

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

222

**CWP-27383-2016 (O&M)
Date of Decision:08.04.2024**

Shanti Devi

.....Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Pranav Chadha, Legal Aid Counsel for the petitioner.

Mr. S.K. Mahajan, Advocate for the respondents.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *Mandamus*, directing the respondents to count the daily wage service rendered by the husband of the petitioner from 01.01.1981 to 11.05.1993 and release the pensionary benefits on the basis of qualifying service i.e. 29 years, 06 months and 15 days.

2. The present writ petition has been filed by a widow seeking counting of daily wage services rendered by her husband from 01.01.1981 to 11.05.1993 for the purpose of fixation of pensionary benefits and counting of the same for other consequential benefits.

3. Learned counsel for the petitioner submitted that the husband of the petitioner was appointed on daily wage basis by the respondents- Dakshin Haryana Bijli Vitran Nigam (hereinafter to be referred to as 'Nigam') on 01.01.1981 and he worked on daily wage basis till 11.05.1993 and thereafter his services were regularized on 12.05.1993 without any

break in service. Thereafter, he retired on 31.12.2011 but his services rendered on daily wages were not considered/counted as a qualifying service for the purpose of his pension and pensionary benefits. The husband of the petitioner, thereafter, died on 21.06.2016 and in this way the present petition has been filed by the petitioner being widow on 22.12.2016 .

4. Learned counsel for the petitioner further submitted that so far as the law with regard to counting of daily wage services for the purpose of pensionary benefits is concerned, the same is no longer res-integra and the same is also not disputed by the respondents-Nigam in the present case. The only dispute which has come forth in the present case that the respondents-Nigam have counted the services rendered by the husband of the petitioner on daily wages only from 01.07.1986 to 11.05.1993 when the regularization was effected and this was done by way of an order dated 01.09.2016 vide Annexure P-5. He further submitted that the aforesaid period of counting of service was not proper because the husband of the petitioner was appointed on daily wages on 01.01.1981 and there is no justification as to why the period from 01.1.1981 till 30.06.1986 has not been counted.

5. The learned counsel for the petitioner in this regard has referred to Annexure P-1 issued by the respondents-Nigam which is the form for assessment and sanction of pension & DCRG, where in the column of length of service, the time spent by the husband of the petitioner in discharging his duties on daily wages has been shown from 01.01.1981 to 11.05.1993 and his regular period service has been mentioned from 12.05.1993 to 31.12.2011. The learned counsel for the petitioner submitted that the aforesaid document (Annexure P-1) has not

been denied by the respondents-Nigam and correct dates were mentioned in the aforesaid document but later on by way of another document which is also attached as a colly to Annexure P-1 a revised form of assessment was issued with respect to the time period of the husband of the petitioner and in this revised form the period spent on daily wages has been mentioned as 01.07.1986 to 11.05.1993. He further submitted that there was no justification to have changed the aforesaid time period of the husband of the petitioner unless there were some documents available on record with the respondents-Nigam and in the absence of any grounds or reasons thereof on record, the revision could not have taken place. He submitted that, thereafter, a letter dated 20.11.2014 was issued by the Executive Engineer, (OP) Division, Safidon vide Annexure P-2 where again the period which has been mentioned is from 01.01.1981 to 11.05.1993 with respect to the husband of the petitioner and the same has been verified out of the muster rolls/affidavit by concerned XEN/SDO and the service book of the petitioner had been prepared for counting of full period daily wages service towards pensionary benefits and language used in the aforesaid letter is very clear. However, when the case for fixation of pension after counting the period of daily wages, was processed, a letter dated 11.08.2015 was thereafter written by Executive Engineer, (OP) Division, DHBVN, Safidon to Executive Engineer, TG. Mtc. Stage-1, PTPS, HPGCL, Panipat vide Annexure P-3 whereby a clarification was sought that CAO/Pension desires that these aspects will be verified based upon some official authentic records and not only on the basis of confirmation from old staff and affidavit. Thereafter, a letter was written vide Annexure P-4 (R-2) from the Executive Engineer, Panipat to Executive Engineer, Safidon wherein it was so stated that the record of the

officer is not available with the office and the period can be verified only on the basis of old staff and affidavit. An affidavit was furnished by the husband of the petitioner which has been attached by the respondents-Nigam in their reply as Annexure R-1 in this regard wherein he stated that he has worked from 01.01.1981 to 05.02.1986. Learned counsel for the petitioner further submitted that, thereafter, a letter dated 23.11.2016 was written by XEN Panipat to Superintending Engineer, Panipat vide Annexure P-9 whereby it was so stated that the office has already prepared the service book and verified the daily wages period of the husband of the petitioner from 01.01.1981 to 05.02.1986 on the basis of the affidavit of the official and also the witness given by the two old employees who had worked with him and the same has been sent to the Executive Engineer. Learned counsel for the petitioner submitted that once the entire verification is completed and the actual record was not available then there was no justification to not have counted the daily wages period of the husband of the petitioner from 01.01.1981 to 05.02.1986 and to exclude the same from the total period of daily wage services rendered by the husband of the petitioner.

