

2023:PHHC:142085

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

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CWP-8352-2021

Date of Decision: 7th November, 2023

Gurmukh Singh

... Petitioner

Versus

Managing Director, Haryana Vidhut Parsaran Nigam Limited and others
... Respondents

CORAM : HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Thakan, Advocate for the petitioner

Ms. Nikita Goyal, Advocate for the respondents.

SANDEEP MOUDGIL, J.(Oral)

1. The jurisdiction of this court has been invoked under article 226/227 of the Constitution of India for issuance of writ of mandamus directing the respondents to count daily wages /work charge services for the purposes of pensionary benefits to the petitioner rendered prior to his regularization along with 24% interest per annum.
2. Learned counsel for the petitioner contends that the petitioner joined on the post of class iv on the work charge basis on 29.10.1988 and was regularised as regular work mate in 1995. Later on he was promoted to the post of Assistant lineman in the year 2007, further promoted as lineman in the year 2009 and thereafter retired in the year 2016 on attaining the age of superannuation.
3. He further argues that the petitioner is aggrieved against the respondents for their act of not counting his daily wage services for the purpose of his pensionary benefits. In addition he relies upon various dictum of the Apex court wherein it has been held that service rendered

on daily wage basis is required to be counted for the purpose of pensionary benefits.

4. Reliance by the petitioner has been put on various judgments titled as Harichand vs Bhakhra Beas Management Board and ors,2005(2) RSJ 373, Kashmir Chand vs Punjab State Electricity Board and ors,2005(4) SCT 298., Joginder Singh vs State of Haryana ,1998(1) SCT 795,Hazura Singh vs State of Punjab and Another, 2003 (4) RSJ 336 and Nasib Singh vs State of Punjab and Another ,1999(4) SCT 233.

5. On the other hand learned state counsel vehemently contends that petitioner remained absent from the duties without permission from April ,1990 to August,1991 for a peroid of about seventeen months and as per the Punjab C.S.R Rules volume II Chapter-3, the petitioner is only entitled for counting his services rendered as daily wages employee followed by regularization for pensionary benefits only if there is continuity of service hence the said period cannot be allowed to be counted.

6. He further refers to para 4 of his written statement specifically denying the claim of the petitioner which is reproduced as under

That it is pertinent to mention here that there was a gap of around 17 months in the service rendered by the petitioner hence as per the Punjab C.S.R rules volume -II (Chapter-3),as applicable to the State of Haryana which clearly states that "the Service paid from contingencies should have been continuous and followed by absorption in regular employment without a break", So the services rendered by the petitioner as daily wages employee from Sept. 1991 till_Feb. 1995 is countable towards the pensionary/ retiral benefits. Copy of the C.S.R rules are annexed

herewith as Annexure R-2. Further as per rule 4.23 (3) of the Punjab Civil Service rules (Haryana) the interruption in service (either to spell of permanent or temporary service) should not be more than one year duration In case where there are two or more interruption the total period of all interruption to be condoned should not exceed one year.

7. Heard learned counsel for the parties.
8. Respondents argued for dismissal for the writ petition, stating that the petitioner remained absent from duty from April, 1990 to August, 1991 i.e. for a period of seventeen months almost. Thus, the daily wage period rendered by the petitioner cannot be counted for the purpose of pension and other retiral benefits.
9. This argument is of no help to the respondents as admittedly the service of the petitioner was regularized on 13.2.1995 considering the Regularization Policy dated 27.5.1993, according to which the petitioner has completed five or more years of continuous service as on 31.3.1993 and was in service on 31.3.1993. Therefore, the stand of the respondent is false and is belied on the simple fact that the petitioner stands regularized only on account that he has completed five regular service as on 31.3.1993 which will include the period which is now been alleged during which the petitioner remained absent i.e. April 1990 to August 1991.
10. As enunciated by a catena of judgments to the effect that pension payable to a retired Government servant is no longer a bounty which is payable on the sweet will and pleasure of the government. It is actually a statutory right which flows to such an employee by virtue of the rules which governed his employment, as has been said in ‘**Deokinandan**

Court.

11. The grant of pension did not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may become necessary for the authorities to pass an order to that effect but the right to receive pension flows to the government servant not because of the said order but by virtue of the rules which have a statutory force, as was the view of the Supreme Court in **State of Punjab v. Iqbal Singh, A.I.R. 1976 S.C. 667**, and subsequently also reiterated further in *State of Kerala and Ors. v. M. Padmanabhan*, AIR 1985 S.C. 356, having made following observations:-

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

12. Thus, a right to pension has been held to be a right in property, and till the Constitution (Forty Fourth Amendment) Act, 1978, came into force, property right was a fundamental right under Article 19(1)(f) of the Constitution. Thereafter on the enforcement of the said amendment property right is no longer a part of fundamental rights and has been provided for as a constitutional right in Article 300-A and in terms thereof no person can be deprived of his property save by authority of law.

13. In light of the above discussion made, added with the fact that once services of the petitioner has been regularized with effect from 13.02.1995 considering the regularization policy dated 27.05.1993, according to which the petitioner should have completed five years or more of continuous service on

to August 1991 on the ground that he remained absent from the duty because admittedly the respondents have counted the service of the petiitoner as regular from 1988 on wards till 1993. Therefore, respondents are directed to count daily wage service rendered by the petitioner from April 1990 to August 1991 i.e. for a period of seventeen months almost along with interest @ 6% per annum.

14. The petition is allowed in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

7th November, 2023
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Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No