

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(207)

CWP No. 8298 of 2017

Date of Decision : 24.07.2023

Jogender Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.K. Bishnoi, Advocate for
Mr. Vikas Lochab, Advocate for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. The present petition has been filed with a prayer that the pensionary benefits of the petitioner should be re-fixed by taking into consideration the daily wage service, which the petitioner had rendered, the benefit of which service has not been granted to him despite the fact that the order to the said effect has already been passed on 12.06.2012.

2. Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.

3. The petitioner was initially appointed as a Ticket Verifier in the department of Transport on 02.02.1983 against a non-sanctioned post. The petitioner continued working in the department on daily wage basis and ultimately, his services were regularized and he retired from service

on attaining the age of superannuation on 30.11.2013. At the time of the retirement, the petitioner made a request that his pensionary benefits be calculated by taking into consideration the daily wage service rendered by him keeping in view the rule, according to which 50% of the daily wage service is to be counted towards qualifying service for computing the pensionary benefits whereas, only 40% daily wage service was taken into account for giving the benefit. The grievance raised in the present petition is that keeping in view the order passed by the General Manager, Haryana Roadways, copy of which has been appended as Annexure P-1, 50% of the daily wage service was required to be taken into account i.e. 02 years and 20 days out of the total 04 years, 01 month and 10 days daily wage service rendered by the petitioner.

4. Notice of motion was issued.

5. The respondents have filed the reply, wherein, the only objection taken is that as the petitioner was not appointed against the regular sanctioned post, the benefit of daily wage service cannot be given to him.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. It may be noticed that keeping in view the settled principle of law settled by the Full Bench of this Court in '**Kesar Chand Vs. State of Punjab and others**', AIR 1988 Punjab 265, the daily wage service rendered by an employee is to be taken into account as a qualifying service for computing pensionary benefits. The said rule has interpreted

Rule 3.17 of the Punjab Civil Services Rules, which was applicable upon State of Haryana also and was also applicable upon the petitioner, hence, keeping in view the settled principle of law settled by the Full Bench of this Court in **Kesar Chand's case (supra)**, the daily wage service is to be taken into account to be considered as qualifying service for computing the pensionary benefits.

8. Even otherwise, in the present case, the only objection taken is that the daily wage service rendered by the petitioner is not against a sanctioned post. No rule has been brought on record to show that only the daily wage service rendered against a regular sanctioned post is only to be taken into account for extending the benefit as qualifying service for computing the pensionary benefits. Further, it is a conceded position that benefit of 40% of the daily wage service rendered by the petitioner has already been granted to him, whereas the petitioner is claiming that the same should be 50% as per the Instructions issued by the Government, which existed at the said time.

9. Once, on the same fact, 40% of the daily wage service rendered against an unsanctioned post has been taken into account as qualifying service for computing the pensionary benefits, no reason has come on record as to why, the same service cannot be given effect to upto 50%, hence, the objection being raised by the respondents to deny the benefit of 50% of the daily wage service to be treated as a qualifying service is without any valid justification and cannot be accepted.

10. Keeping in view the above, the present petition is allowed. The respondents are directed to re-calculate the pensionary benefits of the petitioner by giving him benefit of 50% of the daily wage service rendered by him i.e. 02 years and 20 days as a qualifying service for computing the pensionary benefits and re-fix his pension accordingly. The arrears for which the petitioner becomes entitled for upon re-fixation, should also be paid to the petitioner within a period of two months from the date of receipt of certified copy of this order.

11. As the enhanced pension for which the petitioner has become entitled for under this order was retained by the respondents without any valid justification, on the arrears of pensionary benefits, the petitioner will also be entitled for interest @ 6% per annum from the date of retirement of petitioner till the actual release of the same.

12. Writ petition is allowed in above terms.

July 24, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No