

CWP No.23462 of 2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2023:PHHC:095349

MANOJ KUMAR
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CWP No.23462 of 2016

Date of decision : 26.07.2023

Ram Jawari

....Petitioner

Versus

State of Haryana and Ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. Lajpat Rai Sharma, Advocate for
Mr. Vivek Khatri, Advocate for the petitioner.

Mr. Pankaj Middha, Addl.AG, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

Present petition has been filed raising grievance that daily wage service, which the petitioner had rendered in the Department for the period from 01.01.1986 till 25.08.1987 is liable to be taken into account as qualifying service for computing pensionary benefits and the said request has wrongly been rejected by the respondent-Department vide impugned order dated 13.02.2015 (Annexure P.11) passed, which order has been challenged in the present petition.

Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

The petitioner was appointed as daily wager in the respondent-Department on 01.01.1986 and he joined as such on 06.01.1986. The petitioner continued working till his services were regularized on the post of Peon-cum-Chowkidar vide order dated 24.08.1987. The petitioner attained the age of superannuation on 28.02.2015 but while calculating qualifying service, the benefit of daily wage service from 01.01.1986 till 25.08.1987 has not been taken into account.

Learned counsel for the petitioner argues that the principles of law as settled by Full Bench of this Court in **Kesar Chand vs State Of Punjab And Ors, AIR 1988 P H 265** vide which Rule 3.17 of Punjab Civil Services Rule, Vol. II as applicable to State of Haryana has been interpreted, has not been followed according to which judgment, a finding has been recorded that daily wage service rendered by an employee prior to regularization of his/her services is to be treated as qualifying service for computing pensionary benefits and the action of the respondents-Department in rejecting the said claim of petitioner is contrary to the settled principles of law. Hence, the respondents are under obligation to compute and grant pensionary benefits by taking into account his tenure as a daily wage worker from 01.01.1986 till 25.08.1987.

Learned counsel for the respondents, on the other hand, submits that there was no valid proof of the petitioner having worked as daily wage worker, as claimed by the petitioner. Learned State counsel submits that in the present case, there is no authentic record as to whether the petitioner has rendered the service as daily wage employee, benefit of which is claimed as the Department despite best efforts has not been able to find out the details of the daily wage service rendered by the petitioner. Hence, the denial of the said benefit is perfectly valid and legal, keeping in view the said aspect.

I have heard learned counsel for the parties and perused the record with their able assistance.

In response to order dated 31.08.2022 passed by this Court as to why record was not available once in Annexure P.1, which is the appointment order on daily wage basis, the details including letter number and dispatch number are given, learned counsel submits that the said record is not available being lost and a missing report has also been filed.

It is not disputed between the parties that the daily wage service rendered by an employee prior to regularisation of his/her services is to be taken into account as qualifying service for computing pensionary benefits. The only dispute herein is that there is no valid record as to whether the petitioner has rendered daily wage service as being claimed by him. The dispute which is being raised by the respondent is causing prejudice to the petitioner. Hence, this Court is left with no other option but to decide the issue on the basis of record already available.

A bare perusal of Annexure P.1, which is an order by the Deputy Secretary to Government of Haryana addressed to all the persons who are appointed on daily wage basis, not only gives the date of appointment but also the letter number and serial number etc. Once there is also an endorsement on the said letter to all the concerned, it cannot be said that said letter is forged or fabricated. Rather, no averment has come on record from the respondent-State of Haryana to say that order (Annexure P/1) is forged but only argument raised is that the said letter is not traceable in the record so as to extend the benefit of daily wage service to the petitioner. Once the respondents have lost the record, the petitioner cannot be made to suffer especially when the petitioner is producing the said order appointing him on daily wage and that too with all requirement to show its genuineness.

That apart, the assertion of the respondent-Department that once the said document is not available in their record as of now as the same has been lost so as to grant the benefit to the petitioner cannot be accorded as the said act will not extinguish right of the petitioner to claim the said benefit keeping in view the order Annexure P.1 which is already placed on record. Hence, it is held that the petitioner was appointed on daily wage basis vide Annexure P.1 and continued working till 26.08.1987 till his services were regularized, hence, the petitioner is

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held entitled for benefit of the said service to be treated as qualifying service for computing pensionary benefits.

Accordingly, the present writ petition is allowed and the respondents are directed to re-calculate the pensionary benefits of the petitioner by giving him benefit of service which he has rendered for the period from 01.01.1986 till 25.08.1987 as qualifying service for completing the pensionary benefits and pay him all the arrears which becomes due upon revision of his pensionary benefits. Further as the petitioner had retired in the year 2015 and is litigating with the respondents for the last about eight years, keeping in view the settled principles of law laid down in J.S. Cheema vs. State of Haryana, the petitioner will also be entitled to the interest @ 6% per annum on the arrears, from the date, he retired till the date of actual realisation of the amount.

July 26, 2023
manoj

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable :	Yes