



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(223)

CWP No. 17083 of 2018 (O&M)
Date of Decision : 24.10.2024

Baru Ram

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Sartraj Singh Toor, Advocate with
Mr. Manraj Singh Toor, Advocate for the petitioner.

Mr. T.P.S. Chawla, Senior Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that the period for which he worked on temporary basis is not being taken as a qualifying service for computing his pensionary benefits.
2. Learned counsel for the petitioner submits that the petitioner was appointed as a Workman by the respondent-department on 01.07.1980 and thereafter, his services were terminated. The order terminating the services of the petitioner was made subject matter before the Labour Court, Patiala and after hearing the petitioner as well as the respondent-department, vide Award dated 13.09.1985, the termination of the services was held to be bad by the Labour Court and the petitioner was directed to be reinstated in service with continuity and full back wages.



3. The said Award was challenged by the respondents by filing CWP No. 698 of 1986 which writ petition was dismissed on 22.12.2000 and the Award became final. The petitioner was reinstated in service and he was only granted the benefit of regularization from the year 1999 which benefit was objected to by the petitioner.

4. Ultimately, the petitioner after his services were regularized w.e.f. 04.05.1999, retired on attaining the age of superannuation on 31.07.2016 and his qualifying service has only been counted from 04.05.1999 till 31.07.2016 so as to count the pensionary benefits, which is now being objected to by the petitioner in the present petition.

5. Learned counsel appearing on behalf of the petitioner argues that once the petitioner was appointed on temporary basis in the year 1980, the services which the petitioner had rendered prior to the regularization of his services on 04.05.1999 i.e. the period the petitioner was working on temporary basis, is to be treated as a qualifying service for computing the pensionary benefits keeping in view the judgment of the Full Bench of this Court in CWP No. 2864 of 1983 titled as ***Kesar Chand Vs. State of Punjab through The Secretary, P.W.D.B. & R. Chandigarh and others***, decided on 02.06.1988 and the said benefit has not been extended to the petitioner, which fact is clear from the Pension Payment Order, copy of which has been appended as Annexure P-1, wherein, the service of the petitioner has been taken into account from 04.05.1999 till 31.07.2016 instead of 01.07.1980 till 31.07.2016, hence, the respondents are under obligation to grant the petitioner the benefit of ad-hoc service, which is to be counted as a qualifying service for computing the pensionary benefits according to the judgment in



Kesar Chand (supra) so as to re-calculate the pensionary benefits admissible to him.

6. Learned counsel for the respondents submits that once the services of the petitioner has only been regularized on 04.05.1999, the respondents have already granted the benefit of qualifying service keeping in view the regular service which the petitioner has discharged with the department from 04.05.1999, hence, there is no discrepancy in the Pension Payment Order and the present writ petition is liable to be dismissed.

7. Learned counsel for the respondents further submits that the petitioner had approached this Court more than once seeking the benefit of regularization from the year 1980, which benefit has never been granted to him, hence, the services of the petitioner for computing the pensionary benefits, to be treated as a qualifying service will only start from 04.05.1999 onward, which benefit has already been extended.

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

9. It is disheartening to know that despite the fact that as far back in the year 1979, the question of law whether the ad-hoc/temporary service rendered by an employee prior to regularization of his/her services is to be treated as a qualifying service for computing the pensionary benefits or not, had been settled, the same is not being implemented by the State of Punjab to grant benefit to the petitioner who retired in the year 2016.

