267

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

**CWP-16914-2017 (O&M)**
**Date of Decision: 16.02.2023**

**Dev Raj Driver (Retd.)**

....Petitioner(s)

Versus

**Punjab State Power Corporation Ltd. and others**

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. H.K. Brinda, Advocate, for the petitioner.

Mr. Parminder Singh-I, Advocate, for the respondents.

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**JASGURPREET SINGH PURI, J. (Oral)**

The present petition has been filed under Article 226/227 of the Constitution of India seeking a writ in the nature of *Mandamus* directing the respondents to determine and pay full pension to the petitioner from the date of his retirement of dispensing with linkage of full pension with qualifying service of 33 years vide Annexure P-4 dated 15.12.2011 adopted by the respondent-Corporation vide Annexure P-5 dated 12.03.2012.

Learned counsel for the petitioner submitted that the petitioner had joined the respondent-Corporation as work charge employee on 14.06.1974 and thereafter his services were regularised on 05.05.1981 and thereafter he retired as a Driver on 30.06.2009. He submitted that thereafter all the pensionary benefits were granted to the petitioner but his prior service of work charge was not considered for the purpose of grant of pensionary benefits which was contrary to the law laid down by this Court in ***Kesar Chand Versus State of Punjab, 1988 AIR (Punjab and Haryana) 265***. He submitted that vide Annexure P-2 even the Additional Superintending Engineer, Distribution Division, Anandpur Sahib had written to the Accounts Officer with regard to the request made by the petitioner for counting of his work charge service that his service book be sent to their office. He submitted that in this way on his retirement in the year 2009, he had made detailed request for the purpose of counting of his work charge service for pensionary benefits but no action was taken by the respondent-Corporation. He submitted that thereafter now during the pendency of the present petition, the respondent-Corporation has come up with the plea that the petitioner did not deposit his share of EPF and that was the reason as to why he was not granted the benefit of counting of work charge service of pensionary benefits and now in the year 2019, he has deposited the same on 24.01.2019 alongwith interest and now his earlier work charge service has been counted for the purpose of pensionary benefits and his pension has been revised and arrears have been granted to him. He submitted that scope of the present petition is now for grant of interest on the delayed payment of arrears which has been done in the year 2019.

Learned counsel for the petitioner also submitted that even otherwise also the pension was required to have been revised on the basis of dispensing with the condition of 33 years of service in view of the instructions issued by the Government for dispensing with the condition of 33 years of services and put it at 25 years of service and the petitioner has exceeded his 25 years service and otherwise also he was entiled for fixation of pension at higher scale in the year 2011 when the respondent-Corporation had adopted the instructions of the Government. However, in the present case the petitioner is entitled for revised pension from the date of his retirement and now even the arrears have been paid after calculating the same from the date of retirement.

On the other hand, Mr. Parminder Singh, learned counsel appearing on behalf of the respondent-Corporation has submitted that it is correct that now during the pendency of the present petition in the year 2019 the arrears have been paid to the petitioner w.e.f. 2009 i.e from the time when he had retired after counting his work charge service. He submitted that earlier the work charge service could not have been counted by the respondent-Corporation because the petitioner did not deposit the share of his EPF which was required to be deducted and only then his pension could have been fixed after counting his work charge service and since now he has himself given a letter by which he has stated that now he deposits his share of EPF alongwith interest and now it has been paid. He submitted that in view of the above, nothing survives in the present petition and the same may be disposed of accordingly.

I have heard the learned counsel for the parties.

The only question involved in the present case as per the petitioner is that he had retired on 30.06.2009 and he at that time had requested the respondent-department which was Punjab State Electiricty Board at that point of time vide Annexure P-2 and on the basis of his request, the Additional Superintending Engineer, Distribution Division, Anandpur Sahib had written a letter to the Accounts Officer vide Memo

No.12210/P.F.A.630 dated 24.12.2009 on the basis of request made by the petitioner. A perusal of the reply which has been filed by the respondent-Corporation would show that the averments made by the petitioner in para No.6 of the petition pertaining to the aforesaid Annexure P-2 have not been denied by the respondent-Corporation. In other words at that point of time when the petitioner had retired he had requested the respondent-Corporation for counting his work charge service but the respondent-Corporation did not consider the same and in this way, he had filed the present petition. However, during the pendency of the present petition now the aforesaid benefit of counting of work charge service has been granted and arrears have been given to the petitioner with effect from the date of his retirement after re-fixation of his pension.

The only plea which has been taken by the learned counsel for the respondent-Corporation is that the petitioner did not deposit the employee share of EPF which he has deposited in the year 2019. Such a plea is not sustainable in view of the fact that there is nothing on the record to show that the petitioner was ever informed with regard to the same and also it is not a case that the petitioner did not lay any claim for counting his work charge service whereas a perusal of Annexure P-2 would show that right at the time when he retired in the year 2009, he had laid his claim regarding which a letter was issued by the Additional Superintending Engineer of respondent-Corporation to the Accounts Department and therefore, it was the duty of the respondent-Corporation to have considered his claim well in time and in case any formality was required to have been completed by the petitioner, he ought to have been informed regarding the same but there is nothing on record to show that the petitioner was ever informed with regard to the deposit of his share of EPF.

So far as the argument raised by the learned counsel for the respondent-Corporation that now the petitioner had given a letter to the respondent-Corporation in the year 2019 in which he has stated that he received a letter from the respondent-Corporation in the year 2009 for deposit of his share of EPF but he could not deposit the same because he was not well, the same letter is not on record of the present case. Even otherwise also such kind of letter is liable to be ignored in view of the fact that the respondent-Corporation was under an obligation to consider the case of the petitioner in the year 2009 and in case he was required to perform any act, then it could have been asked from him or an order could have been passed but no order has been passed in that regard. This fact also cannot be ignored that this letter which the learned counsel for the respondent-Corporation is relying upon could have been written by the petitioner for the purpose of getting his work charge service counted now during the pendency of the present petition. Although this Court does not wish to go into the aforesaid controversy as to whether it was by way of undue influence or coercion but the facts of the present case would suggest that the respondent-Corporation was under an obligation to at least pass an order after the retirement of the petitioner with regard to as to whether he was entitled for counting of work charge service or not which has not been done in the present case.

In view of the aforesaid position, the present petition deserves to succeed.

Consequently, the present petition is partly allowed. The petitioner shall be entitled for grant of interest @ 6% per annum on the arrears which have now been paid to the petitioner in the year 2019 after counting his work charge service. The said interest amount shall be calculated by the respondent-department and shall be paid to the petitioner within a period of four months from today. In case the aforesaid amount is not paid within four months, then the future interest shall be @ 9% per annum instead of 6%.

**16.02.2023** **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

Whether speaking : Yes/No
Whether reportable : Yes/No