

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101+219)

CM-17193-CWP-2019 in/and
CWP-7090-2017

Date of Decision : July 25, 2022

Sant Ram

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashok Kumar Sharma, Advocate, for the petitioner.

Mr. Kiran Pal Singh, Assistant Advocate General, Haryana.

Mr. Anil Chawla, Advocate, for respondents No. 2 to 4.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-17193-CWP-2019

Present application has been filed for placing on record the copies of the scheme dated 06.08.1993, 09.08.1994, 11.08.2011, 13.02.2012, 16.08.2013 and 18.04.2014 as Annexures R-2/2 to R-2/7.

Keeping in view the averments made in the application, the same is allowed and Annexures R-2/2 to R-2/7 are taken on record.

CWP-7090-2017

Present petition has been filed for quashing the impugned order dated 06.02.2017 (Annexure P-5) by which, the claim of the petitioner for the grant of the benefit of the daily wage service which the petitioner had rendered to be taken into account as a qualifying service for computing the pensionary benefits has been declined.

As per the averments made in the petition, the petitioner joined the respondent-Electricity Board in the year 1979 as daily wage worker and he continued working on daily wage/work charge basis till 10.05.1993 and his services were regularized by the respondents on 11.05.1993. Thereafter, the petitioner attained the age of superannuation and retired on 31.03.2016. While computing the pensionary benefits, only the service which the petitioner had rendered from 11.05.1993 onwards has been taken into account as qualifying service for computing the pensionary benefits. The services, which the petitioner had rendered on daily wage basis has not been taken into account and the request of the petitioner to the said effect, has been declined by the respondents vide impugned order dated 06.02.2017 (Annexure P-5) on the ground that keeping in view the instructions issued by the respondents dated 18.04.2014, the petitioner was required to submit an option for counting his daily wage service as a qualifying service, which benefit was not availed by him and therefore now, after the retirement, the petitioner cannot claim the benefit of the said service. The said action is under challenge in the present writ petition.

After notice of motion, the respondents have filed the reply wherein, the respondents have submitted that once, a instructions has been issued by the respondents on 18.04.2014, the petitioner was required to exercise his option as per the said instructions as to whether, the petitioner intends to avail the benefit of daily wage service to be taken into account as a qualifying service for computing the pensionary benefits. As the petitioner has failed to exercise his option, no benefit of the same can be extended to him.

Learned counsel for the respondents submits that during the

service career, there were various opportunities for the petitioner to opt for the said scheme but the petitioner failed to exercise his option.

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

The first question which arise for the consideration of this Court is whether, an employee, who is entitled for a particular benefit under the rules governing the service, needs to apply or opt for the same so as to avail the said benefit or not. It is not disputed by the learned counsel for the respondents that keeping in view the rules governing the service, the daily wage service which an employee has rendered prior to regularization, is to be taken into account for computing the pensionary benefits by treating the same as a qualifying service.

Once, the petitioner has already a right for a particular benefit under the rules governing the said aspect of service, no option is needed to be exercised. The option can be to opt out of the benefit but the option cannot be to get a benefit which is already admissible to an employee already under the rules.

In the present case, it has been conceded by the learned counsel for the respondents that the rules governing the service, grant the petitioner the benefit of daily wage service, to be taken into account as a qualifying service for computing the pensionary benefits, hence the same cannot be denied merely on the ground that an option invited from an employee by the respondents so as to claim the same benefit, was not exercised by the petitioner.

Further, learned State counsel has conceded the fact that instructions dated 18.04.2014, a copy of which has been appended as

Annexure R-2/7, is an amended form of the original instructions dated 06.08.1993, which was as amended from time to time. It may be noticed here that in the instructions dated 06.08.1993, a copy of which has been appended as Annexure R-2/2, which is the first instructions issued on the said aspect, as per clause 4 of the said instructions, the same has to be got noted from all the employees and acknowledged receipt has to be received. The relevant clause 4 of the instructions dated 06.08.1993 is as under:-

“4. The instructions may please be got noted from all the employees and acknowledge the receipt of the letter.”

The said instructions was further amended on 09.08.1994, a copy of which has been appended as Annexure R-2/3 wherein also, it was mentioned that instructions be got noted from all the employees along with the acknowledgment receipt. The said instructions of 06.08.1993, as amended on 09.08.1994, was once again amended on 11.08.2011 wherein, as per clause (ii) wide publicity was to be given to the instructions by way of advertisement in the newspaper and in the concerned area by pasting the instructions in every office of the Nigam and also posting the notice on the website so as to bring to the notice of all the concerned. Relevant clause (ii) of the instructions dated 11.08.2011 is as under:-

“ ii) Wide publicity be given to these instructions by way of advertisement in Newspapers circulated in the concerned area by passing the instructions/notice in every office of the Nigam on the notice board and also by posting the notice on the website of the Nigam.”

The said instructions were again amended on 03.02.2012, a copy of which has been appended as Annexure R-2/5. As per the said instructions also, it was duly mentioned that these instructions may be got

noted all the concerned. The same instructions were again reiterated on 16.08.2013, a copy of which has been appended as Annexure R-2/6 according to which also, the employees were given another opportunity to give option for availing the benefit of daily wage service wherein, it has been mentioned that the wide publicity be given by way of advertisement in the leading newspaper and uploading these instructions in the website.

The last instructions on the said issue is dated 18.04.2014, a copy of which has been appended as Annexure R-2/7.

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 work-charge 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.

Keeping in view the above, the prayer of the petitioner is allowed. The respondents are directed to compute the pensionary benefits of the petitioner as admissible to him under the rules governing the service, according to which the qualifying service also include the daily wage service rendered by an employee prior to the regularization. Let the pensionary benefits of the petitioner be calculated by the respondents by taking into account the daily wage service rendered by him as qualifying service and the benefit calculated be released to the petitioner within a period of two months from the receipt of the copy of this order.

The present writ petition is allowed in above terms.

July 25, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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