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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CM-10890 & 10891-CWP-2022
in/and
CWP-22545-2016
Date of Decision: 03.08.2022

Ramu Ram

..... Petitioner

Versus

Haryana Vidyut Prasaran Nigam Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. B.K. Bagri, Advocate,
for the applicant/petitioner.

Mr. Padamkant Dwivedi, Advocate,
for the respondents.

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<u>HARSIMRAN SINGH SETHI J.</u> (ORAL)

<u>CM-10890-CWP-2022</u>:

Allowed as prayed for, subject to all just exceptions.

<u>CM-10891-CWP-2022</u>:

For the reasons mentioned in the application, the same is allowed and the seniority list, being Annexure P-15, is taken on record, subject to all just exceptions.

<u>CWP-22545-2016</u>:

In the present petition, prayer of the petitioner is that the daily wage service rendered by him, w.e.f. 01.07.1982 to 23.05.1993, with the respondent-Department be treated as qualifying service, while computing the pensionary benefits of the petitioner by the respondent-Department.

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As per the averments made in the present petition, the petitioner was appointed on daily wage basis as Construction Mate on 01.07.1982 under SDO Construction, Sub Division, Gurgaon, and he continued working as such till 24.05.1993, on which date, services of the petitioner were regularised by the respondent-Department. Thereafter, the petitioner was promoted to the post of Assistant Lineman and then to the post of Lineman by the respondent-Department, from which post, he retired upon attaining the age of superannuation on 31.03.2016.

Learned counsel for the petitioner argues that in the present case, the qualifying service, which the respondents are liable to take into account for computing pensionary benefits of the petitioner, is from 01.07.1982 till 31.03.2016, whereas the ten years and ten months service, i.e. from 01.07.1982 to 23.05.1993, which the petitioner had rendered on daily wage basis with the respondent-Department, prior to regularization of his services, has not been taken into account as qualifying service for computing his pensionary benefits.

After notice of motion, the respondents have filed the reply, wherein they have stated that there was no document available with the respondents to ascertain the fact that whether the petitioner had discharged the duties on daily wage basis with the respondent-Department, prior to regularization of his services, i.e. on 24.05.1993, or not, hence in the absence of any such document, no relief can be extended to the petitioner.

Learned counsel for the petitioner has controverted the said stand of the respondents by placing on record a seniority list, which the respondent-Department had framed while the petitioner was in service, in which list, the date of appointment of the petitioner with the respondent-Department has been mentioned as 01.07.1982. Learned counsel for the

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petitioner contends that the said document cannot be disputed by the respondents, especially when the same has been given to him by the respondents themselves under the Right to Information Act.

Learned counsel for the respondents also concedes the aforsaid factum.

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

The question of law which now arises before this Court for consideration is whether the daily wage service rendered by the petitioner from 01.07.1982 till 23.05.1993 is to be taken into account as a qualifying service, while computing pensionary benefits of the petitioner by the respondent-Department, or not.

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 daily wage service rendered by an employee is liable to be taken into account as a qualifying service for computing the pensionary benefits. The fact that even the rules envisage the said benefit in favour of the petitioner is not disputed by learned counsel for the respondents.

The petitioner is being denied the benefits of the daily wage service rendered by him, w.e.f. 01.07.1982 to 23.05.1993, with the respondents on the ground that the documents with regard to the proof of said service were not available with the respondent-Department. But now, once the respondents have conceded the factum that in the seniority list, which was issued by them, the date of appointment of the petitioner on the daily wage basis with the respondent-Department has been described as

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01.07.1982, said document is good enough to reckon that the petitioner was appointed with the respondent-Department on daily wage basis on the said date and he continued working as such till the date of regularization of his sevices by the respondent-Department, i.e. 24.05.1993. That being so, claim of the petitioner is squarely covered under the rules governing his service, coupled with the settled principle of law stated hereinbefore in **Kesar Chand's case** (supra).

In view of the above, the respondents are directed to grant the benefit of daily wage service rendered by the petitioner, w.e.f. 01.07.1982 to 23.05.1993, as a qualifying service and re-compute the pensionary benefits admissible to the petitioner along with the consequential benefits including the grant of arrears.

Now, the only question of law which remains to be considered by this Court is whether the petitioner should be granted the benefit of interest on the said delayed release of benefits, with regard to the daily wage service rendered by him, by the respondent-Department or not.

In the present case, it is the respondent-Department, which denied the aforesaid legitimate claim of the petitioner by disputing the facts of the case. Before this Court also, though the respondents first disputed the facts of the case but they later on conceded that the petitioner was in fact working with the respondent-Department since 01.07.1982 onwards. That being so, not only the aforesaid legitimate claim of the petitioner was denied by the respondent-Department at the time of his retirement, but even the petitioner was forced to approach this Court and litigate with the respondents for a period of more than six years.

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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 in releasing the said benefits, 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 retirer 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 -"*

In the present case, there was no impediment in releasing the pensionary benefits of the petitioner as per his entitlement, but the said benefits were denied by the respondents, and therefore, the delay in

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releasing the said benefits to the petitioner is attributable upon the respondents only.

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"*

Hence, along with the arrears, which the respondents will compute, w.e.f. 01.07.1982 to 23.05.1993, under this order, the petitioner is also held entitled for the grant of interest at the rate of 6% per annum from

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the date the said amount became due till the date of actual payment of the same to the petitioner.

Allowed in the above terms.

Let this order be complied with by the respondents within a period of two months from the date of receipt of the copy of this order.

03.08.2022 **(HARSIMRAN SINGH SETHI)**
Apurva **JUDGE**

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

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