

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

Reserved on 28.03.2023

**CWP No.31935 of 2019(O&M)
Date of Decision: 04.05.2023**

Raj Pal Singh

.....Petitioner

Vs

Municipal Corporation, Faridabad

.....Respondent

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

Present: Ms. Abha Rathore, Advocate
for the petitioner

Ms. Suman Rani, Advocate for
Mr. Hitesh Pandit, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India for the issuance of an appropriate writ in the nature of mandamus, directing the respondents to pay retiral benefits to the petitioner in terms of

pension, leave encashment, gratuity, G.P.F, deputation allowances, technical scale with arrears along with the interest.

[2]. Learned counsel for the petitioner submitted that the petitioner was appointed as tubewell-helper/driver on daily wages on 30.08.1991. His services were terminated on 20.04.2001. The petitioner along with others filed CWP No.6142 of 2001 against the order of termination. Vide order dated 01.06.2001, interim order of stay of the operation of the termination order was granted. Vide order dated 27.09.2005, the writ petition was dismissed, however, despite the order of dismissal, the petitioner continued in service without any break. A review petition was filed in the aforesaid writ petition and vide order dated 24.12.2008, the order of dismissal was modified and it was ordered that the petitioner shall continue in service till such time regular selections are made by the respondent-Corporation. Ultimately, vide order dated 22.08.2014, the services of the petitioner were regularized and the petitioner was given regular appointment. The petitioner has joined as regular helper to mechanic on 23.08.2014. The petitioner moved a representation for granting technical scale, but no order was passed. The petitioner had worked upto 31.01.2019 i.e. the date on which, he has attained the age of superannuation.

[3]. The grievance of the petitioner is that the retiral dues after his retirement have not been released to the petitioner on

the ground that the petitioner had less than 5 years of service and was not eligible for grant of pensionary benefits.

[4]. According to the requirement, an employee must have at least 10 years of service to his credit for the purposes of granting retiral benefits.

[5]. Learned counsel for the petitioner with reference to daily wage services of the petitioner from 30.08.1991 to 22.08.2014 submitted that the daily wage service has to be considered for the purposes of computation of total length of service for granting pensionary benefits to the petitioner in view of Full Bench judgment in **Kesar Chand Vs. State of Punjab and others, 1998(2) PLR 223.**

[6]. *Per contra*, learned counsel for the respondent submitted that the petitioner was freshly appointed as regular employee on 22.08.2014 and therefore, past service cannot be considered for the purposes of computing total length of service for grant of pensionary benefits. Learned counsel relied upon the affidavit tendered by the petitioner at the time of joining the regular service to the effect that the contributory pension scheme will be applicable after regularization of the service of the petitioner and as per undertaking given by the petitioner to the respondent-Corporation, he accepted the appointment letter at the time of joining on 23.08.2014, thereby accepting the conditions stipulated in the appointment letter, in which one of

the condition was that he will not be paid in addition to whatever salary he had received prior to the date of regularization and no such claim shall be accepted in future.

[7]. The basic objection raised by the learned counsel for the respondent is that the petitioner was offered a fresh appointment, to which he joined the same after executing an undertaking/affidavit and his engagement was on the post of mechanic.

[8]. I have heard learned counsel for the parties.

[9]. Evidently, the petitioner was initially appointed as tubewell-helper on daily wage basis on 30.08.1991. The services of the petitioner were terminated on 20.04.2001, but the same was never given effect as there was an interim order passed in CWP No.6142 of 2001 and order dated 27.09.2005 was reviewed and it was ordered that the petitioner shall continue in service till such time regular selections are made by the respondent-Corporation. Till the appointment of the petitioner on regular basis on 20.08.2014, there was no gap in service of the petitioner. Learned counsel for the petitioner with reference to **Kesar Chand's case (supra)** submitted that the daily wage service from 30.08.1991 to 22.08.2014 has to be computed towards total length of service for the purposes of granting retiral benefits to the petitioner. At the time of giving fresh regular appointment to the petitioner, the respondent-

Corporation was enjoying a dominant character and any undertaking given, will not change the legal position. In the present writ petition, the petitioner has specifically pleaded in para No.5 of the writ petition that the petitioner had continued in service without any break.

[10]. In the corresponding reply, the factum of continuity or having no break in service has not been denied by the respondent-Corporation, except to allege that the petitioner was freshly appointed.

[11]. Having heard learned counsel for the parties, I find that at the time of appointment of the petitioner on regular basis on 22.08.2014, the respondent-Corporation was at a dominant status. The appointment letter issued by the respondent-Corporation and undertaking/affidavit executed by the petitioner were the result of undue influence and dominant bargain. There was inequality in the bargaining between the parties due to dominant character of the respondent-Corporation. If the situation is analyzed and is judicially tested, the real import of terms and condition of the appointment letter and execution of undertaking by the petitioner can come to fore. The inequality of bargaining power is the result of great disparity in the economic strength of both the contracting parties and such inequality was the result of circumstances in which the petitioner was placed.

The principle of unconscionable bargain is applicable in the

present case due to inequality in the bargaining power of the parties. The Court can strike down unfair and unreasonable contract or unfair or unreasonable clause in the contract entered into between the parties, who are not equal in bargaining power.

[12]. The consent of the petitioner was not voluntary in nature and was greatly influenced by undue influence. Any such restriction imposed by the employer would be hit by the ratio laid down in **National Insurance Co. Ltd. Vs. Surjit Ganesh Nayak and Co. and another, 1997(2) RCR (Civil) 518**, in which limit was prescribed by an agreement contrary to the Limitation Act or any other law thereby curtailing the right to sue when the right actually subsists under the law and such condition was held to be the offending condition under the Law of Limitation. The agreement sought to curtail the time from that prescribed by law and it was held that the agreement would fall within the mischief of the provision.

[13]. Rule 3.17-A of the Punjab Civil Services Rules talks about all services rendered on the establishment, interrupted or continuous shall be counted towards qualifying service. Learned counsel for the petitioner also referred to **Ram Dia and others Vs. Uttar Haryana Bijli Vitran Nigam Ltd. and another, 2005(4) RSJ 689, Hari Chand Vs. Bhakra Beas Management Board and others, 2005(2) RSJ 373** and **Balbir**

Singh Vs. State of Haryana and others, 2004(4) RSJ 71 in

addition to the full bench judgment in **Kesar Chand's case (supra)**. Once the services of the petitioner on the post of daily wage were regularized though fresh appointment was issued, the same has to be tested on judicial principle whether the same was on account of unconscionable bargain or not.

[14]. Since there was no gap in service of the petitioner and the petitioner till his date of appointment on regular basis was in service, it has to be taken to be a case of regularization on daily wage service of the petitioner on 22.08.2014. The petitioner had already put in more than 28 years of service and therefore, he was entitled to all retiral benefits. The daily wage service rendered by the petitioner before his regular service is liable to be counted for qualifying service for the purpose of pension.

[15]. During course of arguments, grant of technical scale to the petitioner has not been pressed and all other benefits have been claimed on the basis of ratio laid down in **Kesar Chand's case (supra)** as well as on the basis of unconscionable bargain as deprecated by the Hon'ble Apex Court in **National Insurance Co. Ltd. Vs. Surjit Ganesh Nayak and Co. and another's case (supra)**.

[16]. For the reasons recorded hereinabove, this writ petition is allowed. Normal consequences to follow. Let needful be done

by the respondent-Corporation within a period of two months
from the date of receipt of certified copy of this order.

04.05.2023
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No