

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

(224)

CWP-13651-2016

Decided on: September 25, 2019.

KRISHAN KUMAR

.... Petitioner

Versus

STATE OF HARYANA AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Kait, Advocate
for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

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HARSIMRAN SINGH SETHI, J.

In the present writ petition, the grievance, which is being raised by the petitioner is, that his total length of service has not been taken into consideration as the qualifying service for computing the pensionary benefits and the service, which the petitioner rendered on contract basis, prior to regularization of his services, has been excluded from the zone of qualifying service, which is contrary to the rules governing the service as well as the settled principles of law.

Petitioner was appointed as a Conductor on contractual basis on 16.01.1994 in the Haryana Roadways. Petitioner continued working on contract basis till 30.04.2002, when his services were regularized, and thereafter, the petitioner worked on regular basis till he was compulsorily

retired on 05.11.2015. After the compulsory retirement, the benefits of the petitioner for which he became entitled after retirement, were computed and his qualifying service for the grant of those benefits was taken from 30.04.2002 onwards and not from 16.01.1994 when the petitioner was appointed on contractual basis.

The prayer of the petitioner in the present writ petition is that petitioner be granted the benefit of service rendered on contractual basis from 16.01.1994 till 30.04.2002 by counting the same as a qualifying service for computing the pensionary benefits.

Upon notice of motion, respondents have filed the reply wherein, it has been stated that the contractual service is not to be counted as a qualifying service keeping in view the provisions of the Rules governing the service and only the benefit of regular service can be granted to the petitioner and in the present case, which benefit has already been extended to the petitioner.

Learned counsel for the respondent has stated that only the daily-wages service as envisaged under Rule 3.17-A of the Punjab Civil Services Rules (as applicable to Haryana) is to be taken into account as a qualifying service for the grant of pensionary benefits.

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

It is a matter of fact that the petitioner was appointed on contract basis on 16.01.1994. It is also not disputed by the respondents that the petitioner continued working till 30.04.2002 when his services were

regularized by the respondents and thereafter, petitioner was compulsorily retired from service on 05.11.2015.

The question of law as to whether the service rendered on contract basis can be treated as a qualifying service under Rule 3.17-A of the Punjab Civil Services Rules (as applicable to Haryana) came up for consideration before this Court while deciding CWP No. 14088 of 2012 (O&M) decided on 09.10.2013 titled as “Sat Parkash Vs. State of Haryana and others”,. This Court, while interpreting Rule 3.17-A (a) as well as (i) of the Punjab Civil Services Rules (as applicable to Haryana) held that there is no difference between daily-wage service or ad hoc service or contractual service and therefore, the service rendered by an employee on contractual basis, prior to his regularization, is also to be treated as a qualifying service for computing the pensionary benefits. The relevant portion of the said judgment in Sat Parkash case (supra) is as under:-

“Counsel for the petitioner has argued that the respondents have misdirected themselves and there is no warrant for the proposition that only daily wage or adhoc service can be counted. In this connection, he has placed reliance on rule 3.17-A(a) and (i) of the Punjab Civil Services Rules (as applicable to Haryana), Volume II, which is to the following effect :-

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

Xx xx xx xx

(i) Persons paid from contingencies; provided that half of the period of service of such persons paid from contingencies rendered from 1st January, 1973 onwards for which authentic record of service is available will count as qualifying service

subject to the following conditions : xx xx xx”

A perusal of the above provision makes it clear that no distinction is drawn between daily wage service/adhoc service or contract service. Rather, the rule is extremely wide in terms since it mentions 'all' service. Consequently, the contention of counsel for the respondents that the Full Bench decision of this Court in Kesar Chand vs State of Punjab, 1988 AIR (Punjab) 265, and the decision in Mulakh Raj & another vs Dakshin Haryana Bijli Vitran Nigam Limited and another, 2007(1) SLR 860 are not applicable to the present case, cannot be held to be correct. The basis of the aforesaid decisions would be squarely attracted to the present case and just because those decisions happened to be the decisions relating to daily wage employees would not mean that the benefit thereof would not be applicable to contractual employees especially in view of wide definition of 'service' mentioned in rule 3.17-A(a) of the said Rules. Consequently, it has to be held that the petitioner is entitled for counting of his contractual service for the purpose of pension, in terms of rule 3.17-A(a) and (i) quoted above.

