

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

(219)

CWP-13048-2016

Date of Decision: August 29, 2019

Ranbir Singh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Naveen Daryal, Advocate, for the petitioner.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI, J.(ORAL)

As per the averments made in the present writ petition, the petitioner is that the petitioner had rendered service on daily wage basis on the post of Mali-cum-Chowkidar from 01.08.1990 till 31.12.1999, whereafter his services were regularized w.e.f. 01.01.2000. Petitioner continued working on the class-IV post till he attained the age of superannuation on 31.10.2015. After the retirement, the petitioner has only been paid the retiral benefits by taking into consideration the service w.e.f. 01.01.2000 till 31.10.2015 and the benefit of daily wage service has not been extended while computing the pensionary benefits. The claim of the petitioner in this regard has been rejected by respondent No.4 on 02.04.2016 (Annexure P-6). The said order is under challenge before this Court.

Learned counsel for the petitioner argues that once the petitioner has worked on daily wage basis from 01.08.1990 till 31.12.1999, which fact is admitted by the respondents, petitioner is entitled to get the benefit of the said daily wage service as a qualifying service for the grant of pensionary benefits.

Learned counsel for the petitioner argues that under Rule 3.17-A of the Punjab Civil Services Rules as applicable to Haryana, petitioner is entitled for counting the daily wage service rendered from 01.08.1990 till 31.12.1999 as a qualifying service. Further, the reliance is placed upon the judgment of the Full Bench of this Court in **Kesar Chand Vs. State of Punjab, 1988 (5) SLR 27** wherein after implementing Rule 3.17-A of Punjab Civil Services Rules it has been held that the daily wage service rendered by an employee prior to regularization of his service, is liable to be counted as qualifying service for the grant of pensionary benefits.

The prayer of the petitioner is opposed by the learned State counsel on the ground that there was no post of Mali-cum-Chowkidar when the petitioner was appointed on daily wage basis and therefore, he cannot be granted any benefit of the said period.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The case of the petitioner for the grant of benefit of counting the daily wage service as a qualifying service for the grant of pensionary benefits is to be seen keeping in view the rules governing the service. Rule 3.17-A of the Punjab Civil Services Rules, as applicable to Haryana, deals with the same. The said Rule is as under:-

“3.17-A. (a) All service interrupted or continuous followed by confirmation shall be treated as qualifying service; the period of break shall be omitted while working out aggregate service.

(b) Extraordinary leave counted towards increments under rule 4.9 (b) (ii) of Punjab Civil Services Rules, Volume-I, Part-I, will be accounted towards service qualifying for pension.

(c) Periods of suspension, dismissal, removal, compulsory retirement followed by reinstatement will count for pension to the extent permissible under rule 4.17 of Punjab Civil Services Rules Volume-II read with rule 7.3 of the Punjab Civil Services Rules, Volume-I, Part-I.

(d) Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of rule 4.19 (a) of Punjab Civil Service Rules Volume-II.

(e) An interruption in the service of a Government employee caused by wilful absence from duty and unauthorized absence without leave will as hitherto entail forfeiture of past service.

[Explanation.— The wilful refusal to perform duties by a Government employee by any means including pen down strike shall be deemed to be wilful absence from duty.]

(f) Employees retiring from Government service without confirmation (as temporary employees) in any post on or after 5 February, 1969 will be entitled to invalid/ retiring/ superannuation pension and death-cum-retirement gratuity on the same basis as admissible to permanent employees. In case of death of employees in service his family will also be entitled to similar benefits as are admissible to the families of permanent employees. This concession will, however, not apply to:

(i) Persons paid from contingencies; provided that [full period]² of service of such persons paid from contingencies rendered from 1st January, 1973 onwards for which authentic records of service is available will count as qualifying service subject to the following conditions:-

(a) Service paid from contingencies should have been in a job involving whole time employment and not

part time for a portion of day, (a) Service paid from contingencies should have been in a job involving whole time employment and not part time for a portion of day,

(b) Service paid from contingencies should be in a type of work or job for which regular post should have been sanctioned e.g. Malis, Chowkidars, Khalasis etc.

