



HIMACHAL PRADESH STATE ELECTRICITY BOARD LIMITED

(A State Govt. undertaking)

Registered office: Vidyut ,Bhawan, HPSEBL, Shimla-4(H.P)

Number (CIN): U40109HP2009SGC0312SS

GST No. : HPSEBL 02 AACCH4894EHZB

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No. HPSEBL(Sectt.)LS/Gen. Vol. No. IX/2021 / - 4384-4474 Dated: 05.01.2022
To

All The Chief Engineer(s) in HPSEBL.

Subject: 1. CWP No. 3598 of 2019 titled as Balo Devi Vs. State of HP.
2. Instructions in compliance of orders passed in CWP OA No. 2531 of 2019 titled as Santosh Kumar & Ors Vs. State of HP by the Hon'ble High Court of HP

Sir,

In connection with above, enclosed please find a copy of email dated 03-12-2021 received from Special Secretary(Power) to the Govt. of HP, , together with copy of letter dated 03-12-2021 and copy of letter dated 22-11-2021 from LR-cum-Pr. Secy.(Law) to the Govt. of HP and copy of judgment dated 28-09-2021 passed by the Hon'ble High Court of HP and copy of letter dated 22-11-2021 from Under Secy.(Pers.) to the Govt. of HP, in the subject cited matter, for favour of information and ensuring strict compliance thereof please .

It is relevant to mention here that as of now after the disposal of CWP No. 3598/2019 discussed herein supra, the position in the matter of how much daily wage period to be counted for pensionary benefits of employee, who have been also served on daily wage period during his/her service career is almost settled. Hence, you all are requested to look into the matter veraciously and further ensure its strict compliance.

Note: In case of any impediment to understand the matter/issue you can directly contact in the office Legal Unit, HPSEBL, Shimla-3 please.

Encls:- As above.

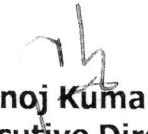
Yours faithfully,


(Manoj Kumar)
Executive Director (Pers.),
HPSEBL, Shimla-4

Copy of above is forwarded to the following for information and necessary action please.

1. The Managing Director, Beas Valley Power Corporation Ltd. Jogindernagar, HP.
2. The Special P.S./ Sr. P.S./ P.S. / to the MD/ Director(s)/ Executive Director(Pers.) , HPSEBL, Shimla-4.
3. All the Dy. Secretaries/ Under Secretaries in the Board Secretariat.
4. The Dy. Director (PR)/ IR/ PO, HPSEBL, Shimla-4.
5. All the Superintending Engineer(s)/ Sr. Executive Engineer(s) in HPSEBL.
6. The Superintending Engineer (IT), HPSEBL, Shimla-4 for uploading the same in the website of HPSEBL.

Encls:- Nil.


(Manoj Kumar)
Executive Director (Pers.),
HPSEBL, Shimla-4

File No. MPP-F(010)-14/2021
Government of Himachal Pradesh,
Department of MPP & Power.

From

Additional Chief Secretary (Power) to the
Government of Himachal Pradesh

To

1. The Director of Energy,
Shanti Bhawan, Phase -III, Sector-6,
New Shimla, Shimla-171009.
 2. The Managing Director,
H.P. State Electricity Board Limited,
Vidyut Bhawan, Shimla-171004.
 3. The Managing Director,
H.P. Power Transmission Corporation Limited,
Near old MLA Quarters,
Tutikandi, Shimla-171005.
 4. The Managing Director,
H.P. Power Corporation Ltd.
Himfed Building, BCS,
New Shimla, Shimla-9
 5. The Secretary,
H.P. Electricity Regulatory Commission,
SDA Complex, Kasumpti, Shimla-9.
 6. Chief Electrical Inspector,
Block No. 29, SDA Complex,
Kasumpti, Shimla-9.
- Dated : Shimla-2, the **3-12-2020**

Subject: 1. CWP No. 3598 of 2019- titled as Balo Devi vs state of H.P
2. Instructions in compliance of orders passed in CWPOA No. 2531
of 2019-titled as Santosh Kumar & Ors vs. State of H.P. & Ors.
by the Hon'ble High Court

Sir,

I am directed to enclose herewith the copy of letter No. LLR-E(5)-1/2014-Leg-Loose dated 22/11/2019 and No. PER(AP)-C-B(12)-1/2013-L dated 22.11.2021 along with its enclosures received from the LR-cum-Pr. Secretary (Law) to the GoHP and the Under Secretary (Personnel) to the GoHP respectively on the subject cited above for your information and Strict Compliance.

