

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

**CWP-2511-2017 (O&M)
Date of decision: - 04.12.2018**

Jagar Ram

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Harnek Singh, Advocate,
for the petitioner.

Mr. Sandeep Vermani, Additional Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

Petitioner has filed the present writ petition claiming that the service which the petitioner had rendered starting from the year 1983 till his services were regularized in October, 1995 should be calculated as a qualifying service for the grant of pensionary benefits.

As per the averments made in the present writ petition, the petitioner joined as a daily wager as Assistant Carpenter on 10.03.1983. Petitioner kept on working till 27.09.1983, when he was relieved from duty. The said relieving was challenged by the petitioner before the Labour Court and the labour Court vide order 23.02.1993 reinstated the petitioner with continuity of service. All the benefits flowing to the

petitioner from the order 23.02.1993 were also paid to him. Petitioner kept on working till 06.11.1998, when again, the petitioner was retrenched from service on the ground that the petitioner does not fulfill the qualification, as prescribed by the Government, vide notification dated 13.10.1995, according to which, ITI diploma was must for appointment as a helper. The said action of retrenchment was again challenged by the petitioner before the labour Court. Thereafter, labour Court, vide judgment dated 19.05.2009 upheld the order of retrenchment. Petitioner filed a writ petition being CWP No.7614 of 2010, challenging the retrenchment order as well as the order passed by the labour Court dated 19.05.2009.

The said CWP No.7614 of 2010 was allowed by this Court on 27.07.2011 and the petitioner was treated to be eligible and a direction was given to regularize his services after completion of ten years of daily wage service. In compliance of the same, the services of the petitioner were regularized w.e.f. 1995.

Petitioner continued working till 28.02.2015 when on attaining the age of superannuation, he retired from service. While computing the pensionary benefits of the petitioner, only the service which he had rendered after the regularization of his services i.e. October, 1995 onwards was taken into consideration and the service which the petitioner rendered on daily wage basis from the year 1983 till October, 1995 was not taken into consideration, as a qualifying service for computing the pensionary benefits. For the said relief, the petitioner filed the present writ petition.

Notice of motion was issued on 13.02.2017.

In the reply which has been filed, the respondents had admitted that the petitioner was appointed in the year 1983 on daily wage basis and also accepted the above-mentioned facts that his services were regularized in pursuance to the directions given by this Court in CWP No.7614 of 2010, decided on 27.07.2011. Further, it has been admitted that there is an award passed by the labour Court, according to which, after the relieving of the petitioner in the year 1983, he was reinstated in service with continuity of service. The said award was passed by the labour Court on 23.02.1993.

I have heard the learned counsel for the parties and gone through the record.

The above-mentioned facts are not in dispute. It is not in dispute that the petitioner was appointed on daily wage basis in the year 1983 and he continued in service till his services were regularized w.e.f. October, 1995. Once, the services of the petitioner have been regularized, w.e.f. October, 1995, there is no reason why, daily wage basis service rendered by the petitioner is not to be counted for the purpose of computing the pensionary benefits. A Full bench of this Court in **Kesar Chand Vs. State of Punjab and others**, AIR 1988 Punjab 265 has already held that the daily wage service is to be computed as a qualifying service for calculating the pensionary benefits of the employees. The said judgment has been followed time and again by this Court. In LPA No.189 of 2004, decided on 19.04.2011, a Division Bench again reiterated that the daily wage service is to be counted for calculating the

pensionary benefits. After taking into consideration the **Kesar Chand's case (supra)** and other cases decided by this Court, a categorical finding has been given that daily wage/work charge service rendered by employee prior to his service regularization is to be counted as a qualifying service for computing the pensionary benefits. The relevant paragraphs of the judgment dated 19.04.2011 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.”

In view of above, there is no justification given by the State of Punjab for excluding the ten years of daily wage service rendered by the petitioner as an Assistant Carpenter.

In view of the above, the present writ petition is allowed. The respondents are directed to count the daily wage service of the petitioner which he rendered from March, 1983 onwards till his services were regularized in October, 1995.

Let the pensionary benefits be re-calculated by the respondents within a period of four months from the date of receipt of a certified copy of this order. The difference of amount, for which the petitioner shall be entitled for after re-calculation, be paid to him within a period of next one month along with interest @ 6% per annum.

(HARSIMRAN SINGH SETHI)

JUDGE

December 04, 2018

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Whether reasoned/speaking?

Yes

Whether reportable?

No