

CWP-7409-2021

2023:PHHC:116916

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-7409-2021

Date of Decision :-05.09.2023

Virender Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S. K. Daaria, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

Present petition has been filed raising a claim that the part-time service, which the petitioner had rendered prior to the regularization of his services, is liable to be taken into account as qualifying service for computing his pensionary benefits.

Learned counsel for the petitioner submits that the claim of the petitioner is squarely covered by the judgment of this Court passed in **CWP-1048-2016** titled as ***Jai Bhagwan vs. State of Haryana and others*** on 01.03.2019.

Learned counsel for the respondents submits that though, the question of law raised in the present petition is covered by the judgment of this Court in *Jai Bhagwan* (supra) but the said judgment is pending consideration before the Division Bench of this Court in LPA No.1892-2019. Learned counsel for the respondents very fairly submits that judgment in *Jai Bhagwan* (supra) has not been stayed.

Learned State counsel further submits that as the matter is pending consideration before the Division Bench of this Court, no benefit of the order passed by this Court in *Jai Bhagwan (supra)* can be extended to the petitioner.

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

Once, it is a conceded position that question of law raised in the present petition is covered by the judgment in *Jai Bhagwan (supra)*, the petitioner is also entitled for the same relief. The argument of the learned State counsel that judgment of this Court in *Jai Bhagwan* is pending consideration before the Division Bench of this Court hence, no benefit of the said judgment should be granted, cannot be accepted especially, when the judgment in *Jai Bhagwan (supra)* has not been stayed. Once, the law settled in ***Jai Bhagwan (supra)*** is operative, the petitioner is entitled for the same benefit.

Further, not only this, even subsequent to the judgment in ***Jai Bhagwan (supra)***, this Court decided the same issue in ***CWP-10238-2017*** titled as ***Jeewan Lata vs. State of Punjab and others*** on 10.05.2019 and the detailed reasons for accepting the part-time service as qualifying service have been mentioned therein, which also covers the claim of the petitioner as raised in the present petition.

At this stage, learned counsel for the respondents submits that there is no record of the services rendered by the petitioner on part-time basis.

The said objection being raised by the respondents is incorrect.

It is a conceded position that services of the petitioner were regularized by

the respondents under the regularization policy of the year 2003 according to which policy, an employee should be in service as in the year 1996 and should have been completed 240 days in service and further he/she should have completed 03 years of service as on 30.09.2003. Once, the petitioner fulfilled the said condition in order to get his services regularized, it cannot be said that the petitioner did not render any part-time service so as to claim benefit of the same.

Learned counsel for the respondents has not been able to rebut the factum that services of the petitioner were regularized by them under the 2003 policy. That being so, it does not lie in the mouth of the respondents that there is no record of the services rendered by the petitioner on part-time basis, relief of which is being sought. Even otherwise, this Court is only holding that any part time service which the petitioner rendered prior to the regularization of his service is liable to be taken into account as qualifying service for computing his pensionary benefits, the respondents will be within their jurisdiction to ascertain the fact qua the rendering of part-time service by the petitioner, claim of which is being sought in the present petition before extending the actual benefit to the petitioner.

Learned counsel for the respondents further submits that a Co-ordinate Bench of this Court while passing order in CWP-13153-2015 titled as **Mukhtyari Devi vs State of Haryana and others** on 31.01.2017 has declined the said benefit as being claimed by the petitioner in the present petition.

It may be noticed that judgment in ***Mukhtyari Devi (supra)*** is by simply interpreting the rules whereas, subsequent to the said judgment the same rules have been interpreted to mean that where an employee

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though, working on part-time basis but continued in service for more than one decade, the said service cannot be treated part-time service so as to deny the benefit to be treated the same as qualifying service for the grant of pensionary benefits. Hence, no benefit of the judgment in *Mukhtyari Devi (supra)* can be given to the respondents so as to deny the benefit to the petitioner.

No other argument has been raised.

Keeping in view the above, present petition is allowed. Respondents are directed to consider the claim of the petitioner for the grant of benefit of part-time service rendered by him as qualifying service to compute the pensionary benefits and whatever services the petitioner had rendered on part-time basis be treated as qualifying service so as to revised his pensionary benefits admissible to him and grant him the consequent benefits alongwith arrears.

Let the present order be complied with within a period of two months from the date of receipt of copy of this order.

September 05, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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