

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-7948-2021 (O&M)
Decided on : 29.01.2024

Laxmi Narayan

...Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Rajat Mor, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance of the petitioner is that the service which the petitioner has rendered from 23.02.1989 till the date he attained the age of superannuation, be treated as qualifying service for computing pensionary benefits.

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

3. The petitioner joined Indian Army on 06.01.1963 after serving for a period of 24 years, the petitioner was discharged from Indian army on 01.02.1987. After discharge from the Indian Army, the petitioner got an appointment as a driver in the Haryana Roadways under reserved category of ex-servicemen on 23.02.1989. Thereafter, on 13.07.1989, the services of the petitioner were terminated by the respondents-department. The order of termination was challenged by the petitioner before this Court and a direction was given to the respondents on 19.08.1993 to decide the claim of the petitioner as to whether his services have been rightly terminated or not.

4. Keeping in view the order passed by this Court dated 19.08.1993, the respondents passed an order on 10.02.1994 reinstating the

petitioner in service but without back wages. It was duly mentioned that the period for which the petitioner remained out of service will be treated as a service period so as to grant him seniority.

5. Ultimately, the petitioner was allowed to join the duties by the General Manager, Haryana Roadways, Rohtak on 21.04.1994, copy of which has been appended as Annexure P-5 and thereafter, the petitioner was retired on medical ground on 20.09.2001.

6. The petitioner had rendered more than ten years of service and though, as per Rule 6.16 of the Punjab Civil Services Rules, which was applicable to Government of Haryana and the same were applicable at the relevant time, 10 years service was required for the grant of pension and other pensionary benefits, but the pensionary benefits were not granted to the petitioner on the ground that the petitioner remained out of service from 1989 to 1994, which period cannot be taken into account as a qualifying service as back wages were not paid to him for the said service period.

6. In the present petition the claim of the petitioner is that the petitioner is entitled for the benefit of total length of service which the petitioner rendered upon joining 21.04.1994 till 20.09.2001 as a qualifying service and the respondents be directed to grant the benefit accordingly.

7. Upon notice of motion, the respondents have filed the reply wherein the respondents have stated that once while passing the order dated 10.02.1994, the benefits of back wages were denied to the petitioner, the said service period cannot be taken into account for any purpose hence, if the service which the petitioner is claiming from 13.07.1989 till 24.04.1994 is excluded as a qualifying service the petitioner does not have minimum service of 10 years which is required for the grant of pension and other benefits.

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

9. It is a conceded position that the petitioner was appointed as a driver with the respondents-department on 23.02.1989. It is also the fact that on 13.07.1989, the services of the petitioner were terminated and the petitioner was reinstated in service in view of the order dated 10.02.1994, copy of which has been appended as Annexure P-4.

10. A bare perusal of the order dated 10.02.1994 (Annexure P-4) would show that the petitioner was reinstated in service and has been given seniority with the observations that the petitioner will be treated as he had never been terminated from service. The relevant paragraph of the order dated 10.02.1994 (Annexure P-4) is as under:

“Sh. Laxmi Narain may be appointed in Rohtak Depot with no back wages for the period that he has been out of service but with seniority as if he had not been removed from service”

11. A bare perusal of the above reproduction would show that the respondents themselves treated the petitioner to be in service all along starting from the date of his initial appointment even for the period he remained out of service and the only benefit of back-wages was denied. The service period which is not being counted i.e. 13.07.1989 to 24.04.1994 as a qualifying service is contrary to the order passed by the respondents themselves. Once, the petitioner has been given seniority from 1989 onwards and that too by treating him in continuing in service, the service period from 13.07.1989 to 24.04.1994 is to be treated as a service period to be taken as a qualifying service for computing the pensionary benefits.

12. The present petition is accordingly allowed. The respondents are directed to grant the petitioner the benefit of service rendered from

13.07.1989 to 24.04.1994 and the said period be treated as a qualifying service for all intents and purposes. The petitioner is also entitled for the pensionary benefits under the Rule, having minimum of 10 years service from the date of his retirement i.e. 20.09.2001, the pensionary benefits be also released to the petitioner alongwith arrears.

13. It may be noticed that the action of the respondents in not giving the benefit to the petitioner despite the fact that the petitioner retired on 20.09.2001 i.e. 21 years, the petitioner has been made to litigate for a period of two decades so as to entitled him to get the benefit of qualifying service from 13.07.1989 to 24.04.1994. As per the judgment of a Coordinate Bench of this Court in of J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355, wherein it has been held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of J.S. Cheema's case (supra) is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

14. Keeping in view the facts and circumstances noticed herein

before, the petitioner is also entitled for the interest @ 6% per annum on the arrears for which the petitioner is found entitled herein above, from the date the amount became due till the actual payments have been released to him.

15. Let the computation of interest be done by the respondents and amount so calculated shall be paid to the petitioner within a period of **eight weeks** from the date of receipt of copy of this order.

16. The present petition is allowed in above terms.

17. Pending civil miscellaneous application, if any, shall also stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

29.01.2024

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Whether speaking/reasoned: *Yes/No*
Whether Reportable: *-Yes/No*