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

CWP-15651-2016

Date of Decision: 05.08.2022

Hukam Chand

..... Petitioner

Versus

Managing Director, UHBVNL and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anandeshwar Gautam, Advocate,
for the petitioner.

Ms. Chhavi Sharma, Advocate,
for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, prayer of the petitioner is that the daily wage service, w.e.f. October, 1981 to February, 1987, and thereafter the work charge service, w.e.f. April 1987 to the year 1997, rendered by him with the respondent-Department, have not been taken into account as qualifying services for computing the pensionary benefits of the petitioner by the respondents, which act of the respondents is totally contrary to the rules governing the service of the petitioner as well as the settled principles of law.

As per the averments made in the present petition, the petitioner initially joined the respondent-Department on daily wage basis in October, 1981 and he continued working as such till February, 1987. Thereafter in

April, 1987, he was brought on work charge service by the respondent-

Department and he worked as such till the year 1997, when services of the petitioner were regularized as an Assistant Lineman in March, 1997 by the respondent-Department. The petitioner continued working as such till 31.03.2013, on which date he attained the age of superannuation and got retired.

The grievance of the petitioner is that while computing his pensionary benefits, the respondents only considered the regular service rendered by him as qualifying service for computing the pensionary benefits, which act of the respondents is totally arbitrary and contrary to the rules governing the services of the petitioner, coupled with the settled principles of law, and therefore, the respondents are under an obligation to grant the benefit of total length of service rendered by the petitioner, i.e. starting from October, 1981 till 31.03.2013, to be taken into account as qualifying service for computing the pensionary benefits.

After notice of motion, the respondents have filed the reply, wherein it has been conceded by them that the petitioner initially worked from the year 1981 to 1987 on daily wage basis and thereafter, on work charge basis from April, 1987 to the year 1997 with the respondent-Department, after which, the petitioner's services were regularized by the respondents.

Learned counsel for the respondents submits that as the petitioner never raised the claim for calculating the daily wage and work charge services rendered by him to be considered as qualifying services for computing the pensionary benefits, therefore, no benefit can be extended to the petitioner in this regard.

I have heard learned counsel for the parties and have gone

through the record with their able assistance.

The Rule 3.17 of the Punjab Civil Services Rules, adopted by State of Haryana, which rules are also adopted by the respondents, clearly states that the daily wage service/work charge service rendered by an employee prior to the regularization of his/her service is to be taken into account as qualifying service for computing the pensionary benefits. Not only this, even as per the judgment of the Full Bench of this Court passed in the case of *“Kesar Chand Vs. State of Punjab and others”*, AIR 1988 Punjab 265, the *ad-hoc* service/daily wage service/work charge service rendered by an employee, prior to the regularization of his/her service, is liable to be taken into account as a qualifying service for computing the pensionary benefits.

Once the daily wage service and work charge service rendered by the petitioner with the respondent-Department are not in dispute, there is no valid justification with the respondents to deny the petitioner's claim for treating the aforesaid services as qualifying services for computing the pensionary benefits. The only reason stated by the respondents to decline the said benefit to the petitioner is that the petitioner never opted for the grant of said benefit.

Nothing has been brought to the notice of this Court that any such instructions were ever brought to the notice of the petitioner that he was required to opt for the grant of benefit of the daily wage and work charge services rendered by him to be treated as qualifying services for computing the pensionary benefits, inspite of him already being eligible for the grant of said benefit, coupled with the settled principles of law. In the absence of any such information to the petitioner, not opting for the same

cannot be treated against the petitioner, who was working on a Class III post with the respondent-Department.

