

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 20652 of 2016
Date of Decision : 18.01.2019

Sh. Tarsem Singh

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. C.L. Premy, Advocate with
Ms. Amarjit Kaur, Advocate for the petitioner.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the prayer is for calculating the ad-hoc service which the petitioner had rendered as a Panchayat Secretary from 04.09.1978 till 08.07.1981 as a qualifying service for computing the pensionary benefits.

As per the averments made in the writ petition, the petitioner was appointed as a Panchayat Secretary on 04.09.1978. Initially, the petitioner was appointed on ad-hoc basis and the services of the petitioner were regularized on 08.07.1981. After the regularization of the services, the petitioner was promoted as Panchayat Officer in the year 1994 and ultimately retired as such on 30.06.2012.

In the present writ petition, two fold grounds have been made by the petitioner. The first one is that the ad-hoc service rendered by the

petitioner as Panchayat Secretary from 04.09.1978 till 08.07.1981 has not been taken into account as a qualifying service for computing the pensionary benefits for which the petitioner is entitled for as per the law laid down by the Full Bench of this Court in ***Kesar Chand Vs. State of Punjab and others, 1998(2) PLR 223.***

The second ground which has been raised by the petitioner is that even though the petitioner retired on 30.06.2012, release of the pensionary benefit was delayed without any justification and for the delayed period, the petitioner is entitled for interest as per the judgment of Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab, 1997 (3) SCT 468*** and judgments of this Court in the cases of ***Fateh Singh Vs. UHBVNL and others***, passed in CWP No. 37775 of 2018, decided on 20.12.2018 and ***Prem Devi Vs. State of Haryana and others***, passed in CWP No. 19670 of 2016, decided on 14.12.2018.

Notice of motion was issued on 03.10.2016 upon which the respondents appeared and filed their reply. In the reply, the respondents have mentioned that the petitioner is entitled for the service benefit only after his regularization and the service which the petitioner had rendered on ad-hoc basis from 04.09.1978 till 08.07.1981 cannot be taken into account for calculating the total qualifying service. In respect of the delayed payment, no justification has been given and only statement is made that all the benefits for which the petitioner was entitled for, have already been released to him.

I have heard learned counsel(s) for the parties and have gone through the record.

In respect of the first prayer, which has been made by the

petitioner for taking into consideration the ad-hoc service which the petitioner had rendered from 04.09.1978 till 08.07.1981 as a qualifying service for computing the pensionary benefits, the case of the petitioner is covered by the judgment in ***Kesar Chand's case (supra)***. Full Bench of this Court has already held that an employee is entitled to count his ad-hoc service as a qualifying service after the regularization of his service. In the present case, the ad-hoc service of the petitioner from 04.09.1978 till 08.07.1981 is followed by the regularization of his service, which was done on 08.07.1981. The relevant paragraph of judgment of the Full Bench of this Court in ***Kesar Chand's case (supra)*** 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 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 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.”

This Court has followed the said Full Bench in number of cases and it is a settled principle of law that ad-hoc service rendered prior to the regularization of the service is to be counted for computing the qualifying service. Therefore, the petitioner is entitled for counting the service which the petitioner had rendered from 04.09.1978 till 08.07.1981 as a qualifying service for computing the pensionary benefits.

The second question is with regard to the grant of interest on the delayed payments, for which, no justification has been given by the respondents. In para 5, the petitioner has given the date(s) on which the payments for various heads of retiral benefits, were made to the petitioner.

As per the averments made in para 5 of the writ petition, which have not been denied by the respondents, leave encashment amounting to ₹3,77,850/- was paid to the petitioner on 13.06.2013 i.e. after expiry of one year of his retirement. CPF amounting to ₹4,49,282/- was paid to the petitioner on 14.01.2015 i.e. approximately after two and half years of the retirement. Gratuity amounting to ₹5,23,776/- was paid to the petitioner on 10.04.2015 approximately after three years and pension was paid to the petitioner on 23.06.2016 after an expiry of four years of the retirement. Once no justification has been given by the respondents for the delay in payment of retiral benefits, as per the law settled by the Full Bench of this Court in ***A.S. Randhawa's case (supra)***, the petitioner will be entitled for the interest on the retiral benefits. The relevant paragraph of the said judgment is as under :-

“Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of the money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement.”

In view of the above, it is directed the petitioner is entitled for

interest @ 9% per annum from the date, the amount became due till the same was actually released to the petitioner.

The writ petition is allowed. The respondents are directed to take into account the service rendered by the petitioner on ad-hoc basis as Panchayat Secretary from 04.09.1978 till 08.07.1981 as a qualifying service and re-calculate his pensionary benefits by granting the said benefits. The said exercise should be done by the respondents within a period of two months from the date of receipt of certified copy of this order. The respondents shall calculate the arrears for which the petitioner will be entitled for and the same shall also be paid to him alongwith interest as directed above within a period of two months thereafter.

The writ petition stands allowed in above terms.

January 18, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*