

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

(207)

CWP-12984-2015

Date of Decision: April 11, 2019

Hari Singh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Manoj Chahal, Advocate, for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is that the period starting from 16.01.1994 till 08.08.2005 has been treated as a non-qualifying service for computing the pensionary benefits, which act of the respondents is contrary to the law.

As per the facts stated in the writ petition, the petitioner was appointed as a Conductor on 28.10.1976 and he continuously served the department till 16.01.1994 when his services were terminated. The said termination of the service was challenged by the petitioner by raising a dispute before the labour Court and vide order dated 05.05.2003, the labour Court set aside the order of termination. The relevant portion of the judgment of the labour Court is as under:-

“ 15. For the reasons recorded above, it will have to conclude that the order terminating the services of the workman passed by the disciplinary authority is illegal, null and void, can't sustained deserves to be quashed. Accordingly both these issues are answered in favour of the workman.

Relief.

16. As a sequel of my aforesaid discussions, evidence and issue-wise findings, the order terminating the services of the workman is hereby set-aside. Workman is ordered to be reinstated with continuity of service but without back wages because he did not utter work to prove that he remained idle during the period he stayed away from service.

Reference stands answered accordingly.”

In pursuance to the said order, the petitioner was allowed to join duty on 09.08.2005. Petitioner continued working and thereafter, he was promoted as a Sub Inspector on 07.08.2009 and thereafter to the post of Inspector, from which post, the petitioner retired on 31.07.2014. Grievance of the petitioner is that though the petitioner has put in 37 years, 9 months and 3 days of service but the petitioner has been granted the benefit of 22 years, 9 months and 16 days as a qualifying service for computing the pensionary benefits. The period for which, the petitioner remained out of service from the year 1994 till 2005 has not been taken into consideration as a qualifying service on the ground that the petitioner did not discharge the duties during the said period and hence the same cannot be treated as a qualifying service for computing the pensionary benefits.

Upon notice of motion, the respondents have filed the reply. In the reply also, the respondents stated that no benefit of period from 16.01.1994 till 08.08.2005 can be given as the petitioner did not perform the duties and therefore, the said period has rightly been excluded while calculating the qualifying service.

This writ petition came up for hearing on 23.01.2019, on which date, the following order was passed:-

*“Mr. Narender Kumar Garg, General Manager,
Haryana Roadways, is present in Court.*

Counsel for the respondent-State states that she has the instructions from the said officer that the department is going to reconsider the claim which has been made by the petitioner in this writ petition in respect of the benefit of the period for which the petitioner remained out of service, which has been treated as non-qualifying service.

Adjourned to 11.04.2019.

Let the order, which the respondents passed on reconsideration, be placed alongwith an affidavit on the next date of hearing.

In compliance of the said order, an affidavit of Mr. Narender Kumar Garg, General Manager, Haryana Roadways, Nuh has been filed in the Court today. In the said affidavit, it has been stated by the respondents that on reconsideration, the benefit of the period for which the petitioner remained out of service, has been granted to the petitioner as the petitioner was reinstated in service with continuity of service by the Labour Court and therefore, by granting him the benefit of the said service i.e. from 14.02.1994 till 08.08.2005, the pensionary benefits of the petitioner has been revised and an order has already been passed in this regard on 01.04.2019. The relevant portion of the affidavit is as under:-

“3. On reconsideration, the matter was submitted before Accountant General (A&E) vide letter dated 01.04.2019 for counting the period from 14.02.1994 to 08.08.2005 for pensionary benefits and thereafter the pension of the petitioner has been revised and on revision the following other financial benefits have also been allowed to be paid to the petitioner vide letter dated 10.04.2019 of Accountant General (A&E).

Sr. No.	Total Gratuity	Payments made at time of retirement	Balance to be paid on counting of the service of continuity of service from 14.02.1994 to 08.08.2005	Pension on retirement	Pension on revision
1.	Rs.4,10,537/-	Rs.2,86,132/-	Rs.1,24,405/-	Rs.4,937/-	Rs.6,010/-

4. That sanction letter dated 10.04.2019 of Accountant General Haryana Chandigarh has been received in afternoon on dated 10.04.2019. The copy of sanction letter dated 10.04.2019 regarding revision of gratuity and pension is annexed as Annexure R-2 (colly). Keeping in view aforesaid facts it is therefore prayed that the petition may please be filed in the interest of justice.”

Alongwith the said affidavit, the respondents have attached the revised pension payment order dated 10.04.2019 by which the revised benefits have already been sanctioned by the competent authority i.e. Accountant General, Haryana.

Learned counsel for the petitioner states that though the benefits have been granted on papers, the same needs to be released in actual to the petitioner without any further delay.

Learned counsel for the respondents states that the pension payment order issued in favour of the petitioner, which has been attached with the affidavit filed today, will be implemented without any further delay, if not already implemented.

Learned counsel for the petitioner states that the petitioner retired from service on 31.07.2014 and these benefits should have been extended to the petitioner at the relevant time itself, but as the amount has

been released in 2019, after a period of 5 years, petitioner is entitled for

interest as well on these payments.

Learned counsel for the respondents, on the other hand, states that once the benefit has been granted to the petitioner, on reconsideration, the petitioner will not be entitled for the interest as the respondent-department after reconsideration has granted benefit immediately and there was no delay in the release of the benefit after the order of reconsideration was passed.

From the facts, which have been stated above, it is clear that the petitioner was reinstated in service with continuity of service by the labour Court. The respondents are only giving effect to the said order now while reconsidering the case of the petitioner. Even at the time of retirement, the respondents should have granted the benefit to the petitioner, which has been extended to him after a period of five years of his retirement. The delay in releasing the benefits is attributed to the respondents themselves. The benefit, for which the petitioner was entitled for, in the year 2014 has been extended to him only in the year 2019. The amount, which is being paid to the petitioner now, should have been paid to the petitioner in the year 2014. The amount remained lying with the respondents and have been used by them.

A Coordinate Bench of this Court while deciding **J.S. Cheema Vs. State of Haryana and others, 2014 (1) S.C.T. 782**, has held that if an amount for which an employee was entitled for, has been withheld and retained by the department without any valid justification and used, the employee will be entitled for the interest. The relevant portion of the said judgment is 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.”

The case of the petitioner for the grant of interest on delayed payment is squarely covered by the abovesaid judgment. The amount which is being released to the petitioner now on account of reconsideration of his case, shall carry interest @ 9% per annum from the date the petitioner retired i.e. 01.08.2014 onwards till the actual payment will be released to the petitioner. Let the calculation of the amount be done within a period of two months from the receipt of copy of this order and the amount so calculated shall be released to the petitioner within a period of one month thereafter.

At this stage, learned counsel for the petitioner states that the petitioner has another grievance qua fixation of his salary w.e.f. 01.01.2006 which was not rightly done. Though no explanation has been given as to why, for the claim accruing in 2006, the petitioner approached this Court in the year 2015 and that too after retirement still, liberty is granted to the petitioner to file an appropriate representation with the respondents to claim the said relief by giving details in support of the claim.

In case, any such representation is filed by the petitioner, an appropriate decision shall be taken by the respondents within a period of three months from the receipt of the said representation.

The writ petition is disposed of in above terms.

April 11, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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