

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(207)

CWP-17950-2014 (O&M)

Date of Decision : October 10, 2023

Kanwar Singh

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. B.K. Bagri, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Ms. Amanpreet Kaur, Advocate, for
Mr. Harneet Singh Oberoi, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-17714-CWP-2019

As prayed for, the application is allowed.

Annexure P-10 is taken on record.

CWP-17950-2014

1. In the present writ petition, the claim of the petitioner is for counting the service which the petitioner had rendered prior to the regularization of his services in the year 2000 as a qualifying service so as to grant the petitioner the pensionary benefits.
2. Certain facts may be noticed for the correct appreciation of the issue in hand.
3. The petitioner was appointed as a Driver with the Haryana

Roadways on 16.05.1994 on contractual basis keeping in view the fact that there was strike announced by the employees of the Transport Department. The petitioner's contract was extended time and again and the petitioner continued working as a Driver. In the year 1998, keeping in view the satisfactory work of the petitioner, his services were regularized by the respondents and ultimately, on attaining the age of superannuation, the petitioner retired from service on 31.05.2005.

4. Upon the retirement, the petitioner was not given the benefit of pension on the ground that the petitioner did not had 10 years qualifying service for the grant of pensionary benefits as his services have been regularized only in the year 1998 from which date, the benefit of regular service is to be counted.

5. Feeling aggrieved against the said action, the petitioner has approached this Court with a prayer that the respondents be directed to consider the total length of service which the petitioner had rendered with the respondents keeping in view the provisions of law which govern the aspect of the grant of pensionary benefits and issue appropriate direction to the respondents to grant the petitioner the benefit of pension.

6. Learned State counsel submits that as only the regular service could have been taken into account for the grant of pensionary benefits and as the petitioner's services were regularized only in the year 1998 and the petitioner retired from service on 31.05.2005, the petitioner did not complete 10 years of mandatory service with the Department to claim the benefit of pension, hence, the claim of the petitioner is liable to be rejected.

7. Learned State counsel further submits that the present petition was filed in the year 2014 whereas, the petitioner had retired from service in the year 2005 and therefore, on the ground of delay and latches, the present

writ petition is not maintainable as the petition is barred because of inordinate delay in filing the present petition.

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

9. The benefit of pension is regulated by the rules governing the service. It is a conceded position that when the petitioner retired from service on 31.05.2005, Punjab Civil Services Rules (as applicable to Haryana) were applicable. Rule 3.17-A (a) of the Punjab Civil Services Rules deals with the issue as to which service is to be treated as qualifying service for the grant of pensionary benefits. Rule 3.17-A (a) is as under:-

“ 3.17-A (a) All services interrupted or continuous followed by confirmation shall be treated as qualifying service; the petitioner of break shall be omitted while working out aggregate service.”

10. A bare perusal of Rule 3.17-A (a) would show that all service interrupted or continuous followed by confirmation shall be treated as qualifying service. The word mentioned in the Rule is “all service”.

11. When the said Rule is applied to the claim of the petitioner, it is clear that the petitioner was appointed on contract basis in the year 1994 and the petitioner continued working uninterruptedly till his services were regularized in the year 1998. That being so, the service which the petitioner had rendered on contract basis with the respondents, is liable to be taken into account as a qualifying service.

12. It is a conceded position that the said Rule has already been interpreted by the Full Bench of this Court in ***Kesar Chand Vs. State of Punjab and others'***, AIR 1988 Punjab 265 according to which, even the daily wage service is liable to be treated as qualifying service in case, the services of the employee concerned were regularized by the Department.

Keeping in view the said settled principle of law, the contractual service which the petitioner rendered continuously starting from 16.05.1994 is to be taken into account as a qualifying service and therefore, the petitioner has more than 10 years of service to his credit to become eligible for the grant of pensionary benefits.

13. Further, learned State counsel submits that contractual appointment should not be taken into account as a qualifying service.

14. It may be noticed that once the word used in Rule 3.17-A is “all service”, the same will also cover the contractual appointment, hence, the said service cannot be excluded for qualifying service.

15. The Hon’ble Supreme Court of India while passing order in SLP No.10399 of 2020, decided on 07.08.2023, has held that the past service as a contractual employee is to be taken into account for computing the pensionary benefits. The said judgment covers the claim of the petitioner as well. Hence, the claim of the petitioner is squarely covered for the grant of pension as the petitioner had more than 10 years of service to his credit on the day when he retired from service on attaining the age of superannuation.

16. It is a settled principle of law settled by the Hon’ble Supreme Court of India in ***Civil Appeal No.4100 of 2022 titled as Shri M.L. Patel (Dead) through LRs vs. State of Goa and another, decided on 20.05.2022*** that the claim for pension is continuous cause of action and cannot be barred on the ground of delay and laches. The judgment of the Hon’ble Supreme Court of India holding that the claim for pension is continuous cause of action, hence, the argument of the learned State counsel that the claim of the petitioner is barred by delay and laches, cannot be accepted.

17. At this stage, learned State counsel submits that at certain point

of time, the petitioner had availed leave during his service career, which leave is to be deducted while computing the qualifying service. No rule to support the said claim has been cited before this Court to claim that the leave obtained by an employee while in service is to be deducted from the total qualifying service. In the absence of any Rule being cited, the claim of the Department that leave obtained by the petitioner while in service is to be deducted while computing the qualifying service, cannot be accepted.

18. Keeping in view the above, the present writ petition is allowed. The petitioner is held entitled for the grant of pensionary benefits by taking into consideration the service rendered by him on contractual basis as a qualifying service.

19. At this stage, learned counsel for the petitioner submits that the petitioner is waiting for the grant of pension for the last 17 years, hence, once the entitlement of the petitioner is based upon the Rules and regulations which existed at the time of his retirement, the petitioner is also entitled for the grant of interest on the arrears which the petitioner has been held entitled for under this order.

20. Learned State counsel submits that the adjudication of the claim for the grant of pension has been done by this Court today, hence, the claim of the interest may kindly be declined.

21. Keeping in view the facts and circumstances that the entitlement of the petitioner is based upon the Rules which existed at the time of the retirement and simple reading of the Rule makes it clear that the petitioner is entitled to count the contractual service as a qualifying service and he has been litigating with the Department for the last 17 years, coupled with the settled principle of law settled by the Coordinate Bench of this

Court in *J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*,

where any amount for which an employee was entitled for but has been retained and used by the Department, the employee will be 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.”

22. Keeping in view the above, the prayer of the petitioner is allowed. Petitioner is held entitled for interest @ 6% per annum on the arrears which will be calculated under this order. Let the order be complied with within a period of two months from the receipt of copy of this order.

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

24. The miscellaneous application pending, if any, also stands disposed of.

October 10, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes