

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

CWP-13281-2017

Date of decision : 31.01.2023

Bhajan Singh

..... Petitioner

versus

PRTC

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Vikas Chatrath, Advocate and
Ms. Tanya Sehgal, Advocate
for the petitioner.

Mr. Anupam Singla, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

Petitioner has invoked writ jurisdiction of this Court seeking writ in the nature of certiorari for quashing impugned order dated 12.04.2016 (Annexure P-2) passed by the official respondent, whereby claim for counting daily wage service prior to regular appointment towards the pensionary benefits has been rejected.

2. The issue relates to the period w.e.f. 24.08.1975 till 31.10.1976. Petitioner claims to have worked with the respondents and thus feels that he is entitled for counting of the said period for the purpose of pensionary benefits. Respondents have declined the same saying that the work was not continuous. An additional affidavit of Bhupinder Pal Singh, Managing Director, PRTC, Nabha Road, Patiala has been filed explaining the factual position as discernible from the record. Operative part thereof reads as under:-

“xx xx xx

3. That the service rendered by the petitioner w.e.f. 24/08/1975 to 31/10/1976 was not counted for the purpose of pensionary benefits as the petitioner has not continuously worked for the said period. It is further submitted that as mentioned in the written statement, the petitioner had joined the respondent corporation on 24/08/1975 and had worked till 04/12/1975. Thereafter, the petitioner was again appointed on 06/12/1975 till 31/10/1976. Hence there is a break of 1 day in service rendered by the petitioner. It is also pertinent to mention here that the petitioner was again appointed w.e.f. 02/11/1976, hence there is also a break of 1 day in the service rendered by the petitioner. Since the period from 24/08/1975 till 02/11/1976, there is no continuity in service of the petitioner, therefore, the said period cannot be counted for the purpose of pensionary benefits. Therefore, the respondent corporation has rightly granted the pensionary benefits to the petitioner by calculating his service w.e.f. 02/11/1976.”

3. The short question involved is as to whether a notional break of one day can be read to the peril of the petitioner to reject his claim. Law w.r.t. notional breaks at the instance of the employer is well settled and has been repeatedly deprecated as unfair practice at the hands of the employer. The petitioner was working as a daily wager with the respondent. Thus, was not in a position to avoid such breaks and there is no allegation that the said notional breaks was owing to the fact that the petitioner was not willing to work. Thus, the petitioner is held to have continuously worked from 24.08.1975 to 31.10.1976 with the respondent and is held to be entitled for counting of the said period towards the terminal benefits in terms of law laid down in *State of Punjab vs. Ram Singh, reported as 2011*

(17) SCT 932.

3. Consequently, the present petition is allowed.

(PANKAJ JAIN)
JUDGE

31.01.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No