Yours faithfully,


Special Secretary (Power) to the
Government of Himachal Pradesh

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30/11-2021

No. LLR-E(5)-1/2014-Leg.-Loose
Government of Himachal Pradesh
Department of Law

From

The LR-cum-Pr. Secretary (Law) to the
Government of Himachal Pradesh.

To

All Administrative Secretaries to the
Government of Himachal Pradesh.

Dated:- Shimla-171002, the ^{22nd}~~22nd~~ November, 2021

Subject:-CWP No.3598 of 2019-titled as Balo Devi vs State of H.P.

Sir,

I am to enclose herewith a copy of order dated 28th September, 2021, and to say that the larger bench of the Hon'ble High Court of Himachal in CWP No.3598 of 2019-Balo Devi vs State of H.P., after considering the decision of the Hon'ble Apex Court rendered in Civil Appeal No.6309 of 2017-titled as Sunder Singh vs State of Himachal Pradesh has passed the following orders:-

"Para 34:-Before parting, it would be appropriate to deal with the apprehension raised on behalf of the petitioner that the interpretation, as expressed in Reference Order, would be contrary to Rule 49 of the CCS (Pension) Rules, 1972, wherein 9 years 9 months are reckoned as 10 years. The apprehension is misconceived as for determining the qualifying service for the purpose of pension any benefit as provided in Rule 49 has not been taken away and an employee has not been precluded from getting such benefit. The benefit extended in Sunder Singh's case (Civil Appeal No.6309 of 2017) is in addition to that and 10 years service, referred in that case, is to be calculated in the manner as provided under the CCS (Pension) Rules, 1972, but definitely an employee shall be entitled for benefit of daily waged service as directed in Sunder Singh's case (Civil Appeal No.6309 of 2017) that 5 years daily-waged service shall be treated equal to 1 year regular service for the purpose of granting pension and in case the person has served for 15 years or 20 years as a daily-wager then he shall be entitled for benefit of 3 or 4 years, as the case may be, of regular service for the purpose of calculating qualifying service for pension and, in such eventuality, if an employee, post-regularization, is having 7 or 6 years of regular service, then after adding benefit of daily-waged service, such employee shall be entitled for pensionary benefits. The term "more than 8 years but less than 10 years" in Sunder Singh's case (Civil Appeal No.6309 of 2017) is an illustration with reference to the petitioners therein,

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wherein the petitioners were having post-regularization service of more than 8 years with daily-waged service of 10 years and the cases of post regularization service 6 years or 7 years or less than that with daily-waged service of 15 years or 20 years or more than that was not before the Supreme Court. But in any case if service of an employee does not become 10 years, as required under rule 49 of CCS (Pension) Rules, 1972, even after adding benefit of daily-waged service as mandated in Sunder Singh's case (Civil Appeal No.6309 of 2017) i.e. counting 5 years equal to one year, then such employee shall not be entitled to reckon his service as 10 years, in terms of Rule 49 (supra). Thus, we hold that in such case 8 years cannot be taken as 10 years.

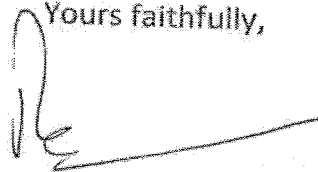
Para 35. In view of above discussion, we are of the considered opinion that view expressed in Reference Order dated 14.9.2021 by the Division Bench, in CWP No.3598 of 2019, is appropriate application of the judgment of Supreme Court passed in Sunder Singh's case (Civil Appeal No.6309 of 2017)."

As per aforesaid orders, an employee shall become eligible for grant of pension only if he completes requisite 10 years qualifying service as mandated under rule 49 of CCS(Pension). If service of an employee does not become 10 years as required under rule 49 of CCS (Pension) Rules, 1972, even after adding daily-waged service in terms of decision rendered in Sunder Singh's case (Civil Appeal No.6309 of 2017) i.e. counting 5 years equal to one year, then such employee shall not be entitled to reckon his service as 10 years.