10. Rather the Full Bench of this Court in *Kesar Chand (supra)* laid down the law that under all circumstances, daily wage service, if the same is being performed continuously by the employee, is to be taken into account as



a qualifying service. The relevant paragraph of the said judgment is as under:-

“19. In the light of the above, let us examine the validity of rule 3.17(ii) of the Punjab Civil Services Rules, Vol. II. This rule says that the period of service in a workcharged establishment shall not be taken into account in calculating the qualifying service. After the services of a work-charged employee have been regularised he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1, 1972, between the workmen and the Chief Engineer, P.W.D. (B. & R), Establishment Branch, Punjab, Patiala, which was published in the Government Gazette dated July 14, 1972. Even otherwise. The matter was settled by the Punjab Government Memo No. 14095-BRI (3)-72/5383 dated 6th February, 1973(Annexure P7) where it was stated that all those work charged employees who had put in ten years of service or more as on 15th August, 1972, their services would be deemed to have been regularised. Once the services of a workcharged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation equality. Even the temporary or officiating service under the State Government has. to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who eligible for



pension and those who started work-charged employees and their services regularised subsequently, and the others is based on any intelligible criteria and, before, is not sustainable at law. After the services of a work-charged employee have been regularised, he is a public servant like other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for case reasons the provisions of sub-rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.”

11. Learned counsel for the respondent-State has not been able to dispute the fact that as per the Rules governing the service i.e. Rule 3.17 of the Punjab Civil Services Rules Vol. II, which governs the qualifying service, the temporary/ad-hoc service rendered by an employee prior to the regularization of his/her services is to be treated as a valid qualifying service for computing the pensionary benefits.

12. That being so, the settled principle of law has not been implemented qua the petitioner and rather the petitioner who was a Class-IV employee, has been made to litigate against the State after his retirement so as to get the entitled benefit under the Rules governing the service, which already stands interpreted as far back in the year 1979.

13. Learned counsel for the respondents has not been able to point out even a single Rule as to why, the benefit of temporary service has not been given to the petitioner while assessing his qualifying service for the purpose of pensionary benefits, which the petitioner had rendered prior to regularization of his services. Once, the Rules governing the service entitles the petitioner for the counting of the ad-hoc/temporary service as a



qualifying service for computing the pensionary benefits, denying the same to the petitioner is totally arbitrary and illegal and without any valid justification.

14. Further, it may be noticed that the services of the petitioner were terminated by the respondents, however, the Award passed by the Labour Court dated 13.09.1985 directed the reinstatement of the petitioner with continuity, which Award has already been upheld by this Court while passing order in CWP No. 698 of 1986, hence the said service is to be taken into account as a qualifying service for computing the pensionary benefits of the petitioner.

15. Learned counsel for the respondents has not been able to point out any fact or Rule governing the service, which dis-entitles the petitioner the benefit of ad-hoc service to be treated as qualifying service for computing his pensionary benefits.

16. Keeping in view the above, the present petition is allowed. The respondents are directed to recalculate the pensionary benefits of the petitioner by giving him the benefit of temporary service as qualifying service, which the petitioner rendered starting from 01.07.1980 till the date his services were regularized on 04.05.1999 over and above what has already been extended to him. The fresh calculation of the entitlement of the petitioner be done within a period of eight weeks of the receipt of copy of this order and the arrears which the petitioner becomes entitled for with regard to the pensionary benefits admissible to him after giving him the benefit of temporary service as a qualifying service, be also released to the petitioner within a period of eight weeks of the receipt of copy of this order.



17. As on the date when the petitioner retired on 31.07.2016, the judgment in ***Kesar Chand (supra)***, was very much available with the respondents to be made applicable upon the petitioner but the petitioner was made to litigate with the respondents to get his entitled claim and the money which actually belonged to the petitioner has been retained by the respondents by not calculating his entitlement. Keeping in view the Rules governing the service, coupled with the judgment in ***Kesar Chand (supra)***, the petitioner will also be entitled for interest on the arrears which will be admissible to him under this order @ 6% per annum from the date the petitioner retired from service till the actual payment of the same.

18. As the respondents have made the petitioner, who is a Class-IV employee, to litigate with the respondents, the petitioner will also be entitled for costs of ₹25,000/-, which will be paid by the Officer, who wrongly computed his entitlement, from his own pocket, so that in future, no Officer, ignores the settled principle of law so as to make an employee litigate before the Court to get his entitled dues and that too after the retirement when he does not have any other source of income.

19. Petition is allowed in above terms.

20. Pending miscellaneous application, if any, also stands disposed of.

October 24, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes