



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 15517/2022

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of Transport, Government Of Rajasthan, Jaipur.
2. The Managing Director, R.s.r.t.c., Chomu House, Jaipur.
3. The Executive Director (Admn.), Rajasthan State Road Transport Corporation Ltd. Jaipur.
4. The Chief Manager, Rsrtc, Barmer.

----Respondents

For Petitioner(s) : Mr. Hapu Ram Vishnoi
For Respondent(s) : Mr. P.R. Singh Jodha

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

REPORTABLE

16/05/2023

Heard learned counsel for the parties.

The present writ petition has been filed against the order dated 23/09/2022 passed by the respondent No.3, whereby the retiral benefits due to the petitioner have been denied on account of the fact that the petitioner has not completed twenty years of qualifying service on the date of his voluntary retirement.

Briefly, the facts noted in the present case are that the petitioner was appointed as a Driver in the respondent Department on daily wages basis in the year 1995. After having served the Department on daily wages basis for almost three years, the services of the petitioner were regularized in the year



1999. After the grant of permanent status in the respondent Department, the petitioner was granted benefit of next selection scale in the year 2009. The petitioner, after having suffered the ailment of low visibility in his eye and night blindness, made an application for voluntary retirement. The application preferred by the petitioner was rejected on 27/12/2016. The petitioner again submitted an application on 03/03/2017 for voluntary retirement, however that too was rejected vide order dated 24/04/2017. Aggrieved against the rejection of the application, the petitioner preferred a S.B. Civil Writ Petition No.6896/2017 before this Court against the orders dated 27/12/2016 and 24/04/2017 but same was dismissed as having rendered infructuous vide order dated 23/09/2019 in view of the fact that the petitioner was accorded voluntary retirement.

The petitioner once again approached this Court by way of filing S.B. Civil Writ Petition No.11331/2019 seeking retiral benefits and that writ petition was also disposed of vide order dated 19/02/2020 with a direction of filing a representation to the respondent for redressal of his grievance. The petitioner, therefore, approached the respondents by way of filing a detailed representation and the same has now been decided vide order dated 23/09/2022, whereby the retiral dues have been denied to the petitioner on account of the fact that he has not completed 20 years of qualifying service. Hence, the present writ petition.

Learned counsel for the petitioner submits that the petitioner has completed more than twenty years of qualifying service as per the Rules and, therefore, he is entitled for all the retiral dues on account of seeking voluntary retirement in accordance with Rule



18(D)(2) of the Rajasthan State Road Transport Workers And Workshop Employees Standing Orders, 1965 (hereinafter referred to as 'the Orders of 1965'). While computing the period of twenty years, the period spent on daily wages basis is required to be taken into consideration as prescribed in Regulation 18(D)(2) of the Orders of 1965 and, therefore, the respondents may be directed to grant all retiral dues on account of seeking voluntary retirement by the petitioner.

Per contra, learned counsel for the respondents submits that the period of service rendered by the petitioner as a daily wages employees cannot be taken into consideration while computing the period of twenty years as per Regulation 18(D)(2) of the Orders of 1965. He submits that if that period is taken into account then it will be deemed that the petitioner was appointed for all intents and purposes on regular basis with effect from his date of first appointment and the respondents would be under an obligation to grant him all the benefits including the salary of a regular employee and the pay fixation. He submits that the petitioner had approached before this Court on earlier occasion and this Court had also not ruled in his favour with respect to the consideration of the period as daily wagger towards computation of the period of twenty years as per Regulation 18(D)(2) of the Orders of 1965. Learned counsel submits that the Notification dated 12/10/2015 is not applicable in case of the petitioner as he has not rendered services on regular basis since the date of his inception. He, therefore, prays that the writ petition may be dismissed.

I have considered the submissions made at the Bar and have gone through the relevant record of the case.



The admitted position with respect to the appointment of the petitioner in the year 1995 on daily wages basis and thereafter his services being regularized is not disputed. The only question involved in the present case is that *whether in the period of twenty years as per Regulation 18(D)(2) of the Orders of 1965, the period of working of the petitioner on daily wages basis will be taken into account or not?*

To appreciate the controversy in right perspective, the meaning/explanation given in the Notification dated 12/10/2015 reads as under :-

18(D)(2) Voluntary retirement

Notwithstanding anything contained herein before 'Corporation employees may after giving three months previous notice in writing, retire from the service on the date on which he completes 20 years service on the date he attains the age of 45 years or any other date thereafter.

