

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

CWP-12944 of 2017

Date of decision: 31.10.2019

Laxmi Narain

.... Petitioner

versus

State of Haryana and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.S. Sangwan, Advocate
for the petitioner (s).

Mr. Safia Gupta, AAG, Haryana.

HARSIMRAN SINGH SETHI, J.

In the present writ petition, the grievance of the petitioner is that the work charge/daily wages service, which the petitioner had rendered, starting from August, 1988 till his services were regularised on 01.10.2003 has not been taken into consideration as qualifying service while computing his pensionary benefits by the respondents.

The facts as stated in the writ petition are that the petitioner was appointed as Mali in August, 1988 with respondent No.3. He continued working as such till 13.12.1997, when his services were terminated by the respondent No.3. Petitioner raised an industrial dispute under the Industrial Dispute Act, 1947, and the claim of the petitioner was allowed by the Labour Court vide order dated 17.12.2002 (Annexure P/1), wherein the action of the respondents in terminating the service of the petitioner was held to be bad and petitioner was reinstated in service with continuity in service with full back

wages. Thereafter, keeping in view the regularisation policy issued by the Government of Haryana, services of the petitioner were regularised w.e.f. 01.10.2003. Petitioner continued working with the respondents till he retired on attaining the age of superannuation on 31.07.2016. The grievance of the petitioner as raised in the present writ petition is that the daily wages service, which he rendered with the respondents from August, 1988 till October, 2003 has not been taken into account as qualifying service while computing pensionary benefits, which act of the respondents is contrary to the law laid down by a Full Bench of this Court in Kesar Chand vs. State of Punjab AIR 1988 Punjab, 265 .

Upon notice of motion, the respondents have filed reply. In the reply, respondents have stated that there is no record available to ascertain whether petitioner had worked with respondents from August, 1988 till December, 1997 and with regard to the period from 1.1.1998 till 30.09.2003, daily wages service rendered by the petitioner has been taken into account as qualifying service and the pensionary benefits of the petitioner has been revised and the arrears of the pensionary benefits under various heads have already been released to the petitioner. Therefore, the present writ petition has been rendered infructuous. Relevant para of the reply filed on behalf of respondent No.1 to 5 is as under:-

“That the contents of para No.2 of the writ petition are wrong, not admitted and hence denied except to save his engagement as daily wage casual labourer by local forest guard for seasonal plantation work from time to time keeping in view the exigency of plantation work and availability of budget and no appointment letter was issued in this respect. It is further submitted that it is wrong that the petitioner was engaged as Mali in the month of August 1988 in the Dadri Range through concerned Employment Exchange. If the petitioner was engaged through employment exchange in August 1988, he should have submitted strict proof in this regard. Rest of the contents of this para is wrong and hence denied.

However, the award dated 17.12.2002 (Annexure P/1) passed by the Ld. Industrial Tribunal-cum- Labour Court, Rohtak in favour of petitioner and relief granted to the petitioner is not denied.

Learned counsel for the petitioner does not dispute the assertions of the respondents that from 1.1.1998 till 30.09.2003 daily wages service has been taken into account as qualifying service by the respondents and the pensionary benefits of the petitioner has been revised and released as well, but, contends that the petitioner is entitled for counting the total daily wages service, which he had rendered from August 1988 till 31.12.1997 as qualifying service as well.

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

The only question which arises for determination in the present writ petition is whether the petitioner had worked on daily wages as Mali with the respondents from August, 1988 till December, 1997 or not. According to the respondents, there is no record available with them to come to the conclusion that whether the petitioner had worked on daily wages basis from August, 1988 till December, 1997 and, therefore, the benefit of said daily wages service, which is being claimed by the petitioner cannot be allowed.

Infact, the respondents have totally ignored the award dated 17.12.2002 (Annexure P/1), which has come in favour of the petitioner in this regard. In the award, the Labour Court has clearly established that the petitioner had worked as Mali with respondents from August, 1988 till December, 1997 when his services were terminated by the respondents. The relevant paragraph of the award is as under:-

6. "As per WW-1 Laxmi Narain he was appointed as Mali in 1988. As per he was appointed against permanent post. His services were terminated in 1998 without giving any notice, notice pay and retrenchment compensation. The petitioner worked from 1988 to 1998 continuously. His work and conduct was satisfactory. The management retained junior workers after termination of services of petitioner. Documents Ex.M-1 to Ex.M-3 above the presence of petitioner.

7. This witness was cross-examined by the learned DDA but nothing had come in the cross-examination to show that the petitioner was not telling the truth. He denied the suggestion put to him that he had not worked for more than 240 days or that no junior workmen were retained by the management.

9. Now coming to the next whether services of petitioner were terminated in accordance with law or not? The unrebutted testimony of petitioner had he worked for the period from 1988 to 1998 and the management has not rebutted the plea taken in the claim statement. At the time of arguments, the learned DDA for the management took the plea that the petitioner had not been able to prove that he had worked for 240 days in a calendar year preceding the date of termination of his services. Similar controversy had gone before Hon'ble High Court in case Shila Devi vs. Presiding officer, Labour Courts, Batinda and others 1988 (2) (L&S) 5 (DB) therein law was laid down that if the employer resists the claim of the workmen and invokes section 2 (ee) (bb) burden lies on the employer to show that though the employee not worked for 240 days in twelve months prior to termination of his services. It has also to be given by the employer that the workmen had been employed for specified work and job which was being performed by the employer is no more required. Again identical facts of case in hand, the management has not been able to prove that the petitioner had worked for more than 240 days in a year the petitioner has been able proved that he had worked for more than 240 days in one calendar year preceding the date of his termination."

A bare perusal of the above findings would show that it has been held by the competent Court of law that petitioner was in service, starting from 1988, which fact remained unrebutted during the proceedings before the Industrial Tribunal-cum-Labour Court. Once, these findings have attained finality and the award has already been implemented by the respondents themselves, the respondents cannot argue that there is no record of the petitioner available with them that he worked on daily wages from

August, 1988 till December, 1997, the benefit of which service has not been given to the petitioner as qualifying service while calculating his pensionary benefits.

Learned counsel for the respondents is unable to dispute that according to the findings given by the Labour Court, which has already been accepted by the department that the petitioner had rendered daily wages service from August, 1988 till December, 1997 when his services were terminated. Under these circumstances, action of the respondents in excluding the said period as a qualifying service is contrary to the facts and findings, which have been recorded by the competent Court of law and have attained finality.

Keeping in view the facts and circumstances mentioned earlier, the claim of the petitioner is allowed. Respondents are directed to give the petitioner benefit of daily wages service starting from August, 1988 till December, 1997 as well by treating the same as qualifying service. The pensionary benefits be recalculated and the arrears be released to the petitioner. Counsel for the respondents states that petitioner is to deposit provident fund along with interest for the period of daily wages service, which he is claiming to be counted as qualifying service.

Learned counsel for the petitioner states that the said amount be deducted from the arrears, which the petitioner will become entitle upon grant of benefit of daily wages service as qualifying service, starting from August, 1988 till December, 1997. Counsel for the respondents agrees to the proposal given by learned counsel for the petitioner.

Let this order be complied with within a period of two months

from the date of receipt of certified copy of this order.

31.10.2019

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(HARSIMRAN SINGH SETHI)
JUDGE

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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |