

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

CWP-2455-2018 (O&M)
Date of decision: 20.12.2022

RANDHIR SINGH

...Petitioner

VS

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

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

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus directing the respondents to count the daily wage service period of the petitioner from 27.09.1988 to 01.02.1996 for grant of pension, gratuity, leave encashment, due LTC etc.

2. The short controversy involved herein is whether daily wage period of an employee is to be treated as qualifying service period for the purpose of determining his pension at the time of superannuation.

3. The position in this regard is no more *res integra*. Repeated judicial precedents have held that where services of an employee are continuous in nature, the same period of service rendered on daily wage/work charged from prior to regularization of service is to be counted for gratuity, pension and benefit of Rule 3.17 (A) of Punjab Civil Services Rules (PCSR), Volume II is to be accorded while determining the pension. For ready reference, Rule 3.17 (A) of PCSR, Volume II, is reproduced herein below:

"3.17-A(1) Subject to the provision of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on

CWP-2455-2018 (O&M)

establishment, interrupted or continuous shall count as qualifying service:-

i) Service rendered in work-charged establishment.

ii) Service paid from contingencies:

Provided that after the 1st January, 1973 half of the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions:

(a) Service paid from contingencies should have been in a job involving whole time employment (and not part time or for a portion of the day).

(b) Service paid from contingencies should have in a type of work or job for which regular post could have been sanctioned e.g. Malis, Chowkidars, Khalasis, etc.

(c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being perform by staff in regular establishment.

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

(iii) Casual or daily rated service.

(iv) Suspension adjusting as a specific penalty.”

4. A perusal of the same leaves no manner of doubt that as long as service continues, benefit of the same has to be given by treating the daily wage period as qualifying service at the time of determining the pension. In this regard, reference may be had to judgment dated 15.01.2016 rendered in **CWP No.26505-2014** titled “**Shamsher Singh Vs. State of Haryana and others**” by my learned Sister Ritu Bahri, J., which is as below:

Petitioner has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus for issuance of direction to respondents for counting his daily wage service for grant of family pension.

2. Petitioner was appointed to the post of Mali cum Chowkidar in the respondent-department on daily wages basis w.e.f 01.10.1994. Thereafter the Haryana Government framed a policy

dated 01.10.2003 whereby all daily wagers who have completed three years of service on 30.09.2003 were held entitled for regularisation (P-3). The case of the petitioner was thus considered for regularisation for service and vide office order dated 27.05.2004 (P-2), the services of the petitioner were regularised to the post of Mali-cum-Chowkidar. As per Rule 6.16(1) of the Punjab Civil Service Rules, the minimum qualifying period of service for grant of pension is 10 years. Thus, the petitioner who is retired on attaining the age of superannuation on 31.05.2013 is fully entitled for grant of pension after counting his daily wage service, as the petitioner has worked with the department for 19 years and 5 months i.e.w.e.f 01.10.1994 to 31.05.2013. But the respondent-department is not granting pension to the petitioner, despite the fact that the petitioner has served a legal notice dated 14.08.2014 to the respondent-department.

3. On notice, a written statement has been filed on behalf of respondent Nos. 1 to 3 taking a stand that since the petitioner's services were regularized w.e.f 01.10.2003, vide order dated 27.05.2004 in terms of policy of 2003, he is not entitled for grant of pension. Prior to his regularization, he was working as daily wager/casual labour for a period of 10 years and paid from annual maintenance schemes which were sanctioned on year basis.

4. Learned counsel for the petitioner submits that his case is squarely covered by judgment of full bench of this Court in a case of Kesar Chand v. State of Punjab AIR 1988 (Punjab) 265 and a judgment passed by Division Bench of this Court in a case of Ram Dia and others v. UHBVN Ltd., 2005(4) SCT 387 wherein it has been held that the daily wage and work charge service period prior to regularisation is liable to be counted for the purpose of gratuity and pension.

5. Learned counsel for the respondent has not been able to cite any judgment contrary to the above mentioned judgments.

6. The case of the petitioner is also covered by Rule 3.17, 3.17A (f) (1) and 4.23 of Punjab Civil Services Rules, Vol II which has been considered by this Court in Ram Dia's case (supra) whereby in para 6 and 7 of the judgment, it has been observed as under:-

6. In Kesar Chand's case (supra), the Full Bench while dealing with a similar controversy held as under:

"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 of equality. Even the temporary or officiating service under the State Government has 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 as work-charged employees and their service regularised subsequently, and the other is not 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 these reasons the provisions of sub-rule (1) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."

It would also be relevant here to refer to Rule 3.17A and 4.23 of the Punjab Civil Services Rules, Volume (2), which read as under:

XXX

XXXX

XXX

The aforesaid view as further reiterated by this Court in this cases of Hazura Singh and Nasib Singh (supra). In Joginder Singh's case (supra), it has been held as under:-

"I am, therefore, of the opinion that the words "half the period of service of such persons paid from contingency" occurring in sub-clause (1) of Clause (f) of Rule 3.17A are bad in law and are, accordingly, struck down."

A conjoint reading of the rules, quoted above and the observations of this court would reveal that it is by now well established that period of service rendered on daily wage/work-charge prior to regularisation of service is liable to be counted for the purpose of gratuity and pension.

7. In view of the above, we are of the view that service rendered by the petitioners on daily- wage/work-charge basis should counted as qualifying service for pensionary and other terminal benefits. The petitioner were working as a whole-time employee and were paid wages on monthly basis. Therefore, the period of service rendered by them on daily- wage/work-charge basis has to be reckoned while computing their pensionary and other terminal benefits.

7. Applying the ratio of the above said judgment, the present writ petition is allowed and a direction is issued to the respondents to count the daily wage service of the petitioner w.e.f. 01.10.1994 to 31.05.2013 i.e. 19 years and 05 months for grant of family

pension and pass appropriate orders within a period of three months from the date of receipt of certified copy of this order.”

5. Still later, another judgment rendered by a Coordinate Bench presided over by my learned Brother, Harsimran Singh Sethi, J., pertaining to the same department i.e. respondent No.2 Department of Forests wherein similarly situated daily wager had approached this Court seeking the same benefit as sought herein and his writ petition was disposed of in following terms:

“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 ties 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 pensionary benefits. Let the order be complied with within a period of two 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.”*

6. In the background of aforesaid judgments, as quoted herein above and my observations made *qua* the admissibility of the daily wage period for calculating the pension, I see no reason as to why the petitioner be not accorded the benefit. *Qua* the pensionary benefits, since the same is continuous cause of action, therefore the objection raised by learned State counsel *qua* the delay is not sustainable.
7. Accordingly, the instant writ petition is allowed. Respondents are directed to treat the daily wage period of the petitioner as qualifying period for determining pension. As regards the re-calculation of the pensionary benefits, the same are confined to 38 months prior to filing of the writ petition. Arrears be paid along with interest @ 5 % per annum.
8. As regards the claim of LTC, I have opined that the petitioner has since filed his writ petition way after his superannuation, the same is clearly hit by delay and laches and is time barred.
9. Allowed in the aforesaid terms.
10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

December 20, 2022
Vandana

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