

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

**CWP No.4251 of 2016 (O&M)
Date of decision : March 12, 2020**

Paramjit Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Alka Chatrath, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition, the petitioner, who is widow of Shri Swarn Singh, is claiming that her late husband should have been granted promotion to the post of Junior Technician as he was fully qualified for the said post, which request was rejected by the respondents vide letter dated 09.07.2014 (Annexure P-18) on the ground that there is no promotion avenue from the post of Sweeper to that of Junior Technician keeping in view the Punjab Roadways (Workshop) Rules, 2009. The further prayer of the petitioner is that the total length of service rendered by her late husband, Shri Swarn Singh with the respondents has not been taken into consideration as a qualifying service for computing the pensionary benefits for which the petitioner became entitled after the death of her late husband, Swarn Singh, who unfortunately died while in service on 02.12.2015.

The prayer of the petitioner is that the daily wages service rendered by the late husband of the petitioner with the respondents be treated as qualifying service for computing the pensionary benefits and

upon re-fixation of the pensionary benefits, the petitioner be released the arrears along with interest.

As per averments made in the present writ petition, the petitioner claimed that her late husband was appointed as Motor Mechanic in the respondent-Department on 28.03.1982 on a consolidated salary of ₹500/- per month. The services of her husband were terminated by the respondents on 25.07.1985, which action was challenged by her late husband by approaching the Labour Court. The Labour Court passed an Award on 07.01.1998 by which the termination of the services of the husband of the petitioner was held to be unjustified. In the said Award, the husband of the petitioner was held to be appointed as a Sweeper and the Labour Court held him entitled for reinstatement with continuity of service as a Sweeper with 50% of the back wages from the demand notice dated 05.06.1990.

Keeping in view the Award dated 07.01.1998 passed in favour of late husband of the petitioner, he was allowed to join as a Sweeper on 24.08.1998. He continued working as such when the respondents passed an order regularizing his service on 25.04.2003. After the said date, he remained in service as a regular Sweeper till he unfortunately died while in service on 02.12.2015.

After the death of the husband of the petitioner, she requested for the release of the pensionary benefits for which she became entitled in respect of the services rendered by her late husband, namely, Shri Swarn Singh. The respondents calculated the pensionary benefits of the late husband of the petitioner and while calculating the same, only the regular

service, which he had rendered from 25.04.2003 to 02.12.2015 was taken as qualifying service. By treating the said qualifying service, the benefits were calculated and released to the petitioner.

Though, in the present writ petition, the petitioner is also praying for the grant of promotion to the late husband of the petitioner as Junior Technician, which request was declined by the respondents on 09.07.2014 (Annexure P-18) but at the time of hearing, learned counsel for the petitioner has restricted her claim only for treating the daily wages services rendered by the late husband of the petitioner as qualifying services and to revise the benefits for which the petitioner became entitled after the death of her husband.

Upon notice of motion, the respondents have filed the reply. In the reply, the respondents have stated that all the benefits for which the petitioner became entitled after the death of her husband on 02.12.2015 have already been released to him and it has been admitted by the respondents that the benefits, which have been released to the petitioner in respect of the services rendered by her late husband, only the services which Shri Swarn Singh had rendered on regular basis, have been taken into account.

Learned counsel for the respondents states that all the benefits for which the petitioner was entitled, have already been released to her and no further benefit is liable to be released to the petitioner.

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

A bare perusal of the Award passed by the Labour Court

(Annexure P-4) makes it clear that Shri Swarn Singh i.e. late husband of the petitioner worked continuously with the respondents from March, 1982 till his services were terminated on 25.07.1985. Further, by the Award dated 07.01.1998, the benefit of reinstatement in service with continuity of service with 50% back wages was allowed in favour of the late husband of the petitioner. The relevant paragraph of the Award which has already attained finality is as under:

“RELIEF:-

8. In view of my findings on the aforesaid issue, I hold that the workman is entitled to be reinstated with continuity of service as a Sweeper, with 50% back wages from the date of demand notice i.e. 5.6.90. The reference is answered accordingly. No order as to costs. The workman is directed to report for duty within 30 days of the publication on the award.”

Once, the benefit of reinstatement with continuity in service has been granted, then, the service which the late husband of the petitioner had rendered from the year 1982 onwards is to be taken into consideration as qualifying service for computing the pensionary benefits. Though, after the services of the late husband of the petitioner were terminated on 25.07.1985 and he was only reinstated in the service in the year 1998 but the period for which late husband of the petitioner remained out of service is to be treated as a qualifying service period keeping in view the Award passed by the Labour Court reproduced above, which has already attained finality.

The question of law raised in this writ petition is as to whether the daily wages services, which an employee had rendered is to be treated as qualifying service for computing the pensionary benefits has already been

settled by the Full Bench of this Court in **“Kesar Chand v State of Punjab and others”**, AIR 1988 PUNJAB 265, It has been held by the Full Bench that keeping in view the provisions 3.17(a) of the Punjab Civil Services Rules, the daily wages services rendered by an employee prior to the regular service, is to be counted as qualifying service for computing the pensionary benefits. The relevant portion of the 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 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 had 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 work-charged employees and their services regularised subsequently, and the others is 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 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.”

Keeping in view the **Kesar Chand's** case (*supra*), the service which the late husband of the petitioner had rendered from March 1982 till 25.04.2003, is to be treated as a qualifying service for computing the pensionary benefits. Non-grant of the benefit of the qualifying service from

March, 1982 till April, 2003 is contrary to the settled principle of law. Once, the rules governing the service have been interpreted by the Full Bench of this Court in **Kesar Chand's** case (*supra*) to the effect that the daily wages service rendered by an employee prior to regularization of his services, is to be treated as a qualifying service for computing the pensionary benefits, the petitioner is entitled for the benefits of the daily wages service, which her late husband had rendered from March 1982 till April 2003 as qualifying service to compute the pensionary benefits.

Learned counsel for the respondents has not been able to show anything contrary to the law settled by the Full Bench of this Court in **Kesar Chand's** case (*supra*). Further, the respondents have already implemented the Award passed by the Labour Court dated 07.01.1998 (Annexure P-4) according to which, the petitioner was reinstated in service with continuity in service, meaning thereby that it has to be deemed that the late husband of the petitioner continued in service uninterruptedly from March 1982 till he died on 02.12.2015. That being so, the total service which the late husband of the petitioner rendered from 28.03.1982 till 02.12.2015 is to be taken into account as a qualifying service for computing the pensionary benefits.

Keeping in view the above, the present writ is allowed. The respondents are directed to recalculate the pensionary benefits of the petitioner by treating the service rendered by the late husband of the petitioner from 28.03.1982 till 02.12.2015 as a qualifying service and after the re-calculation is done, the petitioner be given the benefits of arrears for which she become entitled under this order.

As the petitioner has been forced to approach this Court for the

grant of the relief, which is based upon the settled principle of law and existed at the time when the late husband of the petitioner died in December, 2015, the petitioner will also be entitled for interest @ 9% per annum. The interest will be calculated from January, 2016 onwards till the arrears are released to the petitioner.

Let the computation of the benefits for which the petitioner becomes entitled under this order be done within a period of two months from the date of receipt of certified copy of this order and the amount so calculated, be released to the petitioner within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

March 12, 2020

sarita

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No