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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23198-2017 (O&M)
Date of Decision: 02.08.2023

NIRMAL SINGH .....*Petitioner*

V/s.

STATE OF PUNJAB THROUGH ITS PRINCIPAL SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE, PUNJAB CIVIL SECRETARIAT, CHANDIGARH AND ANOTHER

.....*Respondents*

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA.

Present Mr. Madhav Pokhrel, Advocate,
for the petitioners.

Mr. Kunal Muthreja, AAG, Punjab.

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SANJEEV PRAKASH SHARMA, J (Oral)

1. The petitioner by way of this Writ Petition has prayed for issuance of a writ in the nature of *mandamus* directing the respondents to count the entire service rendered by him on ad hoc basis starting from his initial joining i.e. 20.02.1996 upto 14.01.2008 towards qualifying service for the purpose of pensionary benefits under the old pension scheme.

2. The issue raised in the present petition is no more *res integra* and both the learned counsel are *ad idem* that the issue has been decided by this Court in the case of ***Harbans Lal*** Vs. ***State of Punjab and others***; *2012 (3) SCT 362* wherein it is held that the daily wage service shall be counted towards regular service for the purpose of release of pension. The said judgment has been upheld by the Hon'ble Supreme Court in SLP No.17901 of 2011 decided on 30.07.2012. The Review Petition, filed by the State too before the apex Court, stands dismissed on 04.11.2015.

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3. While dealing with the similar controversy in the case of ***Kesar Chand*** V. ***State of Punjab***; *1998(2) PLR 223*, the full Bench has 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 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 eligible for pension and those who started work-charged employees and their services regularised subsequently, and the others is based on any intelligible criteria and, before, is not sustainable at law. After the services of a work-charged employee have n regularised, he is a public servant like other servant. To deprive him of the pension is not only unjust and inequitable is hit by the vice of arbitrariness, and for se 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."*

4. The aforesaid judgment takes into consideration the provisions of Rule 3.17 A of the Punjab Civil Services Rules, Vol. II whereby all the service rendered in an establishment, interrupted or continuous shall be counted as a qualifying service which includes daily wage service also.

5. In the present petition, the petitioner has prayed for counting of his services rendered on *ad hoc* basis w.e.f. 20.02.1996 followed by his

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regular appointment on 15.01.2008 towards qualifying service for pension under the Old Pension Scheme.

6. Accordingly, the Writ Petition is allowed. The aforesaid period of service rendered by the petitioner shall be counted for the purpose of counting of qualifying service for release of pension under Old Pension Scheme. His pension and other retiral benefits shall accordingly be calculated as per the old pension scheme and released to the petitioner within a period of 3 months from today.

August 2, 2023 **[SANJEEV PRAKASH SHARMA]**
Ess Kay **JUDGE**

Whether speaking / reasoned : Yes/No.

Whether Reportable : Yes/No

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