

**CM-9179-CWP-2022 in/and
CWP No. 19970 of 2020**

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

(109)

**CM-9179-CWP-2022 in/and
CWP No. 19970 of 2020
Date of Decision : 22.08.2022**

Ramchander

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.K. Daaria, Advocate for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-9179-CWP-2022

Present application has been filed for restoration of CWP No. 19970 of 2020, which was dismissed for non-prosecution on 18.05.2022.

Notice of the application to the counsel opposite.

Mr. Harish Nain, learned Assistant Advocate General, Haryana, who is present in Court, accepts notice on behalf of the respondents. He raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which is duly supported by an affidavit, the same is allowed. The order dated

18.05.2022 is recalled and the writ petition is restored to its original number and status.

CWP No. 19970 of 2020

In the present petition, the grievance of the petitioner is that though he had worked as a daily wager starting from the year 1985 onwards and performed the duties upto 31.12.2017, but only his service from the year 2013 onwards till the date of retirement i.e. 31.12.2017 has been taken into account as a qualifying service for computing the pensionary benefits hence, he is entitled for the total length of service as a qualifying service for computing the pensionary benefits.

As per the facts mentioned in the petition, the petitioner joined as a daily wager on 02.12.1985 as a Mali-cum-Peon and he continued working as such till the date of retirement i.e. 31.12.2017. It is relevant to notice here that the services of the petitioner were terminated by the department on 24.09.2000, which action was challenged by the petitioner before the Labour Court and vide Award dated 21.11.2000, the said termination was held to be bad and a direction was issued to reinstate the petitioner in service with 50% of the back wages. As the petitioner was entitled for regularization of his services keeping in view the Policy of the Govt. of Haryana and the same benefit was not being extended to the petitioner, the petitioner filed a Writ Petition bearing CWP No. 12403 of 2013, wherein the respondents were directed to consider the claim of the petitioner. It was ultimately on 23.03.2019, after the retirement of the petitioner, the respondents regularized his services with effect from the year 2003 onwards. After the regularization of his services, only the service

rendered by the petitioner from 01.10.2003 to 31.12.2017 has been treated as a qualifying service for computing the pensionary benefits but the earlier service has been ignored by the respondents on the ground that the same was part time and not on daily wage basis and, therefore, no benefit of the same can be given. The said action of the respondents is under challenge in the present petition.

After the notice of motion, the respondents have filed the reply and the factual background, which has been narrated herein before, has not been disputed. As per the respondents, the part time service rendered by an employee cannot be taken into account as a qualifying service keeping in view the rules governing the service and, therefore, the prayer of the petitioner for counting his service from the year 1985 till 30.09.2003 may kindly be declined.

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

The only ground, which has been taken by the respondents to deny the petitioner the benefit of service from 02.12.1985 till 30.09.2003 as a qualifying service is that the rule governing the service does not allow the calculation of part time service as a qualifying service. The said question of law, interpreting the same rule and similar objection, which is being pressed into by the respondents in the present case, has already been answered while passing order in CWP No. 10238 of 2017 titled as ***Jeewan Lata Vs. State of Punjab and others***, decided on 10.05.2019.

Keeping in view the decision of this Court, which has been

noted in ***Jeewan Lata's case (supra)***, this Court has already held that where

an employee has already rendered two decades of service though on part time, the same cannot be treated as a part time service as the employee is continuously working on daily basis and two decade of service cannot be termed as part time or stop gap. The situation in the present case is not different. The petitioner had worked continuously from December, 1985 onwards till the regularization of his services on 01.10.2003. Not only this, in the present case, the petitioner worked with the respondents on part time basis even upto the date of retirement and the benefit of regularization of services was extended to him only after he crossed the age of retirement.

Learned State counsel submits that while passing order in ***Jeewan Lata's case (supra)***, order passed in CWP No. 1048 of 2016 titled as ***Jai Bhagwan Vs. State of Haryana and others***, decided on 01.03.2019 has also been relied upon, which also answer the same question, wherein, an appeal has been filed by the State and the same is pending though, there is no interim order. As there is no interim order in favour of the State, this Court can rely upon the said judgment in the present case so as to grant admissible benefit to the petitioner.

Keeping in view the above, the question of law raised in the present petition is covered by the decision in ***Jeewan Lata's case (supra)*** and the present petition is also allowed in the same terms. Respondents are directed to grant the petitioner the benefit of service, which he had rendered continuously from 02.12.1985 till 30.09.2003 as a qualifying service and thereafter, re-calculate the pensionary benefits admissible to the petitioner and grant him arrears if he is found entitled for upon re-fixation of his

months of the receipt of copy of this order and the arrears for which the petitioner becomes entitled, be also released to him within a period of one month thereafter.

Petition is allowed in above terms.

August 22, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No