

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 21875 of 2016
Date of decision : 21.11.2019

Balo Devi @ Bano Devi

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ranjit Sharma, Advocate for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Mr. Gian Chand Garg, Advocate for respondent No. 3.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the claim of the petitioner is for taking into account the daily wage service as a qualifying service for computing the pensionary benefits, which has been declined by the respondents vide impugned order dated 12.03.2015 (Annexure P-5). The prayer of the petitioner is for granting the petitioner the benefit of daily wage service, which the late husband of the petitioner had rendered from 01.01.1984 till 31.03.1996 by treating the same as a qualifying service.

The facts as mentioned in the writ petition are that the husband of the petitioner joined as a Temporary Beldar in the Office of Improvement Trust, Amritsar on 01.01.1984. He kept on working as such when his

services were regularized by the respondents on 26.03.1996. After rendering continuous service, husband of the petitioner retired on attaining the age of superannuation on 30.04.2000. Respondents while calculating the pensionary benefits of the petitioner only treated the regular service as qualifying service and the daily wage service was not taken into account as a qualifying service for computing the pensionary benefits. Husband of the petitioner approached this Court by filing CWP No. 11674 of 2001 titled as ***Sat Guru Sharan Vs. State of Punjab and others***, which was disposed of by this Court on 05.12.2013 (Annexure P-4) with a direction to decide the claim of the petitioner for the grant of benefit of daily wage service as a qualifying service for computing the pensionary benefits. In pursuance to the said direction issued by this Court, the respondents passed an order on 12.03.2015 (Annexure P-5) declining the benefit of daily wage service rendered by the petitioner from 01.01.1984 till 31.03.1996 to be treated as a qualifying service for computing the pensionary benefits. This order is under challenge in the present writ petition.

Upon notice of motion, respondent No. 3 has filed the reply in which, no valid justification has been given as to why the daily wage service, which the late husband of the petitioner had rendered, cannot be taken into account as a qualifying service for computing the pensionary benefits. The only reason assigned is that the regular service, which the late husband of the petitioner had rendered, has been taken into account and there is no provision to count 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 the able assistance of learned counsel for the parties.

The employees of the Municipal Committee, Municipal Corporations as well as the Improvement Trust are governed by the Punjab Municipal Employees Pension and General Provident Fund Rules, 1994 (hereinafter referred to as '1994 Rules') for the grant of the pensionary benefits. Under 1994 Rules, the qualifying service has been defined. The relevant Rule 2(j) of 1994 Rules is as under:-

“2(j) 'Qualifying service' means the service rendered under a committee for which an employee is paid from the municipal fund and shall include any service rendered under the Government of Punjab, an Improvement Trust, a Corporation or any other Public Sector Undertaking immediately before joining the service;”

A bare perusal of the above Rule would show that the qualifying service means the service rendered under the Committee for which an employee is paid from the Municipal Fund and shall also include any service rendered under the Government of Punjab, an Improvement Trust, a Corporation or any other Public Sector Undertaking immediately before joining the service. It is clear that the daily wage service, which the husband of the petitioner rendered, was with the respondent-Improvement Trust and the respondent-Municipal Trust paid the husband of the petitioner salary for the said daily wage service out of its own funds. No differentiation has been carved out under the rules governing the service between the daily wage service and the regular service while defining the term “qualifying service”. Once no differentiation has been carved out in

Rule 2(j) of 1994 Rules, the daily wage service rendered by the late husband of the petitioner cannot be ignored while calculating qualifying service for computing the pensionary benefits.

Even otherwise, under Rule 13 of 1994 Rules, Punjab Civil Services Rules are to apply. The relevant Rule 13 is as under:-

“13. Punjab Civil Services Rules also to apply :- Any matter relating to Pension and General Provident Fund which is not specifically covered under these rules, shall be governed and regulated by the provisions of the Punjab Civil Services Rules of any other corresponding rules on the subject.”

Once as the Punjab Civil Services Rules are applicable, Rule 3.17A of the Punjab Civil Services Rules which defines the qualifying service, becomes applicable upon the husband of the petitioner for computing the pensionary benefits. The said Rule 3.17A has already been interpreted by the Full Bench of this Court in '**Kesar Chand Vs. State of Punjab and others**', AIR 1988 Punjab 265, wherein, the Full Bench has held that the daily wage service, which an employee has rendered prior to the regularization of his/her services, is liable 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 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.”

The question as to whether the daily wage service should be counted as a qualifying service for computing the pensionary benefits also came up for consideration before the Hon'ble Supreme Court of India in Civil Appeal No. 6798 of 2019 titled as ***Prem Singh Vs. State of Uttar Pradesh and others***, on 02.09.2019, again while considering ***Kesar Chand's case (supra)***, and other judgments on the issue of counting the daily wage service for computing the pensionary benefits Hon'ble Supreme Court of India held that daily wage period cannot be counted as a qualifying service for computing 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.”*

A combined reading of the above would show that not only under '1994 Rules' but even under the Punjab Civil Services Rules, which are applicable in the present case, an employee is entitled to get the daily wage service to be treated as a qualifying service for computing the pensionary benefits. The action of the respondents in declining the said claim is contrary to the Rules as well as to the settled principles of law.

As the late husband of the petitioner was entitled for this benefit in the year 2010, when he superannuated but the said benefit was not granted and rather two litigation have been forced upon the petitioner and her husband, the petitioner will also be entitled for interest @ 9% per annum on the amount of arrears, for which the petitioner becomes entitled under this order. The said interest will be paid from the date of the retirement of the husband of the petitioner till the amount is actually released to the petitioner.

In view of the above, writ petition is allowed. Respondents are directed to treat the daily wage service period rendered by the late husband of the petitioner from 01.01.1984 till 31.03.1996 as a qualifying service and re-compute the pensionary benefits of the petitioner within a period of two

months from the date of receipt of certified copy of this order and release the arrears for which the petitioner becomes entitled upon re-computation. The payment for which the petitioner becomes entitled upon re-computation, be released to the petitioner within a period of one month thereafter.

November 21, 2019
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

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