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

2023:PHHC:107557

**CWP-14783-2016
DECIDED ON:17.08.2023**

NIRANJAN SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA & ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Ms. Lipika, Advocate for
Mr. R.S. Mamli, Advocate for the petitioner.

Mr. Sandeep Singh Mann, Addl. AG, Haryana.

Mr. Abhishek Grover, Advocate for respondents No.2 to 4.

*****

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari*/*mandamus* directing the respondents to count the entire service of the petitioner for granting pensionary benefit and also to pay all arrears with interest.

2. Learned counsel for respondents No.2 to 4-Nigam has vehemently made a valiant attempt to defend the claim of the petitioner on account of the fact that he never came forward to give option after regularisation of services as given vide memo No.18090 dated 27.10.1980 (Annexure R-1). The attention of this Court has been drawn to the submissions made in para 8 & 9 of the written submissions, which read as under:-

> *8. That the contents of para No.8 are wrong and hence denied. It is further submitted that the petitioner joined the Nigam on 02.12.1970 as Work Charge Cleaner. The work charge period could not be counted for pensionary benefits due to no option submitted by the petitioner with the respondent No.4.*

9. That the contents of para No.9 are wrong and hence denied. It further submitted that the petitioner joined the service on 02.12.1970 as per record of the department and pension was disbursed by the EPF department because the petitioner was the member of EPF".

3. However, on a query put by this Court that the mode and time alongwith the relevant date-period as to when such option was invited by the respondent-Nigam, learned counsel for respondents No.2 to 4 submits that no such record is available and as such nothing has been incorporated in the written statement qua that.

4. This Court is of the considered view that in the light of the fact culminating on record to the effect that no such option was ever made available to the petitioner, after regularisation of his services except a bald statement made in the written statement vide para 8 as has been stated hereinabove, the benefit of work charge service rendered by him, the period from 02.12.1970 to 31.08.2006 more than 36 years cannot be denied to be counted for the purpose of pensionary benefits.

5. It is one of glaring instances on the part of the petitioner that despite his superannuation in the year 2006 rendering a service of 35 years, 8 months and 25 days, the petitioner has been given the service benefit only for 25 years 9 months and 25 days. In fact, an order dated 07.08.2007 (Annexure P-1) was also passed for payment of gratuity to the petitioner, but the same has also not been paid so far. Such glaring instances are to be dealt with snug hands by the Courts being a watch dog for the protection of constitutional and fundamental right of the citizens such like the petitioner, who is being deprived of legitimate financial dues become in the year 2006.

6. Rule 2.3 of Punjab Civil Services Rules would also be pertinent to be mentioned herein:-

"2.3 Active Service for the purpose of pension, includes besides time spent on duty in India:-"

> *(i) Leave of all kinds except extraordinary leave not counting towards increment under rule 4.9(b) (ii);*
> *(ii) Time spent on the voyage to India by a Government employee who is recalled to duty before the expiry of any recognized leave out of India: provided his return to duty is compulsory;*
> *(iii) The period of absence from India of a Government employee deputed or detained out of India on duty."*

7. After having gone through the submissions made by learned counsel for respective parties, it is crystal clear that the petitioner got retired on 31.08.2006 after attaining the age of superannuation and no retiral benefit has been given to him except gratuity to the tune of Rs.1,07,168/-. Moreover, the petitioner has not been given the benefit of work charge service rendered by him w.e.f. 02.12.1970 to 31.08.2006.

8. This Court in the case of ***"Kesho Ram vs. State of Haryana and others",*** ***(2006) 144 PLR, 697*** after relying upon the judgment of Full Bench of this Court rendered in the case of ***"Keshar Chand vs. State of Punjab";*** ***(1988-2) 94 PLR 223 (FB)***, has observed as under:-

> *"Once the services of a work charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal protection 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 of 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 are eligible for pension and those who started as work charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but it hit by the vice of arbitrariness, and for these reasons the provisions of Sub-rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."*

9. In view of law laid down by this Court in ***Kesho Ram's case (supra)*** as well as rule 2.3 of Punjab Civil Services Rules, respondents are directed to release the retiral benefits alongwith gratuity within a period of two weeks from the date of receiving of certified copy of this order alongwith interest @ 9 % per annum, which shall be calculated from the date it became due.

10. In view of the aforesaid terms, the present petition stands disposed off.

(SANDEEP MOUDGIL)
JUDGE

17.08.2023
Meenu

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