6. On the other hand, learned counsel appearing on behalf of the respondents-Nigam submitted that as per the reply filed by the respondents-Nigam and also as per the aforesaid Annexure P-4 (R-2), the record for the period from 01.01.1981 to 05.02.1986 is not available and in view of the above, he referred to Rule 14 of Chapter IV of Haryana Civil Services (Pensions) Rules 2016 whereby it has been so provided that the daily wages services is to be counted for the pensionary benefits if an employee is regularized on that post. He further referred to one note mentioned in Rules 14 (4) (iv) of the 2016 Rules wherein it has been so

stated while bringing contingent paid employee to the regular establishment following entry for verification of contingent service shall be made at the appropriate place in his service book. He further submitted that since no such entry has been made in the service book because the same is not even available, the petitioner is not entitled for the grant of aforesaid benefit of counting his services rendered by him on daily wages from 01.01.1981 to 05.02.1986. He also submitted that so far as the aforesaid proposition of law and the application of aforesaid Rule 14 is concerned, there is no dispute with regard to the same that when an employee is working on daily wage basis and he is regularized on that post then the period on which he has discharged the duties on daily wages is to be counted for the pensionary benefits and that was the reason as to why the benefit of counting of service was granted to the husband of the petitioner but from the year 1986 because for that period the record was available but for the prior period from the year 1981 the record was not available.

7. I have heard learned counsel for the parties.

8. The petitioner before this Court is a widow whose husband died on 21.06.2016. She is claiming the benefit of services rendered by her husband (deceased) on daily wages from the year 01.01.1981 till the time he was regularized i.e. on 12.05.1993. The benefit of counting of daily wage services has been granted to the husband of the petitioner but only w.e.f. 01.07.1986 instead of 01.01.1981. The relevant portion of Annexure P-1 as aforesaid is reproduced as under:-

Name of Govt. under which employed (in order of employment)	From	To	Total Period			Less Non-Qualifying Service			Total Qualifying Service		
			Years	Months	Days	Years	Months	Days	Years	Months	Days
Daily Wages	01.01.1981	11.05.1993	12	06	05	01	07	09	10	10	26
UHBVNL/DHBVNL (Regular Service as per previous form)	12.05.1993	31.12.2011	18	07	19	0	0	0	18	07	19
Total									29	06	15

9. The letter/order dated 20.11.2014 (Annexure P-2) issued by the XEN (OP) Division, DHBVN Safidon is also reproduced as under:-

“Office order No.116

Dated: 20.11.2014

In terms of adoption of Haryana Govt. Finance department letter No.4/51/2013-2/Pension dated 07.02.2014 and memo No.Ch-223/GM/Admn/Gen-165 dated 09.04.2014 the service of Sh. Ram Chander, LM/Retd. S/o Sh. Kuriya Ram rendered in daily wages verified paid out of muster rolls/affidavit by concerned Xen/SDO in daily wages period service book is hereby allowed for counting of full period daily wages service towards pensionary benefits is as under:-

*Executive Engineer period:- 01.01.1981 to 05.02.1986
T.G. Mtc. Stage-I,
FTPS, HPGCL, Panipat*

*SDO (OP) City, S/Divn. Period:-01.01.1986 to 31.12.1990
DHBVN, Safidon*

*SDO S/U S/Divn. Period:-01.01.1991 to 31.12.1992
DHBVN, Safidon*

*SDO (OP) S/Divn. Period:-01.01.1993 to 11.05.1993
DHBVN, Pillukhera
(Note:-3976 qualified days & 584 unqualified days)*

*Sd/- Executive Engineer,
(OP) Divn. DHBVN, Safidon*

*Endst. No.CH.97-PF-821**Dated:20.11.2014*

Copy of the above is forwarded to the following for information and necessary action.

