

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

207

CWP-14381-2001

Date of decision :-16.01.2023

Satpal Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Munish Mittal, Advocate
for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana
for the respondents.

SUVIR SEHGAL, J.

Instant petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to treat the petitioners as work charged employees from the date they were appointed till their regularization and count their services towards all benefits.

Petitioners, who are 08 in number, were appointed on different Group 'D' posts on work charge basis. Appointment letters of some of the petitioners, have been appended as Annexures P-1 to P-3. They worked as such till February/March, 1986, and thereafter, they were paid on daily wage basis, despite the fact that the posts were available. By order dated 29.04.1993, Annexure P-4, services of all the petitioners were regularized with effect from 01.04.1993. Petitioners claim that their service is liable to be considered for the purposes of seniority, increment, additional increment and all other pensionary benefits.

Their claim has been resisted by the respondents by filing a written statement, wherein it has been submitted that the petitioners were appointed on work charge basis for three months as per the requirement of the work and that their services were purely temporary. It has been submitted that the petitioners are not entitled to count the period of service rendered by them prior to their regularization for pension gratuity or GPF.

Counsel for the parties have been heard.

During the pendency of the instant petition, Government of Haryana repealed the Punjab Civil Services Rules, which were applicable to the Haryana Government employees and framed separate set of rules. Chapter IV of Haryana Civil Service (Pension) Rules, 2016, (for short "Pension Rules"), deals with the qualifying service for the purposes of pension. Sub Rule (4) and (5) of Rule 14 of the Pension Rules, which are relevant for the purposes of the present case, are reproduced as under:-

“(4) The service paid from the contingencies followed by regularization rendered by a Government employee retiring on or after 12th December, 1997 shall count as qualifying service provided the service shall have been

(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 wage rates computed and paid on monthly basis and which though 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 absorptions in regular employment without a break.

Note. xxx

(5) The entire service rendered by an employee as work charged shall be reckoned towards pension provided:-

(i) such service is followed by regular employment;

(ii) period of break between two or more spells of service shall be omitted subject to provision in sub rule (2) above,
(iii) such service is a whole time employment and not part time or portion of day.”

A perusal of the above reproduced rules, clearly show that both the work charged service as well as the daily wage service has to be considered as qualifying service for the purposes of grant of pension. A Full Bench of this Court in **Kesar Chand Versus State of Punjab 1988 (2) PLR 223**, while striking down Sub-rule (2) of Rule 3.17-A of Punjab Civil Service Rules Vol. II held that once the services of a work charged employee, have been regularized, there appears to be hardly any logic to deprive him of pensionary benefits. It has been further held that even temporary or officiating service under the Government has to be reckoned for determining the qualifying service. Hon’ble Supreme Court in **Prem Singh Versus State of Uttar Pradesh and others (2019) 10 SCC 516**, has held that the services rendered prior to regularization in the capacity of work charged employees, contingency paid employees or non-pensionable establishment shall count towards qualifying service, even if such service is not preceded by temporary or regular employment in the pensionable establishment.

A Division Bench of this Court in **Harbans Lal Versus State of Punjab and others 2012 (3) SCT 362** has concluded as follows:-

“From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 1.1.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for

the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 1.1.2004.”

SLPs challenging this judgment as well as the review applications filed by the State of Punjab, have been dismissed by the Apex Court.

In view of the above discussion, petitioners are held entitled to count the entire period rendered by them as daily wagers and as worked charge employees for the purposes of grant of pensionary benefits. However, remaining reliefs sought for by the petitioners are declined.

Arrears of pension payable to them shall be confined to period of 03 years prior to the date of this order. After calculating the amount due, the same be paid to them within a period of 04 months from the date of communication of this order.

Writ petition is disposed of.

16.01.2023
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No