

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

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**CWP-2502-2021
DECIDED ON: 01.12.2023**

GIAN DEVI

....Petitioner

VS

**UTTAR HARYANA BIJLI VITRAN NIGAM LTD.AND OTHERS
....Respondents**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shvetanshu Goel, Advocate
for the petitioner.

Mr. Vishal Garg, Advocate and
Ms. Ruchita Garg, Advocate
for respondents-UHBVN.

SANDEEP MOUDGIL, J (ORAL)

Present petition has been filed under Article 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for quashing of impugned reply memo bearing No.152/EP882 dated 22.12.2020 (Annexure P-6).

In view of stand taken in reply of the legal notice dated 22.12.2020 (Annexure P-6) Para No.1 as well as in the para No.6 (ii) of written statement/reply on merits respondents does not inspire confidence of this Court in the light of judgment rendered by ***“Kesar Chand Vs. State of Punjab, AIR 1998 Punjab, 265”***. The husband of the petitioner is entitled for counting of services rendered by him on daily wage basis towards qualifying service for the purpose of pensionary benefits, to which he became entitled on attaining the age of superannuation. The stand of the respondents to the effect that the husband of the petitioner has not submitted any material evidence in support of his assertion that he was appointed on daily wage basis

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in month of October 1979 to worked on such till the date of regularization i.e. upto 09.10.1987 also does not hold good for the reason that in the legal notice para 1 the specific stand has been taken to the following effect:-

“That the husband of the my above named client namely Sh. Ramdhari s/o Sh. Bhagat Ram was appointed on daily wage basis from October, 1979 and worked on daily wage basis till 15.07.1990. Thereafter the husband of my above named client worked on daily wage services/work charge from 1987 onwards. The services of the husband of my above named client were regularized on 16.07.1990 on port of workmate. The husband of my above named client died in harness on 03.07.2006.”

The said legal notice was duly replied by the respondents by speed post dated 22.12.2020 (Annexure P-6) which has not been denied by the respondents during the course of hearing even today before this Court wherein the contents of para 1 of legal notice are matter of record.

“Once service of work charge employee is regularized, there is no logic to deprive him of the pensionary benefits available to other public servants. Even the temporary or officiating service of the government has to be reckoned in determining the qualifying service as has been held in Kesar Chand’s case (supra) wherein a Division Bench of this Court concluded that the rule which excluded to count the work charged services of employees, whose services were regularized subsequently, was bad in law and is liable to be struck down. The Division Bench thus directed to include the work charged services rendered by the petitioner, for the purpose of pension which shall be countable for determining the qualifying services for the purpose of grant of pension.

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Equal protections 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 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 eligible for pension and those who started work charged employees and their services regularized subsequently, and the others is based on any intelligible criteria and, before, is not sustainable at law. After the services of a work charged employee have regularized, he is a public servant like other servant. To deprive him of the pension is not only unjust and inequitable is hit by the vice of arbitrariness.

*The pari materia provisions of Rule 3.17(ii) of the Punjab Civil Service Rules having been interpreted and understood by the Supreme Court in **Punjab State Electricity Board vs. Narata Singhy (2010) 4 SCC 317**, this Court does not find any room for taking any other view except to hold that the petitioner is entitled to reckon the period of work charged services for purposes of computation of 'qualifying service' for grant of pension."*

In view of discussion made hereinabove the present petition is

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allowed. Respondents are directed to count the services rendered on daily wage basis w.e.f. October 1979 to 09.10.1987 by the deceased husband towards qualifying service for the purpose of pensionary benefits and are also directed the same shall be released preferably within a period of 2 months from the date of receipt of certified copy of this order either in favour of the petitioner or any of the legal representatives.

In case the petitioner is not alive, as on date, the arrears shall carry interest @ 9% per annum as no fault could be attributed to the petitioner for such delay as claiming pensionary benefits are not only the legal right but also the fundamental right as per decision of '***AS Randhawa Vs. State of Punjab and Ors. 1997 (3) SCT 468***' and especially in the light of the fact which this Court is quite obvious that the petitioner belongs to such a strata of society where the livelihood in present scenario is hard to earn but has been made to face harassment not only on account of by way of instant litigation but also on financial account as well and therefore the award of 9% interest is deemed justifiable and reasonable.

The present writ petition stands allowed.

**(SANDEEP MOUDGIL)
JUDGE**

01.12.2023

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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*