

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:102460



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CWP No. 7096 of 2023 (O&M)

DECIDED ON: 8th August, 2024

Gurcharan Singh

.....PETITIONER

VERSUS

State of Punjab and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.S. Sidhu, Advocate for petitioner.

Mr. Charanpreet Singh, AAG Punjab.

HARSIMRAN SINGH SETHI, J (ORAL)

In the present petition, the grievance being raised by the petitioner is that the period of his services rendered from 20.5.1994 to 20.2.2002 has not been taken into account as a qualifying service for computing the pensionary benefits.

As per the averments made in the writ petition, the petitioner joined the service as a cleaner in the respondent-Department on 20.5.1994. The petitioner continued working as such when, on 22.10.1995, the services of the petitioner were terminated without assigning any reason. The petitioner challenged the said order before the Labour Court and vide award dated 12.9.2001 (P-1), the petitioner was directed to be reinstated in service with continuity but with 50% of the back wages. The said award was never challenged and was implemented by the respondent.

The petitioner continued working till he attained the age of superannuation and retired on 31.12.2020 and while computing the qualifying service, the period of service rendered by the petitioner from 20.5.1994 to

20.2.2002, has not been taken into account on the ground that the petitioner remained out of service during the said period and he was given a fresh appointment keeping in view the award of the Labour Court dated 12.9.2001. The said action of the respondent is under challenge in the present petition.

Learned counsel for respondents argued that as the petitioner has given an undertaking that he will not claim the arrears upon reinstatement, the service can only be taken into account after his rejoining in pursuance to the order of the Labour Court and his earlier service has washed up as he was given a fresh appointment, and the petitioner was to be treated as freshly appointed as per the award given by the Labour Court.

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

The award of the Labour Court by which the termination of the petitioner was held to be bad directed the respondents that the petitioner is to be reinstated in service with continuity along with 50% back wages. The relevant paragraph of the judgment is as under

“During arguments, Sh. Manohar Singh, DPRO was directed to place on record details of number of working days during the last calander year of the workman in the instant case. Number of working days according to the details furnished are 243 days. Since workman had worked for more than 240 days during the last calander year and his services had been terminated without payment of any compensation or holding of any enquiry, I decide this issue against the management that services of workman have not been validly terminated.”

A bare perusal of the above would show that the petitioner is to be reinstated and not to be given a fresh appointment. That being so, once the continuity of service has been given, the petitioner's service from his initial

date of joining the department i.e. 20.5.1994 is to be taken into account to be treated as qualifying service. Hence, the refusal of grant of the benefit of service rendered by the petitioner from 20.5.1994 till 20.2.2002 is totally arbitrary and illegal.

The argument of learned counsel for respondent that the petitioner has not been granted the arrears of salary hence he cannot get the benefit of service as well cannot be accepted, merely that the arrears are not to be paid does not mean that the petitioner is also not to be granted continuity of service despite the same being granted by the Labour Court. Further, the action of the respondent in treating the petitioner as a fresh appointee in terms of the order of Labour Court is incorrect. Once, the direction by the Labour Court is to reinstate the petitioner with continuity, the petitioner is to be treated in service for all intents and purposes from the date of his initial appointment, even for the period he remained out of service.

Keeping in view the above, the action of the respondents in not granting the petitioner the benefit of service from 20.5.1994 to 20.2.2002 as qualify service is arbitrary and illegal, and is therefore set aside. The respondents are directed to give the benefit of service from 20.5.1994 to 20.2.2002 as a qualifying service and thereafter recompute his pensionary benefits. The petitioner will also be entitled for arrears of the pensionary benefits upon re-computation including the arrears of pension.

As the action of the respondent in not granting the petitioner the benefit of service from 20.5.1994 to 20.2.2002 is bad, the arrears for which the petitioner will become entitled for under this order, will also carry interest at the rate of 6% per annum from the date the payment became due till the actual payment of the same.

The writ petition is allowed in above terms.

Let the order be complied with, within a period of eight weeks on receipt of copy of this order.

8th August, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>