Resultantly, this writ petition is allowed and the respondents are directed to compute the pension of the petitioner and start paying it to him within three months from the date of receipt of a certified copy of this order. They are also directed to release the arrears within the aforesaid period. The petitioner would further be entitled to interest on the amount of arrears @ 8% pa w.e.f 1.7.2011 till the date of payment. Since the petitioner had to approach this Court on two occasions to get his pension released, he would also be entitled to costs of ₹ 20,000/-, which shall also be paid to him within the aforesaid period. ”

In the present case, the petitioner is also similarly situated employee as Sh. Sat Parkash who was working in the same Department.

The only difference is that Sh. Sat Parkash was a driver, whereas, the

petitioner was a conductor. Once the benefit of contractual service has been extended to Sh. Sat Parkash, the same cannot be denied to the petitioner. Counsel for the respondent has not been able to point out any ground which differentiate the petitioner from Sh. Sat Parkash for the grant of benefit of service rendered on contractual basis prior to regularization to be treated as qualifying service.

Keeping in view the above, the present writ petition is allowed and the petitioner be granted the benefit of service rendered on contractual basis from 16.01.1994 till 30.04.2002 as qualifying service while computing his pensionary benefits.

Let the pensionary benefits of the petitioner be recomputed within a period of 02 months from the receipt of certified copy of this order and the difference of the amount for which the petitioner will be entitled for, be released to the petitioner within a period of 01 month thereafter.

Petitioner will also be entitled for interest on the said payment for the reason that once this Court had already decided a question of law that the contractual service is to be taken as a qualifying service by interpreting the Rules governing the service in **Sat Parkash's case (supra)** on 09.10.2013, the respondents were under obligation to grant the same benefit to the petitioner without forcing him to approach this Court. A Division Bench of this Court while deciding the case of **Satbir Singh Vs. State of Haryana, 2002 (2) SCT 354**, has held that once a question of law has been decided by a competent Court of law and has attained finality, the benefit of the same should be given to all the employees without forcing them to approach this

Court. Relevant paragraph of the judgment is as under:-

*“When judgments attain finality to which the State is a party, duty is casted upon the State to grant relief to its employees who are similarly situated and on identical facts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is not necessary for the State to require each one of its employees to approach the Courts of law for grant of a relief which the State ought to grant to the employees in normal course of its administration, particularly, the cases of the kind afore-referred. Such principles is well known and accepted for years now. By referring to few judgments we would only predicate the principle with greater emphasis of its application in the day-to-day affairs of the State. In the case of **Dr. (Mrs.) Santosh Kumari v. Union of India and others, JT 1994 (7) SC 565 : 1995(1) SCT 527 (SC)** the Hon'ble Apex Court held as under:-*

“The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means to approach the Court.”

The respondents in the present case did not grant the benefit to the petitioner in respect of the interpretation given by this Court that the contractual service rendered by an employee prior to the regularization is also to be treated as a qualifying service for computing the pensionary benefits while deciding **Sat Parkash case (supra)** and forced the petitioner to approach this Court to seek the same benefit. On the day of retirement of the petitioner, the said law was applicable and the respondents were bound to follow the same. Therefore, the petitioner will also be entitled for interest

@ 9% per annum on the amount which will be calculated under this order from the date the petitioner retires till the amount is actually paid to the petitioner. The said amount will also be released within the period mentioned above.

The writ petition stands allowed in the above-said terms.

**(HARSIMRAN SINGH SETHI)
JUDGE**

September 25, 2019
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No