In view of above the orders of the Hon'ble High Court of Himachal Pradesh, all the decisions taken earlier contrary to aforesaid orders are required to be got reviewed.

It is, therefore, requested that necessary steps for getting the earlier decisions reviewed may be taken as expeditiously as possible, so that undue benefits, if any, extended to the employees by erroneous implementation of decisions of the Hon'ble Court, could be corrected.

Yours faithfully,



LR-cum-Pr. Secy (Law) to the
Government of Himachal Pradesh

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
ON THE 28TH DAY OF SEPTEMBER, 2021

BEFORE

HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, HON'BLE MR.
JUSTICE AJAY MOHAN GOEL AND HON'BLE MR. JUSTICE
CHANDER BHUSAN BAROWALIA, JJ.

CIVIL WRIT PETITION NO.3598 of 2019

Between

SMT. BALO DEVI
2/O LATE SHRI PRITAM CHAND,
R/O VILLAGE AND P.O. MOONDHI,
TEHSIL PALAMPUR,
DISTRICT KANGRA,
H.P.

.....PETITIONER

(BY M/S A.K. GUPTA, MANIK SETHI,
ABHYENDRA GUPTA, DEVENDER K. SHARMA,
BABITA CHAUHAN AND BONIT THAKUR, ADVOCATES)

AND

1. STATE OF H.P. THROUGH
PRINCIPAL SECRETARY (I&PH) WITH
HEADQUARTERS AT SHIMLA-2
H.P.
2. THE ENGINEER-IN-CHIEF,
I&PH WITH HEADQUARTERS AT
US CLUB, SHIMLA-1
3. THE EXECUTIVE ENGINEER,
I&PH DIVISION THURAL,
DISTRICT KANGRA,
H.P.
4. THE SENIOR DEPUTY ACCOUNTANT GENERAL,
HEADQUARTERS AT SHIMLA-3

.....RESPONDENTS

(BY SHRI ASHOK SHARMA, ADVOCATE GENERAL
WITH M/S ANIL JASWAL, RAMEETA RAHI,
DINESH THAKUR, ADDITIONAL ADVOCATES GENERAL,
WITH MR. RAJU RAM RAHI, YUDHVIR SINGH THAKUR
AND DIVYA SOOD, DEPUTY ADVOCATES GENERAL
FOR RESPONDENTS NO.1 TO 3.



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
ON THE 28TH DAY OF SEPTEMBER, 2021

BEFORE

HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, HON'BLE MR.
JUSTICE AJAY MOHAN GOEL AND HON'BLE MR. JUSTICE
CHANDER BHUSAN BAROWALIA, JJ.

CIVIL WRIT PETITION NO.3598 of 2019

Between

SMT. BALO DEVI
2/O LATE SHRI PRITAM CHAND,
R/O VILLAGE AND P.O. MOONDHI,
TEHSIL PALAMPUR,
DISTRICT KANGRA,
H.P.

.....PETITIONER

(BY M/S A.K. GUPTA, MANIK SETHI,
ABHYENDRA GUPTA, DEVENDER K. SHARMA,
BABITA CHAUHAN AND BONIT THAKUR, ADVOCATES)

AND

1. STATE OF H.P. THROUGH
PRINCIPAL SECRETARY (I&PH) WITH
HEADQUARTERS AT SHIMLA-2
H.P.
2. THE ENGINEER-IN-CHIEF,
I&PH WITH HEADQUARTERS AT
US CLUB, SHIMLA-1
3. THE EXECUTIVE ENGINEER,
I&PH DIVISION THURAL,
DISTRICT KANGRA,
H.P.
4. THE SENIOR DEPUTY ACCOUNTANT GENERAL,
HEADQUARTERS AT SHIMLA-3

.....RESPONDENTS

(BY SHRI ASHOK SHARMA, ADVOCATE GENERAL
WITH M/S ANIL JASWAL, RAMEETA RAHI,
DINESH THAKUR, ADDITIONAL ADVOCATES GENERAL,
WITH MR. RAJU RAM RAHI, YUDHVIR SINGH THAKUR
AND DIVYA SOOD, DEPUTY ADVOCATES GENERAL
FOR RESPONDENTS NO.1 TO 3.

