vs. State of Punjab, 2002 (1) S.C.T. 608***, learned counsel for the petitioner contends that petitioner was a regular employee and did not participate in strike on 08.02.1978. Thus, he is entitled to one special increment. Such a question came before the Division Bench of this Court in the aforesaid ***Darshan Singh's case (Supra)*** where it has been categorically held that respondents shall consider the case of the petitioner for grant of one special increment for non-participation in the strike, in accordance with law. Moreover, the State Government further clarified that only regular employees would be entitled to increment in furtherance to earlier policy. The mere fact that petitioner was on earned leave is itself, no ground to deny the said benefit.

CWP No.26627 of 2014

[3]

Once it is proved that he was a regular employee and did not participate in the strike on 08.02.1978. However, the contentions put forth by learned counsel for the petitioner as referred to above do not appeal to this Court. No doubt, on 08.02.1978 there was a general strike by the transport wing in the State of Punjab. The employees who were present on duty on 08.02.1978, were awarded one special increment vide order dated 16.06.1978 by the Government. It was also clarified vide letter dated 20.02.1979 (R-1) that official who was on earned leave will not be granted the benefit of one special increment. The aforesaid letters dated 16.06.1978 and 20.02.1979, were adopted by the Pepsu Roadways Transport Corporation (for short 'PRTC') vide its letter dated 21.01.1980. The aforesaid instructions/orders passed by the State Government and adopted by the PRTC, have not been challenged at any point of time by the petitioner. Since, petitioner was admittedly on earned leave for the period of 12.12.1977 to 11.03.1978, which was sanctioned on vide order dated 05.12.1977 (P-2), so he cannot be termed to be on duty on 08.02.1978. Thus, he has rightly been declined one special increment in view of clarification dated 20.02.1979 (R-1). Thus, rejection of the claim of the petitioner in this regard is legal, valid and cannot be faulted with.

3. As regards as, second relief i.e. release of increment under ACP Scheme after completion of 32 years of service and consequent fixation of pension and release of pensionary benefits, learned counsel for the petitioner has stressed that petitioner has wrongly been denied the aforesaid benefit. In fact, benefit of increment on completion of 32 years of service under ACP Scheme was granted to the petitioner w.e.f.

CWP No.26627 of 2014

[4]

13.01.2005 but it was stopped vide show cause notice dated 04.01.2006 (P-3). In fact, the petitioner had an unblemished service record besides being **conferred** commendations certificate, no adverse ACR was conveyed to him and question of stoppage of increment is neither legally nor justified.

4. It is an undisputed fact that for the grant of ACP Scale on completion of certain period of service, service record must be good for the period as is required for grant of promotion. Thus, 50% record of Annual Increments on appraisal was not found good and as such, ACP Scale which was earlier granted w.e.f. 13.01.2005 was withdrawn and then granted w.e.f. 13.01.2006 as he was promoted as Sub-Inspector in July, 2005. Hence, due to the change in his cadre, he was not entitled to the benefit of ACP Scheme w.e.f. 13.01.2005. So, this Court does not find any illegality or infirmity in the aforesaid order, whereby ACP Scale which was earlier granted w.e.f. 13.01.2005 was withdrawn and then granted w.e.f. 13.01.2006.

5. So far as the third relief claimed by the petitioner with regard to the rendering of ad hoc service for the period of 05 years and 07 months towards qualifying service for pensionary benefits is concerned, it has been contended by learned counsel for the petitioner that petitioner has only been granted 28 years, 01 month and 13 days service considering it to be a qualifying service towards pension. But a period of 05 years and 07 months on ad hoc service has been arbitrarily denied by the respondents to be counted towards qualifying service for the purposes of pension and

CWP No.26627 of 2014

[5]

other benefits. He further submits that services of the petitioner were terminated vide order 12.07.1978. But he was allowed to join vide order dated 29.10.1982 w.e.f. 15.10.1982. Subsequent thereto, petitioner moved a representation for counting his past ad hoc service for the period from 12.05.1978 to 15.10.1982 but it was rejected vide order dated 22.12.1982, which necessitated the filing of an appeal before the Chairman, PRTC who accepted the same vide order dated 25.01.1984 (P-8) specifically holding that petitioner is entitled to continuity of service, though he rejected his claim for pay and allowances for above aforesaid period. Thus, once the continuity of service has been ordered in respect of period from 12.05.1978 to 15.10.1982, for the simple reason that he was not paid salary and allowances during that period is itself no ground to debar the petitioner. Otherwise, the continuity of service is of no value in the eyes of law. Learned counsel for the petitioner has further submitted that in fact the intention of the Appellate Authority while passing of the order dated 25.01.1984 (P-8) was that the previous service of the petitioner should be counted towards other benefits except salary and allowances for the said period.

6. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner, but does not find any legal and factual force therein especially in view of Regulation 6(3) of the Regulations, which specifically provides that period of without pay service is not countable towards qualifying service. The petitioner is unable to satisfy that aforesaid Regulation is not applicable either to him or in the facts and circumstances of instant case. So in the totality of the facts

CWP No.26627 of 2014

[6]

and circumstances narrated and discussion made above, this Court does not find any merit in the instant petition.

7. Accordingly, it stands dismissed. However with no order as to costs.

April 17, 2018
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned ***Yes***

Whether reportable ***Yes/No***