

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.6500 of 2016 (O&M)

Date of Decision.12.01.2023

Dharampal

...Petitioner

Vs

Managing Director, Haryana Vidyut Prasaran Nigam Shakti Bhawan and
others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.A. Sheoran, Advocate
for the petitioner.

Ms. Supriya Garg, Advocate
for the respondents.

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JAISHREE THAKUR J. (ORAL)

The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari, for setting aside the order dated 5.3.2015 (Annexure P-5) passed by respondent No.2 vide which petitioner's claim for regularization of his service w.e.f. 14.08.2005, granting arrear of pay difference from 01.04.2007 to February, 2012 and applying Old Pension Scheme before 2006 stood rejected, with further prayer that service of the petitioner be regularized w.e.f. 14.08.2005 with all consequential benefits.

In brief, the facts are that the petitioner was appointed as a part-time Mali on 14.08.1995. He filed Civil Writ Petition No.5017 of 2001 seeking regularization of his service, which was disposed of by this Court in terms of order dated 22.08.2002 passed in CWP No.17998 of 1999 titled as *Prem Singh Vs. HVPNL and others*. Thereafter, a regularization policy came into effect on 08.08.2003 and services of the petitioner were regularized under the said policy vide order dated 11.02.2012 w.e.f. 01.04.2007. Since

then, the petitioner has been working on a regular pay scale. Since the petitioner was not paid arrear of difference of the pay scale from the date of his regularization till he was made regular, various representations were made to the respondent-authorities without any effect. Eventually, the petitioner served a demand notice dated 01.07.2014 (Annexure P-3) claiming arrears of difference of pay w.e.f. 01.04.2007 till the date he had been made regular and as the same was not decided, the petitioner filed another Writ Petition No.25207 of 2014, which was disposed of vide order dated 10.12.2014 directing the respondents to decide the claim of the petitioner. Despite the said orders, representation of the petitioner was not decided, which led to the filing of a contempt petition bearing COCP No.1600 of 2015 wherein it was responded by the respondents that claim of the petitioner has been rejected vide impugned order dated 05.03.2015 by applying the principle of 'no work no pay.' Hence, the writ petition.

Learned counsel appearing for the petitioner would argue that once the petitioner was regularized in service w.e.f. 01.04.2007 by an order dated 11.02.2012, he would be entitled to a regular pay scale since the date his services were regularized. It is also argued that the petitioner is entitled to be considered under the Old Pension Scheme, which was applicable at the time when he had completed 10 years of service on 14.08.2005 i.e. prior to the New Defined Contributory Pension Scheme, which came into effect on 01.01.2006.

Per contra, learned counsel appearing for the respondents herein would contend that the petitioner was duly absorbed as a regular employee the minute there was a regular sanctioned post available and therefore, the actual pay benefit can be given from the date of regularization as Mali, which

is 13.02.2012 and not deemed date of regularization. It is also argued that the petitioner's claim for pensionary benefits under the Old Pension Scheme cannot be taken into account as service of the petitioner as Mali was regularized w.e.f. 01.04.2007 and therefore, he was treated as a fresh entrant in the respondent-Nigam. Any one appointed on or after 01.01.2006 is covered only under the New Defined Contributory Pension Scheme.

I have heard learned counsel for the parties and have perused the paper book, apart from perusing pleadings of the case. The petitioner herein was working on part-time basis since 1995 and sought regularization of his service on completion of 10 years as a daily wager in terms of regularization policy framed by the State of Haryana on 08.08.2003. Since his case for regularization was not considered, he had to approach this Court seeking regularization and eventually vide order dated 11.02.2012 his services came to be regularized w.e.f. 01.04.2007 as the sanctioned post of Mali became vacant on 31.03.2007 on superannuation of Rameshwar Das. It is to be taken into account that claim of the petitioner for payment of arrears equivalent to regular employee from the date of regularization i.e. w.e.f. 01.04.2007 till passing of the regularization order i.e. 11.02.2012 stands declined on the principle of no work no pay, which would not be justified, considering the fact that the petitioner was discharging service for equal number of hours as of a regular Mali with similar work and responsibilities. If his service stands regularized w.e.f. 01.04.2007 and he had continued to work for same number of hours as that of a regular Mali, there is no justification for not disbursing arrear of difference of pay to the petitioner, as claimed. There is also nothing on record to substantiate that the petitioner was going to be treated as a fresh entrant on the date when he was offered a regular post of Mali as borne out

from pleadings of the case. On the other hand, the pleaded case of the respondents is that service of the petitioner was regularized in terms of regularization policy dated 08.08.2003 w.e.f. 01.04.2007 on vacation of sanctioned post of Mali. Therefore, the petitioner would be entitled for arrear of pay difference w.e.f. 01.04.2007 till actual date of his regularization as regular Mali i.e. 13.02.2012.

As regards claim of the petitioner that he would be entitled to be governed by the Old Pension Scheme since he came to be appointed as a part-time Mali in 1985 much prior in time to the formulation of the New Pension Scheme in 2006 is left open for consideration, since the writ petition is not happily drafted and pleadings in the writ petition in this regard are not adequate. In case, the petitioner moves any representation to the respondents for counting his service rendered as a part-time Mali for the purpose of governing his service under the Old Pension Scheme, the same will be considered by the respondents in accordance with the law settled by Courts within a period of two months from the date of receipt of any such representation. Since, it is held that the petitioner would be entitled to the arrear of pay difference w.e.f. 01.04.2007 till actual date of his regularization as regular Mali i.e. 13.02.2012, the same be released to him within a period of two months from the date of receipt of certified copy of this order along with interest @7% per annum.

The writ petition stands partly allowed in above terms.

(JAISHREE THAKUR)
JUDGE

January 12, 2023
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No