

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-9085-2019 (O&M)
Date of Decision :21.02.2024

Pawan Kumar

...Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Lochab, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, grievance of the petitioner is that though, the services of the petitioner, who was working as driver with the Department of Development and Industrial Training, Haryana was regularized w.e.f.-1.10.2003 in the pay scale of Rs.5200-20200 plus grade pay of Rs.2400/- with special pay of Rs.200/- but arrears of the said pay have not been given to the petitioner despite the fact that approximately 10 years have elapsed.

2. Upon notice of motion, respondents have filed reply wherein, it has been conceded that order dated 04.08.2014 (Annexure P-5) has been passed by the respondents. Learned counsel for the respondents submits that as there was no mention of grant of benefit of arrears to the petitioner in the order dated 04.08.2014 (Annexure P-5), the petitioner cannot claim the said benefit of salary upon retrospective regularization of his service.

3. Learned counsel for the respondents argues that while working on adhoc basis on the post of driver, services of the petitioner was terminated on 31.10.1998 and vide award dated 22.10.2009 (Annexure P/1) of the Labour Court, the petitioner was reinstated in service with 50% back wages, which back wages have already been paid to the petitioner hence, for the same period, the petitioner cannot claim benefit of regular pay.

4. Learned counsel for the respondents further argues that on the date when the employee joins the service on regular basis, he/she is to be medically fit and in the present case, medical was conducted in the year 2014 hence, petitioner can only be paid salary in the regular pay scale from the date of passing of the order granting him benefit of regularization of his services i.e. 2014.

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

6. It is a conceded fact that services of the petitioner were regularized vide order dated 04.08.2014 (Annexure P/5) w.e.f. 01.10.2003 in a particular pay scale. Once, the benefit of regularization of service has been given to the petitioner in a particular pay scale w.e.f. 01.10.2003, he became entitled for the said pay scale starting from 01.10.2003. That being the factual position, the petitioner is within his jurisdiction to claim the benefit of arrears qua the pay scale, which has been granted to him starting from 01.10.2003.

7. Qua the argument, which is being raised by the learned counsel for the respondents that there was no mention of grant of benefit of arrears to the petitioner in the order dated 04.08.2014 (Annexure P/5), it may be noticed that once a particular pay scale has been granted by the respondents

and that too from a particular date, which is retrospective, it is clear that the employee is to get that particular pay scale from that particular date and in case employee has not been paid in accordance to the same, in such a condition, employee is entitled to claim the benefit of arrears. In case, the respondents intended to deny the benefit of arrears to the petitioner, the said regularization of services of the petitioner should have been termed as on notional basis, which has not been done in the present case.

8. Learned counsel for the respondents conceded the fact that vide order dated 04.08.2014 (Annexure P/5), the services of the petitioner were regularized retrospectively in the pay scale of Rs.5200-20200 plus grade pay of Rs.2400/- with special pay of Rs.200/-, which regularization of service was not mentioned to be on notional basis. That being the factual position, petitioner is entitled to claim the benefit of arrears as being claimed by him in the present petition.

9. Last argument of the learned counsel for the respondents is that the date of joining to the post on which the petitioner was working is to be treated on the day when the petitioner was declared medically fit, which medical test was conducted in the year 2014. Said argument cannot be accepted. Once, the petitioner was already working on the post of driver prior to the date when his services were regularized, the ground taken by respondents that he is to be treated to join the said cadre from another date, is not permissible. Once, the date of regularization of service has been mentioned i.e. 01.10.2003, employee who clears the medical fitness test is to be treated fit from the said retrospective date only and not from the date when he is medically examined and hence, the said argument cannot be accepted.

10. Keeping in view the facts and circumstances recorded hereinbefore, present petition is allowed. Respondents are directed to calculate the arrears for which, the petitioner is found entitled under the order dated 04.08.2014 (Annexure P/5) and release the same to the petitioner. It may be noticed that while calculating and releasing the amount of arrears, the payment which has already been made to the petitioner for the period in question, be deducted from the total amount.

February 21, 2024

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No