

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

**CWP-18832-2021
DECIDED ON: 21.08.2023**

RAJINDER

...PETITIONER

VERSUS

HARYANA VIDYUT PRASARAN NIGAM LTD. AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shvetanshu Goel, Advocate
for the petitioner.

Mr. Rajesh Gaur, Advocate
for respondents.

SANDEEP MOUDGIL, J

1. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India for issuance of a writ in nature of *certiorari* seeking quashing of the order dated 20.08.2021 (Annexure P-4) passed by the respondent No. 3 whereby the petitioner's claim for counting of his daily-wage service as qualifying service for the purpose of pension and pensionary/retiral benefits, has been rejected.

2. Learned counsel for the petitioner contends that the petitioner has worked from 10.01.1984 to 30.11.1987 on daily wages and thereafter, from 03.12.1987 to 29.12.1990 on work charge basis and thereafter the services of the petitioner were regularised and he has now retired from service on 30.06.2017. He submits that finally in pursuance to the directions issued by this Court vide order dated 15.07.2021 passed in COCP No.1390 of 2021, the respondents rejected the claim of the petitioner on the ground that the daily

wage service rendered by the petitioner from 10.01.1984 to 03.12.1987 was not followed by regular service.

3. Learned counsel for the respondent, in their reply, contended that as per the clause embodied in Punjab Civil Services Vol-II and Haryana Civil Services (Pension) Rules, 2016, if work charge service/ daily wage services is followed by regular employment only than it is countable towards pensionary benefit and in the case of the petitioner, the work charge service from 03.12.1987 to 29.12.1990 followed by regularization has been already been counted towards pensionary benefits whereas, daily wage services rendered by petitioner from 10.01.1984 to 30.11.1987 was not followed by regular employment instead it was followed by work charged service, thus it is not countable towards pensionary benefit.

4. Heard learned counsel for the parties and gone through the record.

5. The petitioner is claiming the grant of pensionary benefits and revised pension by counting the service rendered by him as daily wages workers from 10.01.1964 to 30.11.1987. The case of the petitioner is squarely covered the judgment passed by the Division Bench of this Court in **Kashmir Chand v. Punjab State Electricity Board [2005 (4) S.C.T. 298]** wherein under similar facts and circumstances, the Division Bench of this Court while relying on the Full Bench decision in **Kesar Chand v. State of Punjab and others, [1989(II) RSJ 629]** held as under:

“7. The petitioner was appointed as Wireless Operator on daily - wage basis on 21.3.1987. He was further promoted as work - charge Electrician with effect from 21.4.1993 and since then he had been continuously working upto 2.4.1997 as the services of the petitioner were regularised with effect from 3.4.1997.

8. *In Kesar Chand's case (supra), the Full Bench while dealing with a similar controversy held 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 is 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."

The aforesaid view was further reiterated by this Court in the cases of Joginder Singh, Hazura Singh and Nasib Singh (supra). A conjoint reading of the rules, quoted above and the observations of the Full Bench would reveal that it is by now well established that period of service rendered on daily - wage / work - charges prior to regularisation of services is liable to be counted for the purpose of gratuity and pension.

9. *In view of the above, we are of the opinion that services rendered by the petitioner on daily - wage and work - charge basis should be counted as qualifying service for pensionary benefits.* The petitioner was working as a whole-time employee and was paid wages on monthly basis. The respondents have not disputed that there was no wilful absence from duty by the petitioner. In such circumstances, the period of service of 6 years and 29 days rendered by the petitioner on daily - wage basis has to be reckoned while computing the pensionary benefit of the petitioner.

Consequently, we allow the writ petition, quash the order, Annexure P-4 and direct the respondents to redetermine the pensionary benefits of the petitioner by taking into consideration his daily - wage service of 6 years and 29 days. The consequential benefits accruing to the petitioner shall be paid to him within a period of two months of the receipt of a certified copy of the order.”

Further, the judgment in the case of *Ram Dia and others v. UHBVN Ltd.*

[2005(4) SCT 387] also supports the case of the petitioner.

6. At this stage, it is relevant to mention the unnecessary harassment which has been caused to the government employee for seeking payment of amount which he is rightly entitled to. The petitioner had served upon the respondents a legal notice way back in February, 2020. The same was never replied to by the respondents constraining the petitioner to knock the doors of this Court by way of filing a writ petition bearing CWP No. 15417 of 2020. The said petition was decided vide order dated 25.09.2020 whereby the respondents were directed to decide the said legal notice within a period of one month. The order was not complied with by the respondents, as a result of which the petitioner was once again constrained to file the contempt petition bearing COCP No. 1390 of 2021 wherein notice was issued vide order dated 15.07.2021. During the pendency of the contempt petition, the impugned

order dated 20.08.2021 came to be passed, which evidently is based on wrong application of the settled law resulting in another round of litigation for the petitioner. An arduous procedural delay which mars the right of a person is writ large on the face of this case. Such an action on the part of the respondents is deprecated.

7. As such, the present writ petition is allowed and a direction is issued to the respondents to re-calculate the pension and pensionary/retiral benefits of the petitioner and to release the arrears of the benefit to the petitioner after calculation as per his entitlement, within a period of one month from the date of receipt of copy of this order. The petitioner shall also be entitled to interest @ 9% per annum from the date the benefit accrued till the actual payment of the same.

8. Ordered accordingly.

21.08.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No