

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-298 of 2016

Date of decision: 18.07.2019

Jagmail Singh

.... Petitioner

versus

Punjab State Power Corporation Ltd. and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. H.S. Saggu, Advocate
for the petitioner.

Mr. Harsh Garg, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J.

Grievance of the petitioner in the present writ petition is that the period of work charged service of more than four and half years, for which the petitioner served the respondents, has not been taken into consideration as qualifying service for computing the pensionary benefits. As per the averments made in the writ petition, the petitioner worked as work charged employee from 1.1.1984 till 10.08.1988 when he was appointed as Assistant Line Man (ALM) and his services were regularized. Counsel for the petitioner argues that he has only been given benefit of regular service, which has been taken as qualifying service but keeping in view the law laid down by the Full Bench of this Court in ***Kesar Chand Vs. State of Punjab and others, 1998(2) PLR 223***, work charged service, which the petitioner has rendered, should have also been taken into consideration.

Upon notice of motion, respondents have filed reply. In the reply, the respondents have only stated that in case the petitioner wanted his work charged service to be counted as qualifying service, he has to deposit contributions for the said period. Further, the petitioner has only approached this Court after period of eight years and, therefore, on the ground of delay and laches case of the petitioner is liable to be rejected.

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

The factum of *adhoc* service rendered by the petitioner from 1.1.1984 to 09.08.1988 has not been denied by the respondents. Once the petitioner has served the respondents on work charged basis, petitioner is entitled to count the said service as qualifying service. A Full Bench of this Court in ***Kesar Chand Vs. State of Punjab and others, 1998(2) PLR 223*** has categorically held that work charged service/daily wages service of an employee, followed by regular service is to be counted as qualifying service for grant of pensionary benefits. The relevant part 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 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 workcharged 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.

In view of the above reproduced judgment, the petitioner is held entitled for grant of benefit of four and a half years of service to be treated as qualifying service for computing the pensionary benefits.

The objection which has been raised by the counsel for the respondents with regard to the deposit of the contribution, the same is upheld. The petitioner is directed to deposit all the contributions of the said period i.e. four and a half years, so that the said period be taken as

qualifying service. The respondents shall calculate the amount, which the petitioner is liable to deposit on account of taking into consideration the work charged service from 1.1.1984 till 09.08.1988 and the said amount shall be deducted from the arrears, for which the petitioner is found entitled.

The second objection which has been taken by the respondents is qua delay. This Court is of the view that non-grant of pension, for which an employee is entitled for, is a continuous prejudice, which an employee suffers. For the delay to approach the Court, the relief can be modified. In the present case, the petitioner retired from service in the year 2009, whereas, the present writ petition is filed in the year 2016. Therefore, it is held that arrears for which the petitioner is found entitled, that too after deduction, will be restricted to three years and two months before filing of the present petition.

Petition stands disposed of in those terms.

(HARSIMRAN SINGH SETHI)
JUDGE

18.07.2019
aarti

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