

LPA-1295-2024

2024.PHHC.116404-DB



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

LPA-1295-2024 (O&M)

Date of Decision: September 02, 2024

State of Punjab and others

..... Appellants

Versus

Daljit Kaur

..... Respondent

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. R.S. Pandher, Sr. DAG, Punjab.

LISA GILL, J.

1. Prayer in this appeal is for setting aside order dated 07.12.2023 passed by learned Single Judge whereby CWP-25079-2017 filed by respondent (writ petitioner) was allowed.

2. Respondent (writ petitioner) filed CWP-25079-2017 seeking direction to present appellants to count service rendered by her as temporary employee for the purpose of benefit of Old Pension Scheme. It is the case of writ petitioner that she was appointed as Safai Sewak/Sweeper on temporary basis on 01.08.1994. Her services were allegedly terminated illegally on 20.07.1996 upon which she raised an Industrial dispute. Reference was answered in her favour

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and learned Labour Court vide award dated 10.12.2001 directed her reinstatement with continuity of service though without back wages. Writ petitioner was reinstated and her services regularized vide order dated 22.01.2004. Order of regularization was passed in terms of directions by the Punjab Government that employees who were working on the basis of 89 days on or before 13.06.1996 would be entitled for regularization. Case set up by writ petitioner was that regularization of her service should relate back in view of award dated 10.12.2001, therefore, she would be entitled to benefit of Old Pension Scheme and was incorrectly placed in the New Pension Scheme.

3. Learned Single Bench while considering the issue at hand concluded that action of respondents in not granting pension under Old Pension Scheme was unjustified and if service prior to 22.01.2004 is not counted, award dated 10.12.2001 would stand negated. Accordingly, writ petition was allowed and present appellants were directed to fix pension and retiral benefits of writ petitioner accordingly, with amount/pension paid to her under the New Pension Scheme being adjusted accordingly and arrears being released to her within three months alongwith interest at the rate of 9% per annum being paid on the gratuity amount. Aggrieved therefrom present appeal has been filed.

4. Learned counsel for appellant – State vehemently argues that writ petitioner did not challenge her being covered under New Contributory Pension Scheme till her retirement on 31.03.2017. New Contributory Pension Scheme was introduced in November, 2004. As service of writ petitioner was regularized on 22.01.2004 i.e. after cut off date of 01.01.2004 which is the date wherefrom employees would be covered under New Contributory Pension Scheme, grave error has occurred inasmuch as writ petitioner was not eligible for pension under the Old Pension Scheme. Moreover, the amount of gratuity already stands paid

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to writ petitioner on 15.01.2021, therefore, there was no question of imposition of interest at the rate of 9% per annum on the said amount.

5. We have heard learned counsel for appellant – State and have gone through the file with his able assistance.

6. Factual aspect of writ petitioner having joined service as temporary employee on 01.08.1994, termination of her service and subsequent reinstatement with continuity of service in terms of award dated 10.12.2001 is a matter of record. It is further a matter of record that her services were regularized on 22.01.2004. It is a settled position that service as rendered by employee in a situation like the present has to be counted as qualifying service for the purpose of pension. In the case of **Harbans Lal versus The State of Punjab and others 2012 (3) SCT 362**, it was specifically held that work charge service rendered prior to regularization is liable to be counted for regular service for the purpose of pension. In the said case, petitioner therein was initially appointed on daily wages against post of Pump Operator on 01.08.1988. His services were regularized on 28.03.2005. It was specifically held that New Restructured Pension Scheme shall be considered to be introduced for new entrants in the service of Punjab Government w.e.f. 01.01.2004 and would not be applicable to petitioner therein, who would be deemed to be in Government service prior to 01.01.2004. Gainful reference in this respect can also be made to judgment of this High Court in **Ram Dia and others versus Uttar Haryana Bijli Vitran Nigam Ltd. and another 2005 (4) SCT 387**.

7. In this factual matrix, learned counsel for appellants is unable to point out any infirmity or irregularity in impugned order dated 07.12.2023 which calls for interference.

8. No other argument has been raised.

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9. In the given facts and circumstances as above, impugned order dated 07.12.2023 is upheld. Appeal is, accordingly, dismissed being devoid of any merit.

10. As the matter has been considered and decided on merits, adjudication upon application seeking condonation of delay of 129 days in filing the appeal, is rendered academic. Application is disposed of accordingly.

11. Pending application(s), if any, stand(s) disposed of as well.

(LISA GILL)
JUDGE

September 02, 2024
Rts

(SUKHVINDER KAUR)
JUDGE

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