

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21783-2021 (O&M)

Decided on 22.11.2023

Soma Singh

... Petitioner

VS.

UHBVN & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Shvetanshu Goel, Advocate for the petitioner

Mr. Vishal Singh Chauhan, Advocate for respondents No.1 to 5

Sandeep Moudgil, J.

The petitioner has filed the instant writ petition under Article 226 of the Constitution for issuance of a writ in the nature of certiorari for quashing of the impugned memo dated 02.04.2021 (Annexure P6) issued by respondent No.3 whereby the claim of the petitioner for counting of daily wage/work charge service for the period from 15.09.1980 to 04.05.1993 has been rejected and seeks a direction to the respondents to count the said service as qualifying service towards pension and pensionary benefits and to release the same along with interest.

The question which arise for the consideration of this Court is whether, an employee, who is entitled for a particular benefit under the rules governing the service, needs to apply or opt for the same so as to avail the said benefit or not.

Learned counsel for the petitioner contends that undisputedly, the petitioner was appointed as Work Mate on regular basis in 5/1993 - 31.10.1993 Division No-II HSEB Karnal and thereafter was promoted as ALM and retired as such w.e.f. 30.06.2017 and he accepted the benefits

allotted to him without any objection. It is submitted that the petitioner approached the department authorities on numerous occasion for counting of daily wage service and as such they had the requisite knowledge that the petitioner had rendered daily wage service from 15.09.1980 to 05.05.1993. It is averred that the departmental authorities were liable to count daily wage service rendered by the petitioner as qualifying service towards the total length of service for the purpose of pension and pensionary/retiral benefits and release the re-fixed benefits as per Rule 14(4)(iv) of the Haryana Civil Services Rules, 2016.

Learned counsel then raised the argument that the departmental authorities are in complete possession of the daily wage service record of the petitioner since the services of the petitioner were regularized by the department after duly perusing the daily wage service record of the petitioner and it is a matter of record that he rendered his daily wage service under REC Construction S/U Division, HSEB, Karnal and hence there was no need on part of the petitioner to intimate the name of the office where he had rendered his services. It is also submitted that the above said defence taken by the authorities cannot be a valid ground to reject the genuine claim of the petitioner as it is contrary to settled law.

On the other hand, as per the written statement dated 12.07.2022 filed on behalf of the respondents, it is averred that the present writ petition has been filed under a clever 'legal advice' just to harass and humiliate the respondents inasmuch as the petitioner had rendered daily wages/work charge service w.e.f. 15/09/1980 to 04/05/1993 and that too, the daily wages/work charge service of the petitioner is not a continuous service. It is submitted that

the daily wages/work charge service of the petitioner more interrupted from 15.09.1980 to 8/1983, 11/1983 to 6/1984, 2/1987 to 3/1987 and 3/1990 to 11/1992 etc. many times, therefore, the service of the petitioner is not countable for pensionary benefits as per Rule 3.17(A)(g) of the Punjab Civil Services Rules.

Learned counsel for the respondents then vehemently urged that the benefit of work charge service is to be given only to those employees who have submitted their option upto 30.06.2014, but it is revealed from the service record of the petitioner that he did not exercise any option in this regard and remained "negligent" so he did not fulfill the conditions laid down for counting of work charge service for the purpose of pensionary benefits. It is further contended that the petitioner retired from service on 30.06.2017 and has filed the present writ Petition in the year 2021 after a lapse of 4 years and as such the writ petition is time barred.

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

It has been conceded by the learned counsel for the respondents that the rules governing the service, grant the petitioner the benefit of daily wage service, to be taken into account as a qualifying service for computing the pensionary benefits, hence the same cannot be denied merely on the ground that an option invited from an employee by the respondents so as to claim the same benefit, was not exercised by the petitioner. It is incumbent upon the respondents to notify the circular/instructions to all the concerned employees for their information, before the same can be implemented in a manner, which causes prejudice to them. The written statement filed by the

respondents is silent on this aspect to countenance that at any point of time, the petitioner was in receipt/knowledge of the instructions/circulars, in question.

Mere issuance of instructions is not good enough in the facts and circumstances of this case especially in view of the judgment of the Supreme Court of India in **Civil Appeal No.4903 of 2009 titled as Dakshin Haryana Bijli Vitran Nigam and others vs. Bachan Singh**, decided on 30.07.2009 wherein it was held that unless and until those instructions are brought to the notice of the employee concerned, non-submitting of option, cannot be treated as a ground to deny the benefit of daily wage service to the said concerned employee.

In the present case also, these instructions cannot be relied upon by the respondents as nothing has been produced before this Court by the respondents to show that the instructions being relied upon by the respondents were brought to the notice of the petitioner any time while he was in service.

It is further not disputed that under the Service Rules, the *ad hoc* service rendered by an employee is to be counted as 'qualifying service' for computing the pensionary benefits. That being so, merely on the ground that an employee has not given an option under the Instructions, his right to claim the said benefit under the rules, stands extinguished is not sustainable. The rules are on a higher pedestal than the instructions and any benefit accruing to an employee under the rules, has to be made admissible to the employee. The competence to take away the benefit envisaged under the rules can only be exercised by the employer by amending the rules only.

In view of the above discussion, this writ petition is allowed and the respondents are directed to compute the pension/pensionary benefits etc. of the petitioner as admissible to him under the Rules governing his service conditions, according to which the qualifying service also include the daily wage service rendered by an employee prior to the regularization. Let the pensionary benefits of the petitioner be calculated by the respondents by taking into account the daily wage service rendered by him as qualifying service and the benefit calculated be released to the petitioner, along with interest @ 9% p.a. within a period of two months from the receipt of the copy of this order.

Ordered accordingly.

22.11.2023

V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No