IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

214 **CWP-25371-2016**
Date of Decision : April 05, 2022

Ramphal **.. Petitioner**

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep Kumar Sharma, Advocate for
Mr.Naveen Kumar, Advocate
for the petitioner.

Mr. S.K.Mahajan, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI J. (ORAL)

The present petition has been filed for computing the pensionary benefits of the petitioner by taking into consideration the daily wage service, which he has rendered from 01.01.1987 till 02.09.1994, that is before the petitioner's services were regularised by the respondent as T-Mate.

As per the facts mentioned in the petition, the petitioner was appointed as a Daily Wager on 01.01.1987 by the Haryana State Electricity Board and while working on the daily wage basis, the services of the petitioner were terminated by the respondents, which action was challenged by the petitioner by approaching the Labour Court. Vide an award dated 11.06.1992, the termination of the services of the petitioner were held to be bad in law and the petitioner was directed to be reinstated along with the continuity of service. The petitioner was directed to be reinstated with full back wages. The said award was challenged by the respondents by filing CWP No.10457 of 1992 which was decided on 06.11.1996. During the period, the writ petition remained pending, the award in favour of the petitioner was not implemented and ultimately, after the writ petition filed by the respondents was decided, the petitioner was allowed to join the service on 28.08.1997. After joining the service, the services of the petitioner were regularised by the respondents w.e.f. 03.09.1994 and the petitioner continued working with the respondents and while working on the post of Assistant Lineman, the petitioner attained the age of superannuation on 31.01.2016 and retired. After the retirement of the petitioner, the respondents only granted him the benefit of qualifying service starting w.e.f. 02.09.1994 to 31.01.2016 but the service which the petitioner has rendered prior to the said date of regularisation, was not taken into consideration as the qualifying service, which action of the respondents is under challenge in the present petition.

Upon notice of motion, the respondents have filed reply wherein, the factum that the petitioner was appointed on 01.01.1987 has not been denied. The factum that the petitioner was reinstated in service by the Labour Court after the order terminating the services was declared bad in law, is also conceded. In support of their action, the respondents have mentioned that as the petitioner did not discharge his duties after the termination of his services till 29.08.1997, when he was reinstated in pursuance to the award, no benefits of the said pension can be extended to him as qualifying service for computing pensionary benefits as the petitioner did not actually discharged his duties for the said period.

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

Once it is a conceded fact that the order terminating the services of the petitioner was found to be bad in law by the Labour Court and the Labour Court vide award dated 11.06.1992 reinstated the petitioner in service with full back wages, a deeming fiction has to be given that the petitioner continues to remain in service even for the period when he was out of service on account of the order terminating his service passed in the year 1987. Further, the respondents have paid the back wages to the petitioner for the period he remained out of service, hence it cannot be said that the said period for which, the petitioner received the back wages, is to be excluded for computing his pensionary benefits. The deeming fiction that the petitioner continued to be in service has to be given in favour of the petitioner so as to include the daily wage service rendered by him as the qualifying service for computing the pensionary benefits, keeping in view the settled principles of law settled as settled by the Full Bench of this Court in ***Kesar Chand vs. State of Punjab and others, AIR 1988 Punjab 265.*** According to which, the service rendered by an employee on daily wage/work charge basis prior to the regularisation of the services, is to be treated as a qualifying service for computing the pensionary benefits.

In the present case, the stand taken by the respondents is contradictory for the reason that the respondents have paid the salary for the period the petitioner remained out of service but the said period is being excluded while computing the qualifying service for pensionary benefits on the ground that the petitioner did not actually discharged his duties. This stand, which has been taken by the respondents, is to harass the petitioner despite being eligible for the grant of benefits.

Keeping in view the above, the prayer of the petitioner for including the service rendered by him from 01.01.1987 till 02.09.1994 on daily wages/work charge basis as qualifying service for computing the pensionary benefits is accepted. Let the pension of the petitioner be computed afresh and refixed accordingly and the emoluments arrears for which the petitioner becomes entitled for upon refixation of the pensionary benefits be also released to the petitioner within a period of two months from the date of receipt of a copy of this order.

The question which remains for consideration now is, whether the petitioner is also entitled for grant of interest or not. The facts and circumstances and the law cited hereinbefore shows that the petitioner was entitled for the relief which has been allowed today in the order even on the day when he retired from service on 31.01.2016. The respondents, did not grant the petitioner the benefits despite his eligibility and entitlement and the petitioner has not been able to get his dues for the last 5 years and is litigating with the respondents before this Court. The amount, which the petitioner should have got, in case his pensionary benefits would have been computed correctly, has been kept by respondents themselves and used to their benefit..

A Coordinate Bench of this Court in of ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*****,** has held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of the judgment is as under: -

> *"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 lying 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."*

Keeping in view the above law, the petitioner is also held entitled for interest on the arrears for which the petitioner is found entitled for after his pensionary benefits are recomputed and refixed by the respondents under this order @ 6% per annum from the date the amount became due till the same is actually released to him. Let the amount of interest be also released to the petitioner within a period of two months as directed hereinbefore.

The writ petition is allowed in above terms.

April 5, 2022 **(HARSIMRAN SINGH SETHI)**
anju **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No