

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(230)

CWP-4368-2020

Date of Decision : December 14, 2023

Pop Singh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance which is being raised by the petitioner is that the adhoc service which the petitioner had rendered and had been taken into account as a valid service for considering the claim of the petitioner for regularization, has not been taken into account to be treated as qualifying service for computing the pensionary benefits of the petitioner.

2. From the facts mentioned in the petition, the petitioner was appointed as a Bus Conductor in the Haryana Roadways on 19.06.1985 on temporary basis. The petitioner continued to work on the post in question till 12.03.1987 when his services were terminated. The petitioner filed an appeal challenging the order of termination and in an appeal, an order was passed on 09.05.1988 that the petitioner be reinstated in service but he will not be given any monetary benefit for the period he remained out of service.

In pursuance to the order dated 09.05.1988, the petitioner was reinstated in service on 20.05.1988 and thereafter, the petitioner claimed the benefit of regularization of his services.

3. The benefit of period of 455 days was given to the petitioner for which period/days the petitioner had worked on adhoc basis for considering the claim of the petitioner for regularization and his services were regularized by the respondents. The petitioner continued to work with the respondents till he attained the age of superannuation and retired on 31.05.2019.

4. The prayer of the petitioner is that the benefit of ad-hoc service rendered by the petitioner has not been given to the petitioner to be treated as qualifying service while computing the pensionary benefits, which is totally arbitrary and illegal.

5. Upon notice of motion, the respondents have filed the reply wherein, it has been conceded that the petitioner had worked on ad-hoc basis prior to the regularization of the services and for a period of 455 days he remained out of service, the benefit of which was given for regularizing the services of the petitioner but the same has not been given benefit on the ground that the said claim is contrary to the Rule 14 (2) (iii) of the Haryana Civil Services (Pension) Rules, 2016.

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

7. In the present writ petition, the claim of the petitioner is for treating the service which the petitioner had rendered on ad-hoc basis prior to the regularization as a qualifying service for computing the pensionary benefits. It is a settled principle of law that the adhoc service rendered prior to the regularization is to be taken into account as a qualifying service

keeping in view the decision of the Full Bench of this Court in **Kesar Chand Vs. State of Punjab and others'**, AIR 1988 Punjab 265.

8. Further, for regularization of services, the ad-hoc service rendered by the petitioner has already been taken into account as a qualifying service, which fact has been conceded by the respondents in the written statement. Hence, the ad-hoc service which the petitioner has rendered on ad-hoc basis, taken into account for purpose of regularization of services of the petitioner, the same is liable to be taken into account as qualifying service for the purpose of pension and other pensionary benefits.

9. The objection which has been taken by the respondents in the reply is that the claim of the petitioner is covered against him keeping in view the Rule 14 of the Haryana Civil Services (Pension) Rules, 2016. As per the respondents, the petitioner had remained out of service when his services were terminated hence, as interruption in service was for more than one year, the benefit of the earlier service rendered on ad-hoc basis cannot be given.

10. It may be noticed that the order terminating the service of the petitioner was set aside by the Appellate Authority with only condition that the petitioner will not be paid any financial benefit during the period he remained out of service. Once the petitioner was reinstated in service, merely that the financial benefits for the period he remained out of service was withheld, does not mean that the earlier services will be washed out. The continuity of service remained with the petitioner except the financial benefits for the period he remained out of service hence, Rule 14 of 2016 Rules will not come in the way of the petitioner to get the benefit of ad-hoc service of 455 days, which the petitioner had rendered prior to the regularization of his services.

11. The present writ petition is accordingly allowed. The respondents are directed to grant the benefit of 455 days service to the petitioner as qualifying service for computing the pensionary benefits. Let the pensionary benefits including the pension be calculated by giving the said benefit and the arrears for which the petitioner becomes entitled for, be also released to him within a period of two months from the receipt of the copy of this order.

12. At this stage, learned counsel for the petitioner submits that by wrongly interpreting the Rule, the petitioner has been denied the benefit and the arrears have been retained by the respondents and therefore, the petitioner should also be granted the interest on those arrears.

13. Keeping in view the judgment of the Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, whenever any amount belonging to an employee has been retained and used by the Department, the employee becomes entitled for interest. The relevant paragraph of the said judgment is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

14. In the present case, Rule 14 of 2016 Rules has wrongly been

interpreted by the respondents in the facts and circumstances of the present case so as to deny the benefit of adhoc service towards the pensionary benefits. That being so, the arrears for which the petitioner becomes entitled for, will also carry interest @ 6% per annum from the date the amount became due till the actual release of the arrears to the petitioner. Let the order be complied with within a period of two months from the receipt of copy of this order.

15. The present writ petition is allowed in above terms.

December 14, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No