The said question of law has been enumerated in detail in the judgment passed by this Court in **CWP-7090-2017**, titled as “***Sant Ram Vs. State of Haryana and others***”, decided on 25.07.2022, as per which, any instruction, which has not been brought to the notice of an employee, cannot be used to his/her prejudice by the Department concerned. The relevant paragraphs of the said judgment is as under:-

“ x - x - x

*Keeping in view the above, it is incumbent upon the respondents to notify these instructions to all the concerned employees for their information, before the same can be implemented in a manner, which causes prejudice to them. Question with regard to the implemented instructions dated 06.08.1993 which were clarified by the circular dated 09.08.1994, came up for interpretation before this Court i.e. whether, the same can be relied upon to deny the benefit of adhoc/daily wage service to an employee for computing the pensionary benefits and that too without circulating the same or bringing the same to the notice of the concerned employee in **CWP No.17954 of 2004 titled as Dilwar Singh versus Haryana Power Generation Corporation Ltd. and others, decided on 16.01.2006.** The relevant paragraph 6 of the said judgment is as under:-*

“ 6. The claim of the petitioner for the grant of pensionary benefits is based on the instructions dated 6.8.1993 (Annexure P.1) and clarification dated 6.8.1994 (Annexure P.2). In terms of the instructions dated 6.8.1993 (Annexure P.1), the Haryana Government notification dated 4.2.1992

with regard to the counting of service rendered by workers in the work-charge capacity towards pensionary benefit scheme was adopted subject to conditions mentioned therein which inter alia include that an employee on regularisation from workcharge service to regular service is to submit an option within a period of three months from the date of regularisation or from the date of issue of the circular, whichever is later as to whether he/she intends to count the period of work-charge service rendered by him/her towards pensionary benefits or intends to continue to be a member of EPF. In case the option is not given within the stipulated period of three month, it would be presumed that he/she intends to continue to be a member of EPF. Further, that in case an employee opts for pensionary benefits he/she is to refund the entire amount of employer's share of contribution along with interest thereon towards their EPF in lump-sum for crediting to the Board's (HSEB) account. The employee's contribution along with interest has to be deposited with the Board (HSEB) for crediting to his/her General Provident Fund ('GPF'- for short). In terms of the subsequent instructions (Annexure P.2) certain clarifications were given on points that had been raised. One of the queries that was clarified was with regard to the same limit of three months fixed by the Board for submitting the option which expired on 5.11.1993 and there was a demand for extension of time limit for exercising the option. It was clarified that a period of three months from the date of issue of the clarification may be allowed to the employees to exercise their option for

availing the pensionary benefits to those who could not avail this opportunity earlier. In both the circulars dated 6.8.1993 (Annexure P.1) and 9.8.1994 (Annexure P.2), it has been provided that this may be got noted from all the employees who were to acknowledge the receipt of the letter. The petitioner claims that despite the said requirement of getting the instructions noted from the employees the same were not got noted from him. The claims of the petitioner in this regard for counting of work-charge service towards pensionary benefits is dependent on the fact whether he can be brought on to the pension scheme despite the fact that he has not given his option within the stipulated time as fixed in terms of the circular issued by the HSEB on 6.8.1993 (Annexure P.1) and 9.8.1994 (Annexure P.2). The relief in fact has been granted in other cases by this Court. A Division Bench of this Court in Mahinder Singh v. Executive Engineer and another, 2005 (4) SCT 633, to which one of us (S.S. Nijjar, J.) was a member, held that unless it is established that the circular issued for exercise of option was brought to the notice of the employee he cannot be denied from exercising the same in time merely because he did not do so immediately when the circular was issued. In the case of Lilu Ram v. State of Haryana, (C.W.P. No.2476 of 1997), decided on 9.10.1997, a Division Bench of this Court considered the case where the employee had not given his option for adopting the pensionary scheme and had failed to comply with the conditions imposed therein that is depositing the employee's share of contribution towards G.P.F

