

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11081 of 2015

DATE OF DECISION: 19.03.2019

Simarjit Singh

... Petitioner

Versus

Punjab State Power Corporation Ltd. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.S. Gurna, Advocate for the petitioner.

Mr. Y.P. Khullar, Advocate for the respondents.

Mr. Mehardeep Singh, Additional Advocate General,
Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that the adhoc service which the petitioner rendered from 02.10.1973 till 27.03.1978 has not been taken into account as qualifying service for computing the pensionary benefits.

The facts as mentioned in the writ petition are that the petitioner joined Punjab State Electricity Board on 02.10.1973. He kept on working as such till 05.01.1975. On 06.01.1975, work charged service of the petitioner was further extended upto 14.12.1977. Thereafter, the said period was further extended upto 28.02.1978. Thereafter, after granting various extensions, the service of the petitioner was regularized as Assistant Lineman vide order dated

13.11.1978. The petitioner kept on working on regular basis thereafter and ultimately, the petitioner retired from service on attaining the age of superannuation on 31.10.2008.

The petitioner has been given the benefit of 29 years of service starting from November, 1978 onwards whereas the work charged service which the petitioner rendered starting from 02.10.1973 till November, 1978 has not been taken into account for commuting the pensionary benefits. Counsel for the petitioner argues that as per the Full Bench Judgment of this Court in **Kesar Chand Vs. State of Punjab through the Secretary, P.W.D.B.&R. Chandigarh and others, 1988(2) PLR 223**, the work charged services rendered by an employee before regularisation is to be taken into account for computing the pensionary benefits.

Upon notice of motion, the respondents have filed the reply. In the reply, the period spent by the petitioner on work charged basis has been admitted by the respondents. The only objection taken is that though the petitioner retired on 31.10.2008, the representations for the grant of the benefit of work charged service for computing the pensionary benefits were given in March, 2015, which is highly belated and cannot be considered. The relevant paras of the reply are as under:

“1. That the present writ petition deserves to be dismissed merely on the ground of delay and laches as the petitioner retired on 31.01.2018 whereas, petitioner made the representation for first time to the answering respondent on 13.03.2015 in order to include his work charge period as qualifying service for fixation of his

retiral benefits including pension and gratuity.

Reply on merits:-

1. That the averments made in this para are admitted to be correct to the extent that the petitioner is a citizen of India, but is absolutely wrong and denied that he can invoke the extra jurisdiction of this Hon'ble Court by filing the present writ petition.
2. That the contents of this para are admitted to be correct that the petitioner joined as work-charge basis with the answering respondent on 02.10.1973 and served till 05.01.1975 on work charge basis at Sub Division Office, Tubewell Construction Division, PSEB Bathinda.
3. That the contents of this para are also admitted to be correct that the petitioner served as work charge basis from 06.01.1975 to 14.12.1977 in the office of Sub Division office A.E. Sub Division, PSEB Bathinda.
- 4-5 That averments made in this para are also admitted being matter of record.
6. That the contents of para are admitted to be correct that on 23.11.1978, the service of the petitioner was regularized and appointed as Regular Assistant Lineman vide office order No.16897 dated 13.11.1978. Rest of the contents of this para are admitted being matter of record.
7. That the contents of this para are admitted to be correct to the extent that the petitioner was granted 9 & 16 time bound promotional scale as per his entitlement. The petitioner was further promoted as lineman w.e.f. 13.12.1996 and ultimately he retired on 31.01.2008. The averments made in this para with regard to date of his retirement is wrong and denied because actual date of retirement is 31.01.2008 and not 31.10.2008."

I have heard the counsel for the parties and have gone

through the record of the case with their able assistance.

The factum of adhoc service rendered by the petitioner from October, 1973 till November, 1978 has been admitted. Once the said period has been admitted, the respondents were under obligation to grant the relief to the petitioner by treating the work charged service as qualifying service while computing the pensionary benefits of the petitioner. The full Bench of this Court while deciding **Kesar Chand's case (supra)** has already held that the work charged service rendered by an employee before regularization of the services, has to be treated as qualifying service for computing the pensionary benefits of the employee. The relevant portion of the judgment is as under:

“19. In the light of the above, let us examine the validity of rule 3.17(ii) of the Punjab Civil Services Rules, Vol. II. This rule says that the period of service in a work-charged establishment shall not be taken into account in calculating the qualifying service. After the services of a work-charged employee have been regularised he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1, 1972, between the workmen and the Chief Engineer, P.W.D. (B. & R), Establishment Branch, Punjab, Patiala, which was published in the Government Gazette dated July 14, 1972. Even otherwise. the matter was settled by the Punjab Government Memo No. 14095-BRI(3)-72/5383 dated 6th February, 1973(Annexure P7) where it was stated that all those work charged employees who had put in ten years of service or more as on 15th August, 1972, their services would be deemed to have been regularised. Once the

services of a work-charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who eligible for pension and those who started work charged employees and their services regularised subsequently, and the others is based on any intelligible criteria and, before, is not sustainable at law. After the services of a work-charged employee have been regularised, he is a public servant like other servant. To deprive him of the pension is not only unjust and inequitable is hit by the vice of arbitrariness, and for reasons the provisions of sub-rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.”

Counsel for the respondents has not been able to show anything contrary, which would enable them to deny the claim to the petitioner as raised in the present writ petition.

The only ground taken by the respondents is that there is delay in raising the demand. As per counsel for the respondents, the petitioner retired in October, 2008 whereas the demand was raised in

March, 2015. Therefore, at this belated stage, the same cannot be entertained. Law is known to the respondents that work charged service is to be counted as qualifying service for computing the pensionary benefits. The respondents should have done the said exercise at the time of the retirement and should not have forced the petitioner to approach this Court. Further, the denial of actual pension is a recurring cause and cannot be rejected on the ground of delay. Therefore, the plea of the petitioner for counting that the work charged service from 02.10.1973 till 30.11.1978 should be treated as qualifying service for computing the pensionary benefits is allowed.

Let the recalculation of the pensionary benefits of the petitioner be done by the respondents within a period of two months from the date of receipt of a certified copy of this order. After computation, whatever benefits the petitioner is entitled for, shall be extended to the petitioner including arrears and pension and other benefits.

The writ petition is allowed in the above terms.

March 19, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

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