

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 122 of 2017

Date of decision : 19.11.2019

Mahabir Singh

....Petitioner

Versus

Haryana State Agriculture Marketing Board and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. B.K. Bagri, Advocate for the petitioner.

Mr. V.K. Kaushal, Advocate for the respondents.

Harsimran Singh Sethi, J. (Oral)

The grievance, which is being raised by the petitioner in the present writ petition is that the daily wage service, which he had rendered from 12.04.1982 till 31.12.1990 prior to regularization of his service, has not been taken into account as a qualifying service while computing the pensionary benefits. The prayer of the petitioner is for directing the respondents to take into account the service, which the petitioner had rendered on daily wage from 12.04.1982 till 31.12.1990 as a qualifying service and re-compute his pensionary benefits and grant him the benefits of arrears alongwith interest.

As per the facts mentioned in the writ petition, petitioner was

appointed as a Cattle Squarer on 12.04.1982 on daily wage basis. Petitioner

continued working till 31.10.1983 when his services were terminated and petitioner raised an industrial dispute, which was decided in favour of the petitioner vide Award dated 31.07.1987. After the Award, petitioner was reinstated and the services of the petitioner were regularized w.e.f. 01.01.1991. Thereafter, petitioner was promoted to a Class-III post and he continued working on Class-III post till he retired on attaining the age of superannuation on 31.12.2014. The claim of the petitioner is that he has only been given the benefits of qualifying service from 01.01.1991 till 31.12.2014, whereas the petitioner is entitled for calculating the service which he had rendered on daily wage basis as a qualifying service for computing his pensionary benefits.

Upon notice of motion, respondents have filed the reply and in the reply, they have objected the claim of the petitioner on the ground that there was no regular post against which the petitioner was working while performing the duties on daily wages basis and, therefore, the case of the petitioner is not covered under Rule 3.17 (A) of the Punjab Civil Services Rules Vol. II for taking into account the daily wage service as a qualifying service for computing the pensionary benefits.

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

While interpreting Rule 3.17(A), the Full Bench of this Court while deciding '**Kesar Chand Vs. State of Punjab and others**', AIR 1988 **Punjab 265** has held that the daily wage service followed by the regular service is to be counted as a qualifying service for the grant of pensionary benefits. Rather the Full Bench of this Court laid down the law that under

all circumstances, daily wage service, if the same is being performed continuously by the employee, is to be taken into account as a qualifying service. 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 workcharged 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 workcharged 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 n 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 case 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.”

Recently, Hon'ble Supreme Court of India while deciding Civil Appeal No. 6798 of 2019 titled as ***Prem Singh Vs. State of Uttar Pradesh and others***, on 02.09.2019, relying upon ***Kesar Chand's case (supra)***, and other judgments on the issue of counting the daily wage service for computing the pensionary benefits held that the employee cannot be deprived of getting benefit of the said period by not counting the same for the pensionary benefits. The relevant paragraphs of the said judgment are under:-

“30. In the aforesaid facts and circumstances, it was unfair on the part of the State Government and its officials to take work from the employees on the work-charged basis. They ought to have resorted to an appointment on regular basis. The taking of work on the work-charged basis for long amounts to adopting the exploitative device. Later on, though their services have been regularized. However, the period spent by them in the work-charged establishment has not been counted towards the qualifying service. Thus, they have not only been deprived of their due emoluments during the period they served on less salary in work charged establishment but have also

been deprived of counting of the period for pensionary benefits as if no services had been rendered by them. The State has been benefitted by the services rendered by them in the heydays of their life on less salary in work-charged establishment.

31. *In view of the note appended to Rule 3(8) of the 1961 Rules, there is a provision to count service spent on work charged, contingencies or non pensionable service, in case, a person has rendered such service in a given between period of two temporary appointments in the pensionable establishment or has rendered such service in the interregnum two periods of temporary and permanent employment. The work-charged service can be counted as qualifying service for pension in the aforesaid exigencies.*

32. *The question arises whether the imposition of rider that such service to be counted has to be rendered in-between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularization had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in Note to Rule 3 (8) of 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularization. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period*

remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.

33. *As it would be unjust, illegal and impermissible to make aforesaid classification to make the Rule 3(8) valid and non discriminatory, we have to read down the provisions of Rule 3 (8) and hold that services rendered even prior to regularization in the capacity of work-charged employees, contingency paid fund employees or non-pensionable establishment shall also be counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment.”*

The case of the petitioner is squarely covered by the aforesaid judgments in the cases of ***Kesar Chand (supra)*** and ***Prem Singh (supra)*** as the petitioner was working with the respondents continuously except the four years break and after the termination of the services of the petitioner, he was reinstated in service with continuity of service, therefore, service of the petitioner from 12.04.1982 till 31.12.1990 is to be treated as continuous service.

There is no requirement of a sanctioned post for appointing a person on daily wage. The objections, which have been taken by the respondents that in the absence of a regular sanctioned post, benefit of daily wage service, which the petitioner had rendered, cannot be granted, is not

supported by the Rules governing the service. According to Rules, daily wage service is to be taken into account as a qualifying service for computing the pensionary benefits. Rules nowhere provide that only daily wage service, performed against a regular post is to be taken as a qualifying service for computing the pensionary benefits, hence, the objection raised by the respondents is contrary to the Rules governing the service and is accordingly rejected.

In view of the above, claim of the petitioner is allowed being squarely covered by the above said judgment of the Full Bench of this Court in ***Kesar Chand's case (supra)*** as well as judgment of the Hon'ble Supreme Court of India in ***Prem Singh's case (supra)*** and direction is issued to the respondents to grant the petitioner the benefit of daily wage service rendered by the petitioner from 12.04.1982 till 31.12.1990 as a qualifying service and re-compute the pensionary benefits of the petitioner and grant him the arrears of the pensionary benefits.

Let this order be complied with within a period of three months from the date of receipt of certified copy of this order and the benefits so calculated shall be released to the petitioner within a period of one month thereafter.

Writ petition is allowed in above terms.

November 19, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*