
(2002) 09 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4867 of 2000

Kewal Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Citation : (2003) 96 FLR 262 : (2003) 1 LLJ 684

Hon'ble Judges : S.S. Grewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Sandeep Bansal, for the Appellant; D.V. Sharma, for the Respondent

Judgement

Jawahar Lal Gupta J.—The petitioner was working as a matador driver with the respondents. He served from September 23, 1983, to June 30, 1999, on work charge basis. At the end of his tenure, the petitioner requested the respondents to grant him pension. His claim was declined by the Accountant-General, Punjab, vide order dated March 12, 1999, on the ground that there is no order of the Punjab Government "to authorise the pensionary benefits to employees whose entire service is work charged.....". The petitioner represented. His claim was again declined by the Principal Chief Conservator of Forests, Punjab, vide order dated February 24, 2000. Copies of the two orders have been produced on record as annexures P-3 and P-6. The petitioner complains that the action is arbitrary. He prays that these orders be quashed and the respondents be directed to first consider his claim for regularisation and then for the grant of pension.

2. A written statement has been filed on behalf of respondents Nos. 1 to 4. It has been admitted that the petitioner had joined as a matador driver on September 23, 1983. The appointment was on work charge basis. He had continued to work as such till he attained the age of superannuation. However, the petitioner's services could not regularised "as there was no regular post of matador driver with (the) department till the retirement of the petitioner". Thus, the petitioner had continued to work on work charge basis and he is not entitled to the grant of

pension. A separate reply has been filed on behalf of the Accountant- General, Punjab. It has been averred that the petitioner's services were not regularised till the date of his retirement. Thus, no pensionary benefits were allowed to him. Counsel for the parties have been heard.

3. Admittedly, the post of matador driver has continued to exist in the Department of Forests, at least from September 23, 1983, when the petitioner had joined, to June 30, 1999, when he had retired. Still further, it is the case of the respondents themselves that the Principal Chief Conservator of Forests, Punjab, "had repeatedly recommended creation of additional 35 posts of drivers to the Government so that the services of the work charged drivers, including the petitioner, could be regularised". Reference has been specifically made to one of the letters in the written statement. It is, thus, clear that the work was available. The Chief Conservator of Forests, Punjab, wanted the Government to sanction the creation of regular posts. Yet, no decision was taken. In the meantime, the petitioner had retired. At the end of his career, the petitioner is left with nothing to fall back upon.

4. In the circumstances of the case, we are satisfied that denying benefits shall cause extreme hardship to the petitioner. Still further, it is not disputed that the State Government has been regularly issuing instructions for the regularisation of services of the persons appointed on ad hoc basis. In principle, there is no basic difference between the persons appointed on ad hoc basis and those appointed on work charged basis. Both serve their respective employers for the duration of their employment. In a case where the ad hoc employees had served for long time, the State has ordered regularisation. Why is a different yard-stick being adopted in cases of persons appointed on work charge basis ? Nothing has been disclosed.

5. Another aspect of the matter which deserves notice is that according to the rule laid down by a Full Bench of this Court in *Kesar Chand v. State of Punjab*, through the Secretary, P.W.D. B&R, Chandigarh 1988(2) PLR 223, the period of service rendered by an employee on work charge basis prior to the regularisation of his services has to be considered as qualifying service while determining the pension due to him. Thus, work charge service is not such as may not qualify for the grant of pension.

6. In the present case, the petitioner has admittedly served the department for more than 15 years. Apparently, there was nothing against him which may disentitle him to get pension. The mere failure of the Government to sanction a regular post should not result in deprivation of the pension at the end of service.

7. Taking the totality of circumstances into consideration, we set aside the impugned orders. It is directed that the petitioner's case for regularisation of services prior to the date of his retirement shall be considered. Thereafter, his claim for pension shall be re-examined. Whatever is found due shall be paid to him. The needful shall be done within two months from the date of receipt of a

certified copy of this order.

8. The writ petition is disposed of in the above terms. In the circumstances, we make no order as to costs.