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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.3849 of 2018 (O&M)
Date of Decision: 23.02.2023**

PHOLO DEVI

.....Petitioner

Vs

U.H.B.V.N. AND ORS.

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Naveen Daryal, Advocate
for the petitioner.

Ms. Aditi Sharma, Advocate for
Mr. C.S. Bakshi, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of mandamus, directing the respondents to grant the pensionary benefits by counting the work charge service of the husband of the petitioner from 01.12.1968 to 30.08.1976 towards qualifying service for the purpose of pension along with interest @ 18% per annum from the date of accrual till final realization of the same.

[2]. It appears from the record that husband of the

petitioner Ram Chander was appointed as work store mate on work charge basis on 01.12.1968 in the office of Executive Engineer, HSEB, Karnal. The husband of the petitioner had joined the duty on work charge T-mate and he worked upto 30.08.1976 as work charge T-mate. Thereafter he was offered the post of officiating regular ALM in the regular pay scale vide order dated 30.06.1976 and he ultimately expired while in service on 30.10.1985. In the year 1985 itself, the pension case of the husband of the petitioner was sent to the respondents for disbursing the family pension of qualifying service. Later on the petitioner came to know that service record of the his husband is not available in the office of the respondents and they have not counted the work charge service of the husband of the petitioner for the post of T-mate from 01.12.1968 to 30.08.1976 toward qualifying service for the purpose of pension and other benefits. Owing to the non-availability of service record of the petitioner, even family pension of the petitioner was not prepared.

[3]. Learned counsel for the petitioner submits that relevant record was very much available with the respondents and even the petitioner has already provided the relevant record to the respondents including EPF details and other documents which may be used by the respondents while deciding the retiral/pensionary benefits of the husband of the petitioner.

[4]. This is a classic case where the respondents have completely shown insensitivity towards the plight of a widow, who is now more than 75 years of age. Her husband died in the year 1985. The retiral/pensionary benefits even without counting period towards work charge service have not been finalized on the plea that the relevant record is not available.

[5]. It is a settled position of law that the work charge period has to be counted towards qualifying service for the purpose of pensionary benefits. In **Dakshin Haryana Bijli Vitran Nigam & Others vs. Bachan Singh, 2009(5) SLR 476**, the Hon'ble Apex Court has appreciated the grant of such relief even in the absence of option given by the employee/claimant. The Hon'ble Apex Court has appreciated that the employee, who was member of Employee Provident Fund Scheme and he retired from the service on attaining the age of superannuation and the Department while computing this pensionary benefits took into account services rendered by employee on regular basis but services rendered by him on work charge basis were not considered. The stand of the Department was that in view of instructions for the grant of benefit of work charge service towards pensionary benefits, the employee did not come forward to exercise his option within the time prescribed and, therefore, he was not entitled to the benefit of such instructions. The plea was deprecated and it was held that it would be

unreasonable and irrational to deny pensionary benefit to the employee particularly when department failed to produce any record to show that the employee had knowledge about those instructions.

[6]. In the instant case, no such situation arises, but at the same time the respondent-Department has not even finalized the retiral dues of the husband of the petitioner even without assessing the work charge period towards qualifying service for the purpose of grant of pension. The plea as regards non-availability of record is fully unjustified.

[7]. In view of above, this petition is disposed of with a direction to the respondents to pay an amount of Rs.5 lakhs to the petitioner immediately as interim relief without being influenced by any other consideration at this stage. Thereafter, the respondents shall proceed to count the work charge service of the husband of the petitioner while computing the total qualifying service for the purpose of pension along with interest @ 12% per annum from the date on which the amount became due till final realization of the same. The amount of Rs.5 lakhs shall be adjusted by the respondent-Department while processing the case of the widow, whose husband had died in the year 1985 and even family pension has not been prepared till date what to talk of other retiral benefits arising out of the length of the service for which the husband of the petitioner

remained in the respondent-Department. The respondent-Department shall be at liberty to make appropriate deduction of Rs.5 lakhs while computing total dues of the petitioner. However, this petition is allowed with costs of Rs.1 lakh to be paid to the petitioner along with other retiral dues on account of illegal treatment meted to her for a period of more than 37 years.

[8]. Let the needful in the aforesaid context be done within a period of two months from the date of receipt of certified copy of this order, failing which the petitioner would be entitled to penal interest @ 24% per annum from the date of accrual till final realization of the amount.

February 23, 2023

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No