with interest upto date of award. It was held by this Court that respondents therein had not placed any material on record to show that the instructions issued had been got noted in writing from the petitioner in the said case. In the absence of any such material it was held that it cannot be assumed that the petitioner while in service knew about the contents of the instructions that had been issued. It was noticed that the circular in question specifically provided that : “these instructions may please be got noted from the employees and acknowledge the receipt of the letter.” In Hakam Singh, Driver v. Executive Engineer, HVPNL and another, (CWP No.12758 of 2000), decided on 29.5.2002 a Division Bench of this Court directed the respondents to allow the petitioners therein to avail the benefit of pensionary scheme as there was no proof that they were ever served on the basis of instructions regarding switching over to the pensionary scheme. In Darshan Singh v. Chief Accounts Officer, (CWP No.2402 of 1997), decided on 27.8.1997 a Division Bench of this Court allowed the writ petition for computation of the service rendered by the petitioner therein towards retiral benefits. The claim of the petitioner was resisted as he had not exercised his option to claim the benefit of service towards pension. It was, however, held that the amount deposited by the employer from the date of the appointment of the petitioner therein till his retirement along with interest shall be refunded by the petitioner. In Ram Dia v. Uttar Haryana Bijli Vitran Nigam Ltd. and another 2005 (4) SCT 387 a Division Bench of this Court in a case

regarding intimation to employee to opt for pension from EPF held that where there was no material to show that the circular for option was got noted in writing from the petitioner therein, it is to be inferred that the petitioner had no knowledge of the circular. Accordingly directions were issued to the authority to take the options and grant pension as per rules. In the case in hand also there is no material on record to show that the circulars dated 6.8.1993 (Annexure P.1) and 9.8.1994 (Annexure P.2) were brought to the notice of the petitioner and were got noted from him. Therefore, the declining of pension scheme to the petitioner on account of the fact that he failed to exercise his option is without basis. The petitioner would, however, be required to refund the entire amount of the employer's contribution alongwith interest for crediting to the Board's account. Besides, the employee's contribution alongwith interest has to be deposited with the Board for crediting to his GPF account in accordance with the circular dated 6.8.1993 (Annexure P.1). The question whether the petitioner is entitled to count the work-charge service rendered by him towards pensionary benefits is not res integra. A Full Bench of this Court in Kesar Chand and others v. State of Punjab and others, 1988 (5) SLR 25 held that work-charge service followed by regularisation is to be counted towards qualifying service for the purpose of pensionary benefits. The offending rule in the Punjab Civil Services declining the counting of work-charge service towards pensionary benefits was struck down by the Full Bench. Therefore, the petitioner would evidently

be entitled to count the work-charge service rendered by him from 8.12.1970 to the date of his regularisation on 22.9.1981 for the purpose of grant of pensionary benefits as this service was followed by regular service rendered by him till the date of his retirement on 30.6.2003.”

*Keeping in view the above, once these very instructions have already been interpreted by the Division Bench of this Court to mean that the instructions, which are being relied by the respondents to deny the claim to the petitioner should have been brought to the notice of each and every employee with receipt and in case of failure, same cannot be implemented to the disadvantage of the employee concerned, in the present case also, these instructions cannot be relied upon by the respondents as nothing has been produced before this Court by the respondents to show that the instructions being relied upon by the respondents were brought to the notice of the petitioner any time while he was in service. Mere issuance of instructions is not good enough in the facts and circumstances of this case especially in view of the judgment of the Division Bench of this Court in **Dilwar Singh's case (supra)** to deny the benefit of adhoc service/daily wage service to compute the pensionary benefits.*

*The same question came up before the Hon'ble Supreme Court of India in **Civil Appeal No.4903 of 2009 titled as Dakshin Haryana Bijli Vitran Nigam and others vs. Bachan Singh, decided on 30.07.2009** wherein, once again the same very instructions dated 06.08.1993 as well as amended instructions of 09.08.1994 came up for consideration as to whether, an employee can be denied the benefit of adhoc service on the basis of those very instructions. The Hon'ble*

Supreme Court of India held that unless and until those instructions are brought to the notice of the employee concerned, non-submitting of option, cannot be treated as a ground to deny the benefit of daily wage service to the said concerned employee. In the said case also, the respondents failed to produce any document to show that two instructions in question were brought to the notice of the concerned employee, the Hon'ble Supreme Court of India held the respondent employee therein entitled for the grant of benefit of daily wage service for computing the pensionary benefits. The relevant paragraph 26 of the said judgment is as under:-

“26. In view of the law as has been articulated in a large number of cases where this court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing by the respondent. In the absence of any such material it can well be inferred that the respondent had no knowledge about the options called by the appellants.”

