

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-8659 of 2020 (O&M)
Date of Decision:27.03.2025

Sham Singh

....Petitioner

Versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

Present: Mr. Ravi Gakhar, Advocate, for the petitioner.

Ms. Monica Chhibber Sharma, Advocate, with
Mr. Adeep Sharma, Advocate, for the respondents.

DEEPINDER SINGH NALWA, J. (Oral)

1. In the present writ petition, the petitioner is praying for counting of service from 31.07.1987 to 05.07.1998 rendered on work charged basis as qualifying service for the purpose of computation of pension with all consequential benefits alongwith interest.
2. The brief facts of the case are as under:-
3. The petitioner was appointed as contingent Chowkidar with the Punjab State Power Corporation Limited (hereinafter referred to as 'the Corporation') on 31.07.1987. The services of the petitioner were terminated on 31.08.1990. Aggrieved against the aforesaid termination of services, the petitioner approached the learned Labour Court, Patiala. The learned Labour

Court, Patiala decided the reference in favour of the petitioner vide Award dated 24.04.1995 (Annexure P-2). As per the Award passed by the learned Labour Court, Patiala, the petitioner was held entitled to be reinstated with continuity of service, however the petitioner was not entitled for grant of backwages. Aggrieved against the Award dated 24.04.1995 passed by the learned Labour Court, Patiala, respondent No.1 filed a writ petition before this Court being CWP No.9300 of 1996 and the said writ petition was dismissed by this Court vide judgment dated 25.07.1997 (Annexure P-3).

4. In pursuance of the Award passed by the learned Labour Court, Patiala, which was upheld by this Court, the petitioner was reinstated on 06.07.1998 and retired on 31.03.2016 on attaining the age of superannuation. The retiral benefits were released to the petitioner, however the respondents did not take into consideration the work charged period from 31.07.1987 to 05.07.1998 as qualifying service for the purpose of computation of gratuity/pension.

5. Aggrieved against the action of the respondents in not treating the work charged period from 31.07.1987 to 05.07.1998 as a qualifying service for the purpose of computation of retiral benefits, the present writ petition has been filed by the petitioner.

6. Learned counsel for the petitioner submits that the work charged service rendered by the petitioner from 31.07.1987 to 05.07.1998 prior to regularization should be taken into consideration as qualifying service for the purpose of computation of retiral benefits. He relies upon a judgment of Full

Bench of this Court passed in case of **Kesar Chand versus State of Punjab through the Secretary and others**, AIR 1986 265.

7. On the other hand, learned counsel for the respondents submits that the petitioner was granted the regular pay scale with effect from 06.07.1998 as such, the service rendered by the petitioner with effect from 06.07.1998 till his retirement has been taken into consideration for the purpose of retiral benefits.

8. I have heard learned counsel for the parties and have gone through the records available on the case file with their able assistance. There is no dispute with regard to applicability of Rule 3.17 of Punjab Civil Services Rules Vo.II in the respondent Corporation.

9. The issue involved in the present writ petition is with regard to whether the service rendered by the petitioner on a daily wage/work charged basis while working on the post of contingent Chowkidar before regularization can be taken into consideration as a qualifying service for the purpose of calculating retiral benefits. It is well settled law that the service rendered by an employee on a daily wage/worked charged basis is to be taken into consideration as qualifying service for the purpose of computation of retiral benefits if service rendered by an employee on a daily wage/work charged basis is followed by regularization.

10. In case of **Kesar Chand** (supra) while considering Rule 3.17 of the Punjab Civil Services Rules Vol.II, Full Bench of this Court has held that where the service of a work charged employee was regularised, in that case,

the work charged period has to be taken into consideration for the purpose of retiral benefits. The relevant para is reproduced as under:-

“.....Once the services of a work-charged employee have been regularized, 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 of 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 regularization has not be taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work-charged employees and their services regularised subsequently and the other is not based on any intelligible criteria and, therefore, is not sustainable at law. After the service of a work-charged employee have been regularized, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these 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. A co-ordinate Bench of this Court in case titled as **Shamsher Singh versus State of Haryana and others 2016 (2) SCT** has held as under:-

6. The case of the petitioner is also covered by Rule 3.17, 3.17A (f) (i) and 4.23 of Punjab Civil Services Rules, Vol II

which has been considered by this Court in Ram Dia's case (supra) whereby in para 6 and 7 of the judgment, it has been observed as under:-

6. In Kesar Chand's case (supra), the Full Bench while dealing with a similar controversy held as under :-

"Once the services of a work-charged 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 of 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 are eligible for pension and those who started as work-charged employees and their service regularised subsequently, and the other is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work-charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness and for these 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."

It would also be relevant here to refer to Rule 3.17A and 4.23 of the Punjab Civil Services Rules, Volume (2), which read as under :-

"3.17(A)

(1) Subject to the provisions of Rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-

(i) Service rendered in work-charged establishment.

