

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.25176 of 2017 (O&M)

Date of decision : 16.01.2024

Ram Kumar

....Petitioner

Versus

State of Haryana and Ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- None for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. I.S. Sidhu, Advocate for respondent No.4.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present petition, the grievance of the petitioner is that his total length of service has not been taken into account while calculating the pensionary benefits and the respondents be directed to revise the same by passing a speaking order.

2 As per the facts mentioned in the petition, the petitioner was appointed as a Conductor in Haryana Roadways, Hisar, on 23.01.1976. He continued to work upto 1980 when his services were dispensed with. Thereafter, he worked as Adda Conductor from 1981 and he continued to work upto 20.02.1990, on which date his services were terminated.

3 The petitioner challenged the termination of his services before the Labour Court and vide award dated 14.12.1995, the termination was held to be bad and petitioner was ordered to be reinstated with continuity in service alongwith the consequential benefits but without back wages. Keeping in view

the said award, the petitioner was reinstated in service on 18.03.1996.

4 After attaining the age of superannuation, the petitioner retired from service on 31.07.2003. While calculating the qualifying service, the service period for which the petitioner remained out of service was not treated as a qualifying service and only the benefit of actual service rendered by the petitioner was taken into account while computing the pensionary benefits which action has been challenged by the petitioner in the present petition.

5 Upon notice of motion, respondents had filed the reply, wherein respondents have stated that once the petitioner was not given the benefit of back wages, he is not entitled for counting the period for which he remained out of service keeping in view the rules governing the service, hence, his qualifying services has rightly been taken into account for the period for which he had actually discharged the duties.

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

7 The only question which arises for determination before this Court is whether, the period for which the petitioner remained out of service is to be treated as qualifying service or not. As per award passed by the Labour Court, the petitioner was reinstated in service with continuity. The continuity in service means the petitioner is to be treated in service for all intents and purposes, hence, while interpreting the award, the petitioner is to be treated in service all along, the benefit of the total service period cannot be declined and even the period for which petitioner remained out of service is to be treated as 'qualifying service' for all intents and purposes.

8 The Rule 3.12 of the Pension Rules, being relied by the respondents so as to deny the benefit will not cover the case of the petitioner. Once, the period for which the petitioner remained out of service has been treated in continuance,

but the back wages has been denied by the Competent Court of law, the same will be treated in the category of 'withheld' as compared to 'not paid'. Even the order to withhold the back wages is by the Court and not Government, hence non grant of back wages will not be covered by the condition of Rule 3.12 of Punjab Civil Services Rules, as applicable upon Haryana.

9 Keeping in view the above, the present petition is allowed and the respondents are directed to recalculate the pensionary benefits of the petitioner by giving him the benefit of service for which he remained out, as a qualifying service.

10 Let the respondents recalculate the pensionary benefits of the petitioner and release the difference between the earlier calculated pensionary benefits and the revised pensionary benefits within a period of 8 weeks from the date of receipt of certified copy of this order.

11 Ordered accordingly.

16.01.2024

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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable : No