

226

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

**CWP No.271 of 2020 (O&M)
Date of Decision: 11.05.2023**

OM PARKASH

.....Petitioner

Vs

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Jai Bhagwan Sharma, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, D.A.G., Haryana.

Mr. Hitesh Pandit, Advocate
for the respondent No.4.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari for quashing the order dated 11.05.2018 (Annexure P-1) vide which the respondent No.3 has considered the daily wage period of the petitioner from 01.09.1988 to 03.05.1993 as a qualifying service for the purpose of pensionary benefits by ignoring that the petitioner was entitled for consideration of his daily wage period from 09.07.1983 to 03.05.1993 during which he had worked against the leave vacancy as daily wage worker.

[2]. The petitioner was appointed as Octroi Incharge Barrier on daily wage basis with the approval of the Deputy Commissioner w.e.f. 09.07.1983. The petitioner had worked as such upto 03.05.1993 i.e. the date on which his services were regularized w.e.f. 04.05.1993.

[3]. The claim of the petitioner is that the period spent by him as daily wage employee be considered and counted for the purpose of pensionary benefits. The respondent-Department has considered the period from 01.09.1988 to 03.05.1993 as a qualifying period for pensionary benefits thereby ignoring the period from 09.07.1983 to 30.08.1988 during which the petitioner had actually worked on daily wage basis but against the leave vacancy.

[4]. The status of the petitioner from 09.07.1983 to 01.09.1988 was held to be as daily wage employee against leave vacancy w.e.f. 09.07.1983 to 30.08.1988 and thereafter the petitioner started working as daily wager from 01.09.1988 to 03.05.1993 and immediately thereafter his services were regularized w.e.f. 04.05.1993. There was no gap in service of the petitioner from the initial appointment on 09.07.1983 till the date of regularization. The period from 09.07.1983 to 30.08.1988/01.09.1988 has not been counted as a qualifying service for the purpose of pensionary benefits on the ground that the petitioner remained

as daily wage employee on a leave vacancy for the period from 09.07.1983 to 01.09.1988.

[5]. In the reply filed by the respondents, the stand of the respondents is that since the petitioner had worked against leave vacancy for the particular period, therefore, the said period is not countable while computing qualifying service for the purpose of pensionary benefits.

[6]. The issue in question is governed by the Rule 14(4) of the Haryana Civil Services (Pension) Regulation, 2016 which prescribes that the service paid from contingencies followed by regularization rendered by a government employee retiring from service on or after the 12.12.1997 shall count as qualifying service provided that the service shall have been the following characteristics:-

- i) In a job involving whole time employment and not part time for a portion of day;*
- ii) In a type of work or job for which regular post would have been sanctioned;*
- iii) Such for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which through not analogous to the regular scale of pay/pay structure shall bear some relations in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments; and*

iv) Continuous and followed by absorption in regular employment without a break.

Note: While bringing contingent paid employee to the regular establishment following entry for verification of contingent service shall be made at the appropriate place in his service book”

[7]. Perusal of the aforesaid rules would indicate that the petitioner is entitled for counting his service paid from contingencies subject to satisfaction of the aforesaid conditions. Condition No.(i) is that the petitioner shall have a job involving whole time employment and not part time for a portion of day. This condition is squarely met by the petitioner as he always remained as a whole time employee. The condition No.(ii) is also satisfied that in a type of work or job for which regular post would have been sanctioned. Against the leave vacancy, the petitioner kept on performing the job during the scheduled hours and thereafter he kept on performing the job as a daily wager till his services were regularized without there being any gap. As regards, condition No.(iii), the petitioner has semblance of interest in relation in the matter of pay which was being paid for similar job being performed by staff in regular establishment. Since the services of the petitioner were regularized without there being any gap and earlier to that he was performing the job as daily wage employee from 09.07.1983 to 01.09.1988

against leave vacancy and thereafter as daily wager from 01.09.1988 to 03.05.1993 i.e. the date on which his services were regularized without there being any break. The condition No.(iii) is not sufficient to take out any benefit of the petitioner on exemption note to Rule 14(5) of Haryana Civil Services (Pension) Regulation, 2016. Since the petitioner has been regularized and has been absorbed in regular employment being transferred from Municipal Committee to the respondent No.2 and there was no break in service, therefore, condition No.(iv) is also satisfied.

[8]. In view of aforesaid factual position on record, I am of the considered opinion that the non-consideration of the period from 09.07.1983 to 30.08.1988 (01.09.1988) as a qualifying service for the purpose of pensionary benefits is wholly illegal and the same needs to be counted towards pensionary benefits.

[9]. Resultantly, this writ petition is allowed. The period from 09.07.1983 to 30.08.1988/01.09.1988 shall be counted for all intents and purposes as qualifying service for the purpose of pensionary benefits. Normal consequences to follow.

May 11, 2023

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No