(ii) Service paid from contingencies :

Provided that after 1st January, 1973 half of the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions :-

(a) Service paid from contingencies should have been in a job involving wholtime employment (and not part-time or for a portion of the day).

(b) Service paid from contingencies should have been in a type of work or job for which regular post could have been sanctioned e.g. Malis, chowkidars, khalasis etc.

(c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishment.

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

(iii) Casual or daily rated service.

(iv) Suspension adjudged as a specific penalty.

3.17A(2) An interruption in the service of a Government employee caused by willful absence from duty or unauthorized absence without leave, shall entail forfeiture of the past service.

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4.23 In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered under the State Government shall be treated as automatically condoned, and the preinterruption service shall be treated as qualifying service for pension purposes, except where the interruption has been caused by resignation, dismissal or removal from service or due to participation in a strike, but the period of interruption itself shall under no circumstances be reckoned as qualifying service for pension purposes."

The aforesaid view was further reiterated by this Court in the cases of Hazura Singh and Nasib Singh (supra). In Joginder Singh's case (supra), it has been held as under :-

"I am, therefore, of the opinion that the words "half the period of service of such persons paid from contingency" occurring in sub-clause (i) of Clause (f) of Rule 3.17A are bad in law and are, accordingly, struck down."

A conjoint reading of the rules, quoted above and the observations of this court would reveal that it is by now well established that period of service rendered on dailywage/ work-charge prior to regularisation of service is liable to be counted for the purpose of gratuity and pension.

7. In view of the above, we are of the view that service rendered by the petitioners on daily-wage/work-charge basis should be counted as qualifying service for pensionary and other terminal benefits. The petitioners

were working as a whole-time employee and were paid wages on monthly basis. Therefore, the period of service rendered by them on daily-wage/work-charge basis has to be reckoned while computing their pensionary and other terminal benefits.

7. Applying the ratio of the above said judgment, the present writ petition is allowed and a direction is issued to the respondents to count the daily wage service of the petitioner w.e.f 01.10.1994 to 31.05.2013 i.e 19 years and 05 months for grant of family pension and pass appropriate orders within a period of three months from the date of receipt of certified copy of this order.”

12. A perusal of the facts of the present case would show that there is no dispute that the service rendered by the petitioner on daily wage/work charge basis on the post of contingent Chowkidar was followed by regularization.

13. In view of the above facts and the ratio of the aforesaid judgments, the service rendered by the petitioner on daily wage/work charge basis should be considered as a qualifying service for the purpose of pensionary benefits. Therefore, the period of service rendered by the petitioner on daily wage/work charge basis has to be taken into consideration as a qualifying service while computing the retiral benefits.

14. The question which now arises for consideration before this Court is whether the petitioner is also entitled for the grant of interest on the said arrears. A perusal of the facts would show that the service rendered by the petitioner on daily wage/work charged basis was not taken into consideration while calculating his retiral benefits. In spite of the fact that as per the law, the aforesaid period had to be taken into consideration for the

purpose of calculating retiral benefits. As the said benefit was not granted to the petitioner, the petitioner had no option except to file the present writ petition. The petitioner has also prayed for grant of interest on the arrears.

15. As per the settled principle of law laid down by the Full Bench of this Court while passing judgment in ***“A.S. Randhawa Vs. State of Punjab and others”***, 1997(3) SCT 468, an employee who has not been released the pensionary benefits within a period of two months from superannuation, in case there is no impediment, becomes entitled for the grant of interest for the delay in releasing of the pensionary benefits. The relevant paragraph of the said judgment is as under:-

“ - x - x -

8. Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M.Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement. ...

- x - x -”

16. Further, a co-ordinate Bench of this Court, while passing order in CWP-15867-2001 titled as “*J.S. Cheema Vs. State of Haryana and others*”, decided on 20.11.2013, held that even where an amount has been retained by a Department, which actually belonged to the employee, and has used the same to its benefit, and the employee has suffered prejudice due to the non-release of the said amount, the employee becomes entitled for the grant of interest, so as to compensate him for the said prejudice. The relevant paragraph No.5 of the judgment is as under:-

“ x -- x – x

In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

17. Keeping in view the facts and circumstances of the present case, the present writ petition is allowed with a direction to the respondents to count the service rendered by the petitioner on daily wage/work charged basis from 31.07.1987 to 05.07.1998 as qualifying service for the purpose of retiral benefits and to recalculate the pensionary benefits and also the arrears, for which the petitioner is entitled alongwith interest @6% per annum on the

delayed payment of retiral dues with effect from 01.06.2016 (i.e. after two months from the date of retirement) till actual realization of payment and the said benefits be released to the petitioner within a period of two months from the date of receipt of certified copy of this order.

(DEEPINDER SINGH NALWA)
JUDGE

March 27, 2025

dinesh	Whether speaking	:	Yes/No
	Whether reportable	:	Yes/No