1. The Divisional Accountant (OP) Divn. DHBVN, Safidon.

*Sd/-Executive Engineer,
(OP) Divn. DHBVN, Safidon”*

10. A perusal of the aforesaid document would show that a specific order has been passed by the XEN concerned that it has been verified out of muster rolls/affidavit by the concerned Xen/SDO in the daily wages period service book and therefore the counting of the full period of daily wage services from the year 01.01.1981 to 11.05.1993 was allowed by the XEN. It was, thereafter, an objection might have been raised by the audit department which is apparent from Annexure P-3 that again some clarification was sought that the verification is to be made on the basis of the official authentic record and not on the basis of confirmation from old staff and affidavit. However, in Annexure P-4 it was so stated by the XEN Panipat that the record of the said official is not available with his office and therefore verification can only be made on the basis of the old staff and affidavit and in this way ultimately vide Annexure P-9 dated 23.11.2016 it was rather written by the XEN, Panipat to SE, Panipat, that the office has prepared the service book and verified the daily wages period from 01.01.1981 to 05.02.1986 on the basis of the affidavit submitted by the official and two witnesses who were the old employees who had worked with him and the same has also been forwarded to the Executive Engineer (OP) Division, Safidon. However, despite the aforesaid position, the husband of the petitioner was not

granted the benefit of counting his daily wage services from 01.01.1981 to 05.02.1986.

11. The argument which has been raised by learned counsel for the respondents/Nigam that the benefit of counting of service on daily wages can be done only when there is note in the service book. However, a perusal of the reply filed by the respondents-Nigam and also the aforesaid Annexures would show that as per the stand taken by them, the record was not even available. A perusal of Annexures P-2 and P-4 would show that the recommendation was made by the Executive Engineer on the basis of the record/muster roll which was verified. Therefore, the stand taken by the respondents-Nigam is totally contradictory from the record of the case itself. Once repeatedly the Executive Engineer has so recommended and rather passed an order dated 23.11.2016 vide Annexure P-9 that the period from 01.01.1981 to 05.02.1986 is to be counted but no such benefit was granted to the husband of the petitioner. This Court is of the view that in case any departure was to be made from the earlier orders issued by the Executive Engineer, Safidon for taking away the rights of the husband of the petitioner which ultimately came to the petitioner being his widow then the same could not have been done without passing of an appropriate order based upon enquiry. It was only on the whims and fancies of any of the officer of the respondents-Nigam who has blown hot and cold at the same breath. Once repeatedly the officers who were the competent authorities have ordered that the husband of the petitioner have worked on daily wages from 01.01.1981 to 05.02.1986 then thereafter if a departure was to be made by any competent authority, it had to pass an order based

upon some reasons. The entire approach of the respondents-Nigam was absolutely arbitrary and perverse in nature.

12. Law with regard to the right to receive pension and pensionary benefits which is not a bounty of the State is no longer res-integra. When the State gives pensionary benefits to its employees, then it is not doing any charity and rather it is an obligation upon it to pay the benefits. In the absence of any justifiable reason, the same cannot be snatched away from an employee or family pensioner and particularly when the employee has died and as such serious prejudice has been caused to the petitioner being widow of the employee in this regard.

13. Way back in the year 1971, a Constitution Bench of Hon'ble Supreme Court in "*Deokinandan Prasad Vs. State of Bihar*", 1971(2) SCC 330, held that the pensionary benefits etc. are not the bounty of the State. Earlier Right to Property was a Fundamental Right under Article 31 of the Constitution of India, however, after 44th Amendment to the Constitution of India, Right to Property is no longer a Fundamental Right under Part-III of the Constitution of India but certainly it is a Constitutional Right under Article 300-A of the Constitution of India.

14. In view of the aforesaid facts and circumstances, the present petition is allowed. The respondents are directed to refix the entire pension and pensionary benefits of the husband of the petitioner and the benefits ultimately are to be given to the petitioner being widow by counting the entire service period rendered by the husband of the petitioner from 01.01.1981 onwards till the time he was regularized and will calculate the arrears of the same and pay to the petitioner within a period of three months from today alongwith interest @ 6% per annum.

In case the aforesaid amount is not paid within a period of three months

from today, the petitioner shall be entitled for future rate of interest @9% per annum.

15. Since the present petition has been filed by a widow in the year 2016 and it is ex-facie clear that the respondents have failed to discharge their duties and they have acted in most arbitrary and perverse manner whereby Statutory rights and also the Constitutional Rights of the petitioner who is a widow have been infringed, the petitioner shall also be entitled for costs which are assessed as Rs.1,00,000/- (rupees one lac only). The respondents-Nigam are directed to pay the aforesaid cost to the petitioner within a period of three months from today. In case the aforesaid cost is not paid within a period of three months from today, the petitioner shall be entitled for future rate of interest @9% per annum on the cost as well.

(JASGURPREET SINGH PURI)
JUDGE

08.04.2024
shweta

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