

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

CWP-2290-2017

Date of Decision: March 06, 2020

Sewa Ram

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Surinder Kumar Daaria, Advocate, for the petitioner.

Mr. Apoorv Garg, DAG, Haryana, for the respondents.

RITU BAHRI, J. (ORAL)

Petitioner has approached this Court by way of instant writ petition, filed under Article 226 of the Constitution, seeking a writ in the nature of certiorari for quashing the impugned order dated 10.10.2016 (Annexure P-3), vide which for grant of retiral benefits, such as pension, gratuity and leave encashment etc., the period of service rendered by the petitioner has been restricted from 01.10.2003 to 31.05.2016 only. Further, prayer has been made commanding the respondents to count the period from 01.01.1987 to 01.10.2003 for the purposes of grant of pensionary benefits, when the petitioner rendered services as a daily wager.

Petitioner joined the respondent Forest Department, Haryana, as unskilled labourer on 01.01.1987 on daily wages. On 02.01.1999, his services were terminated and he raised an industrial dispute vide demand notice dated 02.02.1999. The matter was referred to the Industrial Tribunal-cum-Labour Court, Panipat, vide Reference No. 1430 of 1999.

The Tribunal answered the reference in favour of the petitioner, vide award dated 14.06.2002 (Annexure P-1), holding that the petitioner was entitled for reinstatement with continuity of service and full back wages from the date of demand notice, i.e. 02.02.1999. Implementing the award passed by the Tribunal, the petitioner was taken back in service and later on his services were regularised w.e.f. 01.10.2003. The petitioner was superannuated on 31.05.2016. The grievance of the petitioner is that though the service rendered by him as a daily wager is liable to be counted towards grant of pension and other retiral benefits, however, the respondents in an illegal and arbitrary manner, while passing the order dated 10.10.2016 (Annexure P-3), have restricted the period only from 01.10.2003, i.e. the date the petitioner was regularised into service, to 31.05.2016. Hence, the present petition.

On notice, a written statement has been filed on behalf of respondent Nos. 1 to 3 taking a stand that since the petitioner's services were regularized w.e.f. 01.10.2003, the period during which he had rendered service as a daily wager, cannot be counted for the purposes of grant of pension and other retiral benefits. It has also been pointed out that the petitioner had earlier approached this Court by filing CWP No. 8834 of 2004, seeking regularisation of service, but neither any prayer was made by the petitioner for counting the period of service during which he was working as a daily wager nor any such direction was issued by this Court while passing order dated 18.09.2004 (Annexure R-1). Hence, the present

writ petition is liable to be dismissed being hit by the principle of *res judicata*.

Learned counsel for the petitioner submits that the case of the petitioner is squarely covered by various judgments rendered by this Court, i.e. in the cases of **Kesar Chand v. State of Punjab**, AIR 1998 (Punjab) 265 (FB); **Ram Dia and others v. UHBVN Ltd.**, 2005 (4) SCT 387 (DB); and **Shamsher Singh v. State of Haryana and others**, 2016 (2) SCT 283 (SB), wherein it has been consistently held that the daily wage and work charge service period prior to regularization is liable to be counted for the purposes of gratuity and pension.

Learned State counsel has not been able to cite any judgment contrary to the above mentioned judgments.

Having heard learned counsel for the parties and gone through the record, this Court is of the considered view that the matter is no longer *res integra*. In **Kesar Chand's case (supra)**, the Full Bench of this Court while dealing with a similar controversy held as under:-

"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 of 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 are eligible for pension and those who started as work-charged employees and their service regularised subsequently, and the other is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work-charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness and for these 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 aforesaid view was further reiterated by this Court in the cases of **Ram Dia and others (supra)** and **Shamsher Singh (supra)**.

The respondents are denying the claim of the petitioner on the ground that in the earlier writ petition, i.e. CWP No. 8834 of 2004, the petitioner had not sought any relief for counting of service rendered as a daily wager, for the purposes of pension and the said petition was disposed of by this Court only with a direction to consider his claim for regularisation. I find no force in the stand taken by the respondents. When

the ratio of the aforementioned judgments are applied to the facts of the present case, the petitioner has a right that the period of service rendered by him before his regularisation be counted as qualifying service for the purpose of pension and other post retiral benefits. The petitioner has claimed that the period from 01.01.1987 to 01.10.2003 ought to have been counted for this purpose. However, perusal of the record shows that the Industrial Tribunal-cum-Labour Court, Panipat, while passing the award dated 14.06.2002 (Annexure P-1), held the petitioner entitled for reinstatement with continuity of service and full back wages from the date of demand notice, i.e. 02.02.1999.

In view of above, the present writ petition is allowed and a direction is issued to the respondents to count the daily wage service of the petitioner w.e.f. 02.02.1999 to 01.10.2003, for grant of pension and other post retiral benefits and pass appropriate orders within a period of three months from the date of receipt of a certified copy of this order.

(RITU BAHRI)
JUDGE

March 06, 2020

Pk Kapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO