
(2005) 07 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7693 of 2004

Mangat Ram

APPELLANT

Vs

Haryana Vidyut Prasaran Nigam Ltd. and Others

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Citation : (2005) 107 FLR 1203 : (2006) 2 LLJ 91 : (2005) 141 PLR 578

Hon'ble Judges : S.S. Nijjar, J; Nirmal Yadav, J

Bench : Division Bench

Advocate : R.K. Malik, for the Appellant; Ankur Rishi and Vandana Malhotra, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—The petitioner has admittedly worked with the respondents as a daily wager from 18.7.1982 till 29.4.1993 when his services were regularised. There is no break in service. His services were regularised while he was continuing on adhoc basis. He retired from service on 31.12.1997 on attaining the age of superannuation. At the time of retirement, the petitioner has worked with the respondents for a period of 15 years. He, therefore, claims the pension and other retiral benefits on the basis of aforesaid period of service.

2. The respondents have rejected the claim of the petitioner on the ground that the petitioner would not be entitled to count the period of daily wages service. This plea is also taken in the written statement filed by respondents.

3. Counsel for the petitioner submits that in view of the law laid down by the Supreme Court in the case of Bhagwati Prasad v. Delhi State Mineral Development Corporation 1990 LIC 126 the period spent by the petitioner as a daily wager cannot be excluded from qualifying service at it was followed by regular service, which was continuous. Counsel also relied upon Single Bench judgment of this Court rendered in C.W.P. No. 2683 of 1989, decided on 18.4.1991.

4. After notice to the judgment of the Supreme Court in Bhagwati Prasad's case (supra), the learned Single Judge held that as follows:

"In the present case also, the petitioner who was appointed on daily wages on 21.2.1953 but his services were regularised on 18.12.1958 and his seniority was to be reckoned with effect from 21.2.1953 i.e. the date he was appointed in the department on daily wages. It would be unjust and inequitable in case the period from 21.2.1953 to 18.12.1958 is excluded while computing the qualifying service of the petitioner for grant of pensionary benefits. The Supreme Court in Bhagwati Prasad v. Delhi State Mineral Dev. Corporation 1990 LIC 126 has held that the persons who continue in service on daily wages for more than 3 years, would be entitled to confirmation even if they were unqualified. In the present case, it is not the case of the State that the petitioner was not qualified for being appointed to the post of Carpenter. Thus, the action of the State in not treating the petitioner as regular with effect from 21.2.1953 is absolutely illegal, arbitrary and cannot be sustained in law."

5. The petition, therefore, has to be allowed. Before parting with the order, we must notice the wholly unjustified attitude adopted by the respondents in not accepting the just and lawful claim of the petitioner. The petitioner earlier filed C.W.P. No. 8644 of 2002. The aforesaid writ petition was disposed of with the direction to the respondents to take a decision on the legal notice, which the counsel for the petitioner had already submitted. The respondents did not comply with the order of this Court. The petitioner was, therefore, constrained to file Contempt Petition No. 319 of 2003. During the contempt proceedings, a statement was made that the order dated 24.7.2002 be treated as withdrawn and competent authority will pass a fresh order keeping in view the law laid down by a Full Bench of this Court in the case of Kesar Chand v. State of Punjab (1988) 94 P.L.R. 223. Having given the aforesaid assurance to this Court till date, the pensionary benefits have not been released to the petitioner. In such situation, we are of the considered opinion that costs need to be imposed upon the respondents as well as grant of interest to the petitioner for the delayed release of the pensionary benefits. We, therefore, allow the present writ petition with the directions that consequential benefits shall be released to the petitioner within two months from the date of receipt of copy of this order. The petitioner shall also be entitled to interest from the date of his retirement till payment at the rate of 9% per annum. The petitioner shall also be entitled to costs in sum of Rs. 10,000/-.