SHRI SHASHI SHIRSHOO, STANDING COUNSEL, FOR
RESPONDENT NO.4)

Whether approved for reporting? Yes.

This petition coming on for orders this day, Hon'ble Mr. Justice Vivek Singh Thakur, Judge, passed the following:

ORDER

This Larger Bench has been constituted by Hon'ble the Acting Chief Justice to adjudicate and answer the following question:

"Whether the views expressed in CWP No.3396 of 2021 and Ex. Pet. No.117 of 2018 in CWP No.267 of 2015 OR the view expressed in the present judgment is the appropriate application of the judgment of the Hon'ble Supreme Court in Sunder Singh's case."

2. Sunder Singh was appointed, on 1.1.1993, as a Baildar on daily-waged basis. His services were regularised with effect from 1.1.2002 after completion of 8 years service, and he retired on 31.1.2021, after serving, on regular basis, for 9 years 1 month. On account of denial of pension, for not having completed qualifying service of 10 years at his credit, as required under CCS (Pension) Rules, 1972, he approached this Court, by filing CWP No.3496 of 2011, by invoking Article 226 of the Constitution of India, seeking direction to count half of his daily-waged service towards qualifying service and thereafter pay pension to him from the due date alongwith incidental benefits.

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3. Claim of Sunder Singh was based upon judgment dated 19.7.2007, passed by a Division Bench of this High Court in CWP No.180 of 2001, titled as *State of H.P. & others v. Sarab Dayal*, wherein it was held as follows:

"We are, therefore, of the considered view that 50% of the continuous service rendered by the employees on daily rated basis followed by work charge/regular employment should be taken into account while calculating the qualifying service for purposes of entitlement to and the amount of pension to be paid to them."

4. The State had filed Special Leave Petition before the Supreme Court against aforesaid judgment dated 19.7.2007, but raising new questions before the Supreme Court and, thus, matter was remanded by the Supreme Court to this Court for fresh adjudication, with following observations:

"We have perused the records and heard the learned counsel for the parties. We are of the considered view that an entirely new case has been weaved out before this Court. There are no pleadings to that effect. In this view of the matter, we are constrained to set aside the impugned judgment of the High Court and remit the matters to the High Court for fresh adjudication. To avoid any confusion, we direct the State to file a comprehensive amended writ petition in the High Court within eight weeks and reply of the same be filed within eight weeks thereafter and rejoinder, if any, within four weeks thereafter."

5. Consequent to directions of the Supreme Court, the Division Bench had formulated the question of law, arising before it to be adjudicated in CWP No.180 of 2001 and connected matters, as under:

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"Whether the services rendered on daily waged basis by the employees before their regularization/grant of work charged status are to be taken into consideration for the purpose of counting their qualifying service for grant of pension under the Central Civil Services (Pension) Rules, 1972, and if so, to what extent."

6. The aforesaid issue was answered by the Division Bench, vide judgment dated 31.5.2012, as under:

".....Consequently, we answer the question framed by us earlier by holding that the service rendered on daily waged basis by the employees before their regularization/grant of work charged status cannot be taken into consideration for counting their qualifying service for grant of pension under the Central Civil Services (Pension) Rules, 1972. The writ petition is disposed of in the aforesaid terms."

7. Vide order dated 31.5.2012, CWP No.3496 of 2011, titled as *Sunder Singh v. State of H.P.*, was also disposed of by the same Division Bench of this High Court in terms of judgment dated 31.5.2012, passed in CWP No.180 of 2001 (*supra*).

8. Sunder Singh approached the Supreme Court of India by filing SLP No.34038 of 2012, which was allowed and the petitioner was granted special leave to file Civil Appeal No.6309 of 2017 against the order passed by the High Court in CWP No.3496 of 2011, wherein, in the aforesaid background, the Supreme Court has passed the following judgment:

"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/Rasbia 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 Suppl(2) SCC 316 under a Scheme. 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 for pension or which work charge service is counted. Earlier, in terms of O.M. dated 14.05.1998 (wrongly printed, should be 1968), 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.

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 w.e.f. 01.01.2008, 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 services will be reckoned as ten years.

