

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(218)

CWP No. 17061 of 2018
Date of Decision : 08.02.2024

Dayanand (since deceased) through his L.R.

...Petitioner

Versus

The State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shalender Mohan, Advocate for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. The present petition has been filed with a prayer for directing the respondents to pay full salary for the period the petitioner (since deceased) remained under suspension. The next prayer of the petitioner is that the adhoc service rendered by the petitioner be taken into account as qualifying service for calculating the pensionary benefits.

2. Learned counsel for the petitioner submits that the petitioner (since deceased) was initially appointed as Driver in the year 1993 on daily wage basis and he continued working on the said post when his services were regularized in the year 1999 w.e.f. 16.03.1999. Thereafter, the date of regularization was anti-dated to 15.05.1995.

3. While working with the respondent-department as a Driver, the petitioner (since deceased) met with an accident and an FIR No. 33

dated 18.10.2011 was registered against him, due to which, the petitioner (since deceased) was placed under suspension on 25.10.2011 and he remained under suspension upto 28.02.2012. In the enquiry proceedings, the petitioner (since deceased) was held guilty and punishment for a recovery of ₹5,000/- was imposed upon him and nothing was to be paid over and above subsistence allowance already paid to the petitioner. Thereafter, the petitioner (since deceased) got voluntarily retirement w.e.f. 05.01.2015.

4. After the retirement, the petitioner (since deceased) got acquitted in the criminal case on 20.01.2017 and he raised a claim that once he has been acquitted in the criminal case, he is entitled to be paid full salary for the period he remained under suspension. Another grievance of the petitioner is that even while calculating the pensionary benefits, the service which the petitioner rendered on daily wage basis from 18.04.1993 till 15.05.1995 has not been taken into account as a qualifying service, which is arbitrary.

5. Learned counsel for the respondents, on the other hand, submits that once, the petitioner (since deceased) was held guilty in the departmental proceedings and a punishment order was passed that he will not be paid anything over and above the subsistence allowance, merely that after retirement he had been acquitted in the criminal case, will not entitle the petitioner (since deceased) the benefit of salary of the suspension period. Learned counsel for the respondents further submits that the petitioner (since deceased) has been given the due benefit of

qualifying service from the date of regularization, hence, no further grievance can be raised by him.

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

7. It is a matter of fact that the petitioner (since deceased) was proceeded against departmentally, due to which, he also remained under suspension. In the departmental proceeding, the petitioner (since deceased) was held guilty of the allegations and a punishment order was passed that he will not be given any benefit of pay over and above the subsistence allowance already paid during the suspension period. The said order has already attained finality and not challenged. Merely that subsequent to the said departmental proceedings, the petitioner (since deceased) has been acquitted in the criminal case will not give him a right to claim that he is entitled for full salary during the suspension period. The said claim is accordingly declined.

8. With regard to the prayer of the petitioner (since deceased) that he was appointed on 18.04.1993 and his services were regularized on 15.05.1995 but he has only been given the benefit of qualifying service from 15.05.1995, whereas, he is entitled for the said benefit from 18.04.1993 carries weight keeping in view the judgment of the Full Bench of this Court in '**Kesar Chand Vs. State of Punjab and others**', **AIR 1988 Punjab 265**. wherein it has been held that the daily wage service followed by the regular service is entitled to be counted as a qualifying service for the grant of pensionary benefits.

9. Once, the benefit of ad-hoc/daily wage service is to be given to an employee as a qualifying service for computing the pensionary benefits, no rule to deny the said benefit has been cited by the learned counsel for the respondents. Learned counsel for the respondents has also not been able to differentiate the claim of the petitioner keeping in view the judgment of the Full Bench of this Court in *Kesar Chand (supra)*, hence, the claim of the petitioner that services, which the husband of the petitioner had rendered from 18.04.1993 till 15.05.1995 to be treated as a qualifying service needs to be allowed and is accordingly allowed.

10. Let the respondents recompute the pensionary benefits for which the husband of the petitioner becomes entitled for and grant the benefit of arrears to the legal heir of the petitioner.

11. It may be noticed that the husband of the petitioner got retired in the year 2015 and the present petition was filed in the year 2018, the arrears for which the husband of the petitioner will become entitled for under this order be released from the date when the husband of the petitioner filed the present petition i.e. 12.07.2018 onwards.

12. Petition is allowed in above terms.

February 8th, 2024
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No