Keeping in view the above mentioned facts as well as law, the instructions cannot be brought into operation against the petitioner to deny him the claim as nothing has been produced before this Court that at any given point of time the instructions being relied by the respondents were brought to the notice of the petitioner.

It is further not disputed that under the said rules, the adhoc service rendered by the employee is to

be counted as qualifying service for computing the pensionary benefits. That being so, merely on the ground that an employee has not given an option under the instructions dated 18.04.2014, his right to claim the said benefit under the rules, stands extinguished is not sustainable. The rules are on a higher pedestal than the instructions and any benefit accruing to an employee under the rules, has to be made admissible to the employee. The competence to take away the benefit envisaged under the rules can only be exercised by the employer by amending the rules in question, the instructions cannot be treated at par with the rule so as to take away the benefit admissible to the employee under the rule.

x - x - x ”

In the present case, nothing has come on record that any instructions were ever brought to the notice of the petitioner that he was required to opt for the grant of benefit with regard to the daily wage service and work charge service rendered by him to be treated as qualifying services for computing the pensionary benefits.

Keeping in view of the above, claim of the petitioner for treating the daily wage and work charge services as qualifying services for computing the pensionary benefits is covered by the aforesaid settled principles of law and is accordingly allowed. The respondents are directed to grant the said benefit to the petitioner and pensionary benefits of the petitioner be re-calculated accordingly and also the arrears, for which the petitioner becomes entitled for under this order, be also released in his favour within a period of two months from the date of receipt of the copy of this order.

The question which now arises for consideration before this

Court is whether the petitioner is also entitled for the grant of interest on the said arrears or not.

From the facts which have been stated hereinbefore, it is clear that on the day of retirement of the petitioner, he was entitled for the grant of benefit of taking into account the daily wage service and work charge service rendered by him as qualifying services for computing the pensionary benefits, which benefit has been allowed in his favour today by this Court. Despite the fact that the respondents had no right to deny the grant of said benefit to the petitioner at the time of his retirement, the said benefit was denied to him and the petitioner was made to run from pillar to post for the grant of said benefit and thereafter he was forced to approach this Court for the said purpose.

As per the settled principle of law laid down by the Full Bench of this Court while passing judgment in “A.S. Randhawa Vs. State of Punjab and others”, 1997(3) SCT 468, an employee who has not been released the pensionary benefits within a period of two months from superannuation, in case there is no impediment, becomes entitled for the grant of interest for the delay in releasing of the pensionary benefits. The relevant paragraph of the said judgment is as under:-

“ - x - x -

8. 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 his 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. ...

- x - x -"

Further, a co-ordinate Bench of this Court, while passing order in CWP-15867-2001 titled as **"J.S. Cheema Vs. State of Haryana and others"**, decided on 20.11.2013, held that even where an amount has been retained by a Department, which actually belonged to the employee, and has used the same to its benefit, and the employee has suffered prejudice due to the non-release of the said amount, the employee becomes entitled for the grant of interest, so as to compensate him for the said prejudice. The relevant paragraph No.5 of the judgment is as under:-

" x -- x -- x

In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.

x -- x -- x''

Keeping in view the above, the petitioner has also made out a case for the grant of interest on the aforesaid arrears, which are to be paid to him by the respondents under this order, at the rate of 6% per annum from the date the said benefits became due till the date of actual release of the same to him.

Let the calculation of the said interest be done by the respondents within a period of two months from the date of receipt of the copy of this order.

Further, the total amount which is to be paid to the petitioner by the respondents under this order, be released to the petitioner within a period of four weeks thereafter.

Disposed of in the above terms.

05.08.2022

Apurva

(HARSIMRAN SINGH SETHI)
JUDGE

1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes