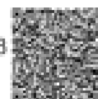

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CWP-5133-2023 (O&M)
Date of decision: 27.01.2025

Malkiat Singh

....Petitioner

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Mr. Vikas Chatrath and Mr. Sachit Katoch, Advocates for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

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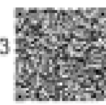
AMAN CHAUDHARY, J. (ORAL)

1. The prayer made in the present petition is for directing the respondents to count the daily wage service rendered w.e.f. 01.07.1986 to 20.06.1999 as Helper, Grade-I followed by regularisation vide order dated 20.06.1999.

2. Learned counsel submits that the petitioner was promoted as Technician Grade-III in the year, 2007 and retired on attaining the age of superannuation on 30.04.2021. He submits that the issue already stands decided by this Court in **State of Punjab and Others vs. Mukhtiar Singh**, LPA-189-2004, decided on 19.04.2011, relevant paras whereof read thus:

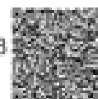
> "13. The only question referred by Hon'ble the Supreme Court for detailed consideration of this Court is whether daily wager employee would be entitled to reckon their service as qualifying service for the purposes of pension if it is followed by regularisation. It appears that on behalf of the appellant State specific attention of Hon'ble the Supreme Court was drawn to Rule



3.17-A (1)(iii) of the Punjab Civil Services Rules, Volume-II (for brevity, the Rules) for the purposes of excluding the service rendered on daily wage basis, as qualifying service for pension. However, a careful perusal of Rule 3.17-A of the Rules would clearly show that the rule principally is aimed at counting of that period of service which is interrupted. It would, thus, be necessary to read the aforesaid rule, which is as under:

xxx xxx xxx

17. The question then is what is substantive difference between a work-charged employee and a daily rated employee, who have rendered 10 years or more than 10 years of service without interruption and which is followed by regularisation. It appears to us that there is no substantive difference between a work-charged and a daily rated employee in the facts and circumstances of these cases. If we examine the facts obtaining in the instant cases then no doubt is left that these employees, who are called daily wage employee, have better legal rights than their counterparts working on work-charged establishment. A work-charged employee, as is commonly understood, work on a project for a limited period and when the work comes to an end, his services would also come to an end. However, a work charged employee who have rendered long un-interrupted service, which has been followed by regularisation, has been given the benefit of counting his pre-regularisation service for the purposes of pension, as has been held by the Full Bench of this Court in Kesar Chands case (supra). Once a work-charged employee is given the benefit of pre-regularisation service then it stands recognised that the nature of his job is perennial in character and the title given to his job as work charged or for that matter even daily rated employee, would be completely misnomer and would lose its significance. In fact, by using these expressions for an employee, a regime of exploitation has been created. It is not unknown that these daily rated employees or work-charged employees are kept on the tender hooks as against their counterparts working on confirm and regular basis. All these employees live under the shadow of apprehension of their bosses of being cashiered and have to respect their whims and fancies. It is for that reason that in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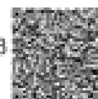
Kesar Chands case (supra), the thinking which has been adopted would be fully applicable to such like employees. The following observations made by the Full Bench in Kesar Chands case (supra) would reflect the aforesaid point of view:-

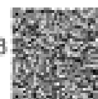
"Once the services of a work charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly 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 services regularised subsequently, and the others is not based on any intelligible criteria and. therefore, is not sustainable at law. After the services of a work charged employees 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 rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."

18. It is pertinent to notice that their Lordships of the Full Bench have kept in the background two principles that the right to pension is not a bounty payable on the sweet will and pleasure of the Government. That right of superannuation pension including its amount is a valuable right vesting in a Government servant. The Full Bench of this Court in **K.R. Erry v. The State of Punjab, ILR (1967) 1 Punj Har 278**, has laid down the aforesaid principle, which was approved by their Lordships of Hon'ble the Supreme Court in the case of **Deokinandan Prasad v. The State of Bihar, AIR 1971 Supreme Court 1409**. Likewise, the Full Bench



in Kesar Chands case (supra) has also kept in view the nexus theory to test the constitutional validity of any provision of law, as propounded and evolved by Hon'ble the Supreme Court in the case of **Ram Krishna Dalmia v. S. R. Tendolkar, AIR 1958 Supreme Court 538**. It is trite to observe that Article 14 forbids discrimination and any law making classification has to fulfil two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group, and (ii) that differentia has a rational relation to the objects sought to be achieved by the statute in question. Once, both the aforesaid principles are kept in view then a daily rated employee, who has worked for more than 10 years, would become entitled to count his service rendered as such on a post, if it is followed by regularisation. The very fact that an order of regularisation has been passed in his favour would be an admission on the part of the State that work has been available which is of perennial nature and he was rendering service against a post. If a work-charged employee is to be granted benefit of such service then there cannot be any rationale basis to exclude a daily rated employee like those who are before this Court. It is incidental that in Kesar Chands case (supra) the employees who have sought the relief, were work-charged and not daily wager. We are sure that had it been a case of a daily wage employee, who had rendered more than 10 years service as such, which is followed by regularisation, then the same result would have followed which has been recorded by the Full Bench in the case of work-charged employees.

22. As a sequel to the above discussion, the appeals filed by the State of Punjab are dismissed and the writ petitions are allowed. The departmental authorities are directed to count the work charged/daily wage service rendered by the petitioner(s) as qualifying service. The needful shall be done within a period of one month from the date of receipt of certified copy of this order. The petitioner(s) shall also be entitled to interest @ 12% per annum from the date the amount is payable to the date of its actual payment. The action of the authorities is patently against Rule 3.17-A of the Rules, therefore, the petitioner(s) are



> held entitled to their costs, which is determined at Rs. 2,500/- per petitioner. The amount of cost shall be sent to the petitioner(s) by cheque along with other retiral benefits."

3. The only reason given is that the aforesaid judgment was not generalised, in this regard, a reference is made to the judgment passed in **Satbir Singh vs. State of Haryana**[1] wherein was held that any artificial disparity among similarly situated employees is not permissible even on grounds of economic hardship or administrative convenience, on the touchstone of Articles 14 and 16 of the Constitution and the benefit granted to one set of employees based on a judicial pronouncement, the same must be extended to all similarly situated employees to maintain parity and avoid multiplicity of litigation,

4. Learned State counsel despite best efforts has been unable to controvert regards the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

5. In wake of the aforesaid, the present petition is disposed of in terms of **Mukhtiar Singh** (supra).

(AMAN CHAUDHARY)
JUDGE

27.01.2025
M.Kamra

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No

[1] 2002 (2) SCT 354.