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

9. In aforesaid judgment, in *Sunder Singh's* case, the Supreme Court had held that Sunder Singh and other similarly placed daily wagers would be/shall be are entitled to weightage of service rendered as daily wager towards regular service for the purpose of pension and had issued a mandate that for extending such benefit, daily-wage service of 5 years would be

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treated equal to 1 year for regular service for pension, with further observation that if on that basis, their service was more than 8 years but less than 10 years, their service would be reckoned as 10 years, with further direction that Sunder Singh and other similarly situated employees would be entitled to pension, if they would have been duly regularized and would have completed total eligible service of more than 10 years.

10. Seeking benefit on the basis of the aforesaid mandate, large number of daily-wagers, who had not completed 10 years qualifying service, post conferment of work-charge status/regularization, approached this High Court by filing petitions under Article 226 of the Constitution of India. Some of such petitions have been decided, whereas some petitions are still pending adjudication and present petition is one of such pending petitions, whereas CWP No.3396 of 2021 and CWP No.267 of 2015 are such decided petitions.

11. In CWP No.3396 of 2021, titled as *Tilak Ram v. State of H.P. & others*, Tilak Ram, petitioner therein, had completed 6 years 9 months post regularization service and he was denied the pensionary benefits and, therefore, he had approached this High Court, seeking direction to the Department to count ten years of daily waged service, equivalent to two years of regular service, and thereafter regular service of 8 years and 9 months be treated as 10 years for the purpose of qualifying service for

pension, in terms of law laid down by the Supreme Court in *Sunder Singh's* case (Civil Appeal No.6309 of 2017).

12. The Division Bench, in aforesaid CWP No.3396 of 2021, took note of the judgment passed by learned Single Judge of this High Court in CWP No.2110 of 2020, titled as *Devi Singh v. State of Himachal Pradesh & others*, decided on 2.11.2020, wherein pensionary benefits were directed to be extended to the petitioner therein, who had served as daily-wager for 10 years with post-regularization regular service of more than 7 years and 5 months and by adding two years of regular service, on account of 10 years of daily-waged service, his service was counted as 9 years 5 months and applying judgment in *Sunder Singh's* case (Civil Appeal No.6309 of 2017), 9 years 5 months were reckoned as 10 years.

13. Concurring with the aforesaid view, the Division Bench held that petitioner Tilak Ram having post-regularization service of 6 years 9 months, with ten years daily-waged service, shall be entitled for addition of two years regular service for ten years daily-waged service and, after adding these two years, his service would be 8 years 9 months which shall be treated as ten years for the purpose of qualifying service for pension, in terms of law laid down in *Sunder Singh's* case (Civil Appeal No.6309 of 2017).

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14. CWP No.267 of 2015, titled as *Sanehru Devi v. State of Himachal Pradesh and others*, was disposed of vide order dated 6.1.2015, with direction to the respondents to take appropriate action, keeping in view outcome of SLP (Civil) No.34038, titled as *Sunder Singh v. State of H.P.* pending, at that time, before the Supreme Court. After decision of *Sunder Singh's* case (Civil Appeal No.6309 of 2017), Sanehru Devi was not granted pension for not serving for 10 years after regularization. She filed Execution Petition No.117 of 2018 in CWP No.267 of 2015, titled as *Smt. Sanehru Devi v. State of Himachal Pradesh & others*, and during pendency of Execution Petition, claim of Sanehru Devi was rejected by the Department, whereafter, vide order dated 24.6.2019, passed in the said Execution, the Division Bench had held as under:

"5. It is not in dispute that the husband of the petitioner Shri Ghulla Ram was initially engaged as Beldar on daily wage in the year 1984 and thereafter granted work charge status w.e.f. 1.1.1994 and served upto 31.5.2001 and had thus rendered 7 years 5 months period in the department as work charged Beldar. Now, in case the two years are added to this period as per the judgment rendered in *Sunder Singh's* case (supra), his total period worked out to be 9 years and 5 months, which definitely is more than 8 years though less than 10 years and thus his case is squarely covered for grant of pension as per the judgment rendered in *Sunder Singh's* case (supra), as the service put in by him has to be reckoned as ten years."

15. During the course of hearing of this Reference, we have been, it has been informed that the Division Bench, in

Sanehru Devi's case, vide order dated 9.9.2021, passed in Review Petition No.91 of 2021, preferred by State in the said case, has reviewed its order dated 24.6.2019, passed in Execution Petition No.117 of 2018, and the Execution Petition has been ordered to be restored to its original number. Therefore, view taken in Execution Petition No.117 of 2018 is no more in existence. Now only the view taken in CWP No.3396 of 2091 is in force.

