

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

220-4 cases

CWP-27024-2018
Date of decision:10.01.2023

Dal Chand

... Petitioner

Vs.

The State of Haryana and others

... Respondents

2.

CWP-27880-2018

Raju

... Petitioner

Vs.

The State of Haryana and others

... Respondents

3.

CWP-27808-2018

Bitto

... Petitioner

Vs.

The State of Haryana and others

... Respondents

4.

CWP-28900-2018

Kanwar Pal

... Petitioner

Vs.

The State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Gaurav Gupta, Advocate for the petitioner
in all cases.

Mr. Saurabh Mohunta, DAG, Haryana.

SUVIR SEHGAL J. (ORAL)

This order shall dispose of CWP-27024-2018 titled as **Dal Chand versus The State of Haryana and others**; CWP-27880-2018 titled as **Raju versus The State of Haryana and others**; CWP-27808-2018 titled as **Bitto versus The State of Haryana and others** and CWP-28900-2018 titled as **Kanwar Pal versus The State of Haryana and others** as they involve common questions of law and facts. For the sake of convenience, facts are being taken from CWP-27024-2018.

Petitioner has approached this Court under Article 226/227 of Constitution of India for issuance of a writ in the nature of mandamus seeking setting aside of order dated 13.09.2018, Annexure P-4, and conditions No.11 and 12 of regularization order dated 11.09.2014, Annexure P-5, whereby he has been denied the consequential benefits and arrears of pay with effect from 01.10.2003.

Shorn of details, suffice it to notice that the petitioner was working with the respondent as Cleaner on daily wage basis since 01.01.1995. His services were terminated on 16.10.1995. He raised an industrial dispute before the Labour Court and vide award dated 03.02.2000, he was ordered to be reinstated in service with continuity of service and 25 % back wages from the date of termination. He re-joined duties on 06.02.2002. By order dated 11.09.2014, Annexure P-5, his services were regularized with effect from 01.10.2003. Petitioner is aggrieved by conditions No.11 and 12 imposed therein, which are reproduced as under:-

“11. The contributory pension scheme would be application after regularization of the service.

12. No arrear of any type is admissible as per Govt. Notification No.6/7/2014-GDI dated 16.06.2014. The pay of Sh. Dal Chand will be drawn on initial of the scale from the date of joining his duty.”

By subsequent order dated 13.09.2018, Annexure P-4, which has also been impugned herein, petitioner has been informed that as his service has been regularized in 2014, he will be governed by New Pension Scheme (NPS).

Reliance has been placed by counsel for the petitioner upon a Division Bench judgment of this Court in **Harbans Lal Versus State of Punjab and others 2012 (3) SCT 362**, to urge that qualifying service will relate back to the date of initial appointment of the employee and service rendered by the petitioner from 01.01.1995 is liable to be counted for purposes of pension.

Petition has been opposed by the State counsel. He has submitted that as the petitioner has been regularized subsequent to the coming into force of the NPS with effect from 01.01.2006, he is not entitled to pension under the old Scheme. He submits that the petitioner has been paid wages in terms of the award of the Labour Court.

Having heard counsel for the parties, this Court is of the view that the matter deserves to be re-considered by the authorities.

Sub Rule (4) of Rule 14 of Haryana Civil Services (Pension) Rules, 2016, (for short “the Pension Rules”), which is applicable to the

petitioner, reads as under:-

“(4) The service paid from the contingencies followed by regularization rendered by a Government employee retiring on or after 12th December, 1997 shall count as qualifying service provided the service shall have been-
(i) in a job involving whole time employment and not part time for a portion of day;
(ii) in a type of work or job for which regular post would have been sanctioned;
(iii) such for which the payment is made either on monthly or daily wage rates computed and paid on monthly basis and which though not analogous to the regular scale of pay/pay structure shall bear some relations in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments; and
(iv) continuous and followed by absorptions in regular employment without a break.

Note:- xxx”

It has been held by a Full Bench of this Court in **Kesar Chand Versus State of Punjab** 1988 (2) PLR 223, that daily wage service rendered by an employee, is to be taken into account as qualifying service for computing his pensionary benefits. Interpreting Rule 3.17 A of Punjab Civil Services Rules Vol II, Division Bench of this Court in Harbans Lal's case(supra) concluded as follows:-

“From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 1.1.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be applicable to the petitioner.

The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 1.1.2004.”

SLPs and review applications preferred by the State of Punjab against this Division Bench judgment were dismissed by the Supreme Court and the matter has attained finality. Order passed by the Apex Court on 04.11.2015 in Review Application (C) No.2038 of 2013 in SLP(C) No.23578 of 2012, is reproduced hereunder:-

“After hearing Shri V.K. Bali, learned senior counsel appearing for the petitioner(s), we are of the opinion that no case for review of order dated 30.07.2012 is made out.

The Review Petition is dismissed accordingly.

IN ALL THE SPECIAL LEAVE PETITIONS

Delay condoned, if any.

Heard Shri V.K. Bali and Shri P.P. Rao, learned senior counsel appearing for the petitioner(s).

We are of the opinion that the High Court has not committed any error which would call for our interference in exercise of our jurisdiction under Article 136 of the Constitution of India.

Accordingly, all the Special Leave Petitions are dismissed.

We direct the State of Punjab not to file any more special leave petitions against the similar issues as considered by the High Court in the impugned judgment(s) and Order(s).”

There is no dispute about the fact that vide award dated 03.02.2020, petitioner has been ordered to be reinstated in service with continuity and 25% back wages from the date of termination. The

implication of the award is that the petitioner had continuity in service and was therefore entitled for the benefit of counting daily wage service rendered by him from 01.01.1995 till the date of regularization as qualifying service for computing pensionary benefits. His case would squarely be covered under Rule 14 (4) of the Pension Rules reproduced above. However, petitioner is not entitled to arrears of difference in pay from the date of regularization.

Ergo, it is held that the period of service rendered by the petitioner as a daily wager be treated as qualifying service for purpose of pension. A direction is issued to respondent No.3 to make appropriate modification in impugned orders, Annexures P-4 and P-5 within a period of four months. Arrears of pension are confined to three years only before the date of this order and shall be disbursed to the petitioners within the aforesaid period.

10.01.2023
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No