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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-25079-2017 (O&M)
Date of Decision:07.12.2023

DALJIT KAUR

.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Abhivadya Sood, Advocate for the petitioner.

Mr. R.K. Kapoor, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The short points involved in the present case are **(a)** whether the service rendered by the petitioner between the period of her initial appointment as a Safai Sewak (Sweeper) i.e. 01.08.1994 and 22.01.2004 i.e. the date when she was regularized would be counted for the purpose of her retiral benefits and **(b)** whether the petitioner, who has been regularized by the respondents on 22.01.2004, can be denied the benefit of Old Pension Scheme, treating her to be regularized after the cut-off date of 01.01.2004 when the New Pension Scheme was brought into force.

2. Learned counsel for the petitioner has pointed out that the services of the petitioner workman were dispensed with by the respondents on 20.07.1996 after having worked for almost 2 years, while she was drawing wages in the pay scale of ₹750 – ₹1350/-. The Labour Court, awarded her continuity of service without back wages. The petitioner has rejoined services and thereafter the respondents have passed an order regularizing her services vide order dated 22.01.2004. The said order was passed in terms of the

Punjab Government's directions that employees who are working on the basis of 89 days on or before 13.06.1996 would be entitled for regularization.

3. Learned counsel for the petitioner submits that regularization of the service of the petitioner, therefore, have to relate back from an earlier date as she was already granted continuity of service. Thus, she has to be treated to be under the Old Pension Scheme. However, at the time of retirement, she had been denied the benefit of Old Pension Scheme and has been wrongfully placed under the New Pension Scheme.

4. Learned counsel for the petitioner relies on the full bench judgment passed by this Court; **Kesar Chand Vs. State of Punjab Through the Secretary, PWD (B&R), Chandigarh and Others**; 1989 (1) CLR 253, wherein the services of the work charge employees who are regularized, were treated to be under the Old Pension Scheme and his qualifying service rendered as a work charge employee was required to be counted.

5. Learned State counsel submits that the petitioner did not take up the issue at the time of regularization and has filed this Writ Petition in the year 2017, and ought not be given the said benefit.

6. I have considered the submissions of learned counsel for both the parties.

7. Although, delay may be a factor in refusing relief to an employee, but facts of the case are required to be examined. In the present case, the petitioner was working as a Safai Karta (Sweeper) and was granted continuity of service by the Labour Court on 10.12.2001. It was, therefore, incumbent upon the respondents to have passed the regularization orders,

both in terms of the circular issued by the Govt. of Punjab as well as in terms of the Award and regularize the services of the petitioner from the original date. The order has to be, thus, read to be regularizing her services as she was in service as on the cut-off date i.e. 01.08.1996.

8. Keeping in view thereto, if the service is not counted prior to passing of the order of regularization dated 22.01.2004, the importance of the award dated 10.12.2001 would stand negated. Such interpretation which results in taking away the relief already granted by the Court would be illegal and unjustified. Accordingly, the petitioner has to be considered under the Old Pension Scheme.

9. The action of the respondents in not granting pension under the Old Pension Scheme to the petitioner is found to be, therefore, unjustified. The Writ Petition is accordingly allowed. The respondents are directed to fix her pension and retiral benefits accordingly. If any amount/pension is paid to the petitioner in relation to the New Pension Scheme, the same shall be accordingly adjusted and the arrears shall be released to the petitioner within a period of three months. The interest on the gratuity amount @ 9% per annum shall also be paid to her.

10. All the pending applications in this Writ Petition stand disposed of accordingly.

December 7, 2023

Ess Kay

[SANJEEV PRAKASH SHARMA]
JUDGE

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No