(c) The service should have been such for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relations in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments; and

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

Note.— While bringing contingent paid employee to the regular establishment an entry for verification of contingent service should be made at the appropriate place in his service book, preferably before making any entry regarding his regular service in the following manner:-

"Service from _____ to _____ paid out of contingencies verified from acquittance rolls and office copies of contingent bills". This entry should be signed by the Head of Office with date.

(ii) Deleted.

(iii) Casual Labour;

(iv) Contract Officer; and

(v) Persons born on Contributory Provident Fund Establishment.

(g) The entire service rendered by an employee as work charged shall be reckoned towards retirement benefits provided—

(i) such service is followed by regular employment;

(ii) there is no interruption in the two or more spells of service or the interruptions fall within condonable limits; and

(iii) such service is a whole time employment and not part-time or portion of day.”

A bare perusal of the above Rule would show that the daily wage service, which an employee has rendered prior to the regularization of his service, and for which he is paid by the State, is liable to be counted for the purpose of the pensionary benefits. The said Rules came for interpretation before this Court in *Kesar Chand's case (supra)*, wherein Full Bench of this Court while interpreting the said Rule held that the employee who has rendered the service on daily wage basis prior to his regularization of his service, the said daily wage service is to be counted as a qualifying service for computing the pensionary benefits. The relevant paragraph of the said 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 workcharged 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 se 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.”

The respondents have not denied daily wage service rendered by the petitioner from 01.08.1990 till 31.12.1999. Rather no reason has been given and no rule has been quoted while declining the benefit of counting the daily wage service as a qualifying service for the grant of pensionary benefits in the impugned order dated 02.04.2016 (Annexure P-6) which has

been passed by respondent No.4.

The case of the petitioner is squarely covered not only under Rule 3.17-A but also under the judgment in *Kesar Chand's case (supra)*, where the said Rule has been interpreted.

The objection which has been raised by the learned State counsel that there has to be a sanctioned post even for working on daily wage basis so that the daily wage service can be computed as a qualifying service. This is not correct interpretation of Rule 3.17-A. The reliance is being placed upon the instructions, which has been issued on 17.03.2010 to Rule 3.17-A. Rule 3.17-A as reproduced above, has already been considered by the Full Bench in *Kesar Chand's case (supra)* and it has been held that the daily wage service is liable to be computed as a qualifying service for the grant of pensionary benefits. The existence of a regular post, even for discharging the daily wage service, is not required for counting the daily wage service as a qualifying service for the grant of pensionary benefits. Furthermore, if an employee is continuously working for a period of ten years on daily wage basis, it shows that the work for the post existed and if the work for the post existed, it has to be interpreted that the respondents were liable to create a post. Non creation of the post by the respondents, though the work existed and petitioner continued working, cannot be read in favour of the respondents to deny the benefit of daily wage service for a period of ten years, to be counted as a qualifying service for the grant of pensionary benefits. Therefore, the objection taken by the respondents cannot be sustained, is hence rejected. Further, the interpretation being given to the instructions dated 17.03.2010 by the counsel for the respondents is not correct. As per the said instructions, the

service, which an employee was required to render should be a type of job, for which the regular post should have been sanctioned i.e. Chowkidar etc. It is not required that the employee should have worked against the sanctioned post. The only requirement is that the employee should have been discharging the duties of the post, in nature of which there should be a regular sanctioned post in the department.

It is not denied by learned counsel for the respondents that there existed the post of Chowkidar in the school of which post, the petitioner was discharging the duties and therefore, it cannot be said that the petitioner does not fulfill the requirement of the condition, which is being put forward for raising objection.

The writ petition is allowed. The impugned order is set aside. The respondents are directed to grant the petitioner the benefit of daily wage service for computing the pensionary benefits. Let the pensionary benefits of the petitioner be re-fixed in terms of this order by taking into consideration the daily wage service which the petitioner has rendered from 01.08.1990 till 31.12.1999 within a period of two months from the receipt of certified copy of this order and the difference of the benefits in monetary terms be released to the petitioner within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

August 29, 2019
harsha

Whether speaking/reasoned: Yes
Whether reportable: Yes