"विभागाध्यक्षों/मुख्य उत्पादन प्रबन्धकों/मुख्य प्रबन्धकों को निर्देशित किया जाता है कि उक्त प्रावधानों को इस सावधानी के साथ लागू किया जावे कि निगम के स्थाई आदेशों से शासित कर्मचारियों की पेंशन योग्य सेवा (qualifying service) जो कि 20 वर्ष है, पूर्ण होना आवश्यक है, साथ ही 45 वर्ष की आयु भी देखी जावे। ऐसा नहीं होने पर किसी कर्मचारी को स्वैच्छिक सेवानिवृत्ति स्वीकृत न की जावे। यह भी सुनिश्चित किया जावे कि यदि कोई कर्मचारी लम्बे समय से अनुपस्थित है या उसके विरुद्ध कोई विभागीय जाँच बाकी है तो ऐसी अनुपस्थिति या विभागीय जाँच का निष्पादन लम्बित रहते स्वैच्छिक सेवानिवृत्ति स्वीकृत नहीं होगी। "क्वालिफाईंग सर्विस" का तात्पर्य कर्मचारी द्वारा राजस्थान परिवहन निगम में की गई उस सेवा से है जिसमें वह स्वीकृत स्थाई/अस्थायी पद एवं/अथवा ऑफिसियटिंग रूप में कार्यरत रहा हो। प्रायः यह देखने में आया है कि इन निर्देशों की कठोरता से पालना नहीं की जा रही है। अतः उपरोक्त निर्देशों की कठोरता से पालना की जावे।

अध्यक्ष एवं प्रबन्ध निदेशक"



A plain reading of the Explanation given in the Notification dated 12/10/2015 shows that while computing the qualifying service of an employee in the respondent Department, period of twenty years spent on duty as Permanent, Temporary &/or Officiating basis will be taken into consideration. Since the Notification dated 12/10/2015 has included the services rendered by the employees in the category of Permanent, Temporary and/or Officiating for the purpose of computation of twenty years, there cannot be two opinions that petitioner who has worked on daily wages basis is not entitled for getting the services included for the purpose of computation of twenty years of qualifying service.

The intention of the respondent Corporation is very clear that those persons who are working in the respondent Department in different capacities including casual and temporary are required to be given benefit of the services rendered by them to the respondents for computation of qualifying service for pension, therefore, the petitioner having rendered the services on daily wage basis to the respondents are required to be included in the categories mentioned in the Regulation akin to for grant of benefit of pension while computing that period for the purpose of qualifying service of twenty years.

The view taken by this Court is duly supported by the order dated 08/03/2018 of Apex Court delivered in the case of **Sunder Singh vs. The State of Himachal Pradesh, Civil Appeal No.6309/2017** which is reproduced as under :-



"1. Heard learned counsel for the parties.

2. The appellants represent class of Class-IV employees who were recruited initially as daily wagers such as Peon/Chowkidar/Sweeper/Farrash /Malis/Rasoia etc. Their services, thereafter, were regularized pursuant to the decision of this Court in Mool Raj Upadhyaya Vs. State of H.P. and Ors. 1994 Supp(2) SCC 316 Signature Not Verified under a Scheme. Digitally signed by MADHU BALA Date: 2018.03.12 17:45:13 IST Reason: Regularization was after 10 years of service.

3. It is undisputed that the post-regularization an employee who had served for 10 years is entitled to pension for which work charge service is counted. Earlier, in terms of O.M. dated 14.05.1998, 50% of daily-wage service was also counted for pension after regularization but the rules have undergone change.

4. Since the appellants have not rendered the requisite 10 years of service they have been denied pension.

1

5. Even though strictly construing the Rules, the appellants may not be entitled to pension. However, reading the rules consistent with Articles 14, 38 and 39 of the Constitution of India and applying the doctrine of proportionate equality, we are of the view that they are entitled to weightage of service rendered as daily wagers towards regular service for the purpose of pension.

6. Accordingly, we direct that w.e.f 01.01.2018, the appellants or other similarly placed Class-IV employees will be entitled to pension if they have been duly regularized and have been completed total eligible service for more than 10 years. Daily wage service of 5 years will be treated equal to one year of regular service for pension. If on that basis, their



services are more than 8 years but less than 10 years, their service will be reckoned as ten years.

7. The appeal as well as special leave petitions are disposed of in above terms”.

Thus, this Court is of the opinion that service period of daily wages basis rendered by the petitioner from 1995 till 1999 is required to be taken into account for computation of the period of twenty years in case of the petitioner for the purpose of granting retiral benefits.

A plain reading of the Regulation 18(D)(2) of the Orders of 1965 goes to show that an employee who completes 20 years service or attains the age of 45 years or on any other date thereafter can seek voluntary retirement. Therefore, by accepting the application for voluntary retirement of the petitioner, the respondents themselves admitted that the petitioner has completed qualifying service of twenty years.

It is also noted that the Notification dated 12/10/2015 only envisages the Explanation of qualifying service for the purpose of pension and not for any other purpose. Thus, the argument of learned counsel for the respondents that taking into account the entire service period for grant of benefits of pension in light of the Notification dated 12/10/2015, the petitioner would be entitled for all other benefits, is noted to be rejected only for the simple reason that by virtue of granting the pensionary benefits while computing twenty years, the persons like the petitioner will not be entitled to get the benefit of regularization etc. from the date of their inception in service, if they were not regularly appointed on the post.



In this view of the matter, the writ petition merits acceptance and the same is allowed accordingly. The order dated 23/09/2022 passed by the respondent No.3 is quashed and set aside. The services rendered by the petitioner as daily wages basis shall be taken into account while computing twenty years of qualifying service for the grant of the pensionary benefits to the petitioner.

The stay application and other pending applications, if any, also stand disposed of.

(VINIT KUMAR MATHUR),J

45-SanjayS/-