16. Another Division Bench in CWP No.3598 of 2019, titled as *Balo Devi v. State of H.P.*, has expressed the view that in case, after giving weightage of pre-regularization daily-waged service of an employee towards regular service, in terms of *Sunder Singh's* case (Civil Appeal No.6309 of 2017), his service does not become 10 years, then he cannot be held entitled for pensionary benefits, by considering service of less than 10 years as 10 years. According to this Division Bench, as expressed in Reference Order dated 14.9.2021, an employee shall be entitled for pensionary benefits in case he completes 10 years service after addition of daily-waged service, as mandated in *Sunder Singh's* case (Civil Appeal No.6309 of 2017), i.e. 5 years of daily-waged service shall be treated equal to 1 year regular service. In case years of regular service of an employee, even after adding the weightage of daily-waged service remains less than 10 years then he shall not be entitled for pensionary benefits. 8

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years regular service shall be reckoned as 10 years only by giving weightage of daily-waged service after adding it in his actual regular service.

17. We have heard learned counsel for the petitioner as well as learned Additional Advocate General, and have also gone through the record of *Sunder Singh's* case (CWP No.3396 of 2011), wherein alongwith copy of order passed by the Supreme Court of India, a copy of SLP No.34038 of 2012 preferred by Sunder Singh is also available.

18. From record, it is evident that Sunder Singh, who was regularized after 10 years daily-waged service, in terms of *Mool Raj Upadhyaya Vs. State of H.P. and Ors. 1994 Supp(2) SCC 316*, was seeking direction to the Department for counting 50% of his daily-waged service for the purpose of calculation of qualifying service necessary for pensionary benefits.

19. Learned counsel for the petitioner has supported the view taken by the Division Bench in CWP No.3396 of 2021 and similar view taken by a Single Bench in CWP No.2110 of 2020 (*supra*). Reliance has also been placed on judgment of another Division Bench, passed in CWP No.5067 of 2020, titled as *Baryam Singh v. State of H.P. & others*.

20. It is contended on behalf of the petitioner that in *Sunder Singh's* case (Civil Appeal No.6309 of 2017), the Supreme Court created a legal fiction by giving a mandate that

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In case, after adding benefit of daily-waged service towards regular service, service of employee becomes more than 8 years but less than 10 years, his service shall be reckoned as 10 years. It has also been submitted that though there would be a shortfall of service of about 2 years but because of legal fiction created by the Supreme Court, the length of service of such employee shall be reckoned as 10 years so as to extend benefit of pension to such employee who has been regularized after serving as daily-wager for a considerable long period. Learned counsel has further contended that in Para-6, in first sentence, of order in *Sunder Singh's case* (Civil Appeal No.6309 of 2017), words "total eligible service" have been used for entitlement to pension by Sunder Singh and other similarly placed Class-IV employees, w.e.f. 1.1.2018, whereas, in second line, words "Daily wage service" have been used for treating 5 years of daily wage service equal to 1 year of "regular service" and in last line word "services" only has been referred. According to the learned counsel, four references of the word "Service", i.e. "total eligible service", "daily-wage service", "regular service" and "service" have been used in different contexts. In the first sentence "total eligible service" means period of service plus period treated to be regular service on the basis of daily-waged service being weightage for regular service. The service directed by the Supreme Court as

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between 8 and 10 years to be taken into consideration for reckoning that service as 10 years, in terms of fiction created by the Supreme Court. It has also been contended that the last line of para-6 clearly says that if after adding years to regular service on the basis of daily-waged years, as directed by the Supreme Court, service of an employee becomes between 8 and 10 years then his service would be reckoned as 10 years and the words "on that basis" refer to the service counted on the basis of benefit extended to an employee as per direction of the Supreme Court for his daily-waged service.

21. Learned counsel for the petitioner has also contended that where two interpretations, with respect to a beneficial legislation, are possible, then the interpretation beneficial to the beneficiary should be preferred and, thus, it is submitted on behalf of the petitioner that in *Sunder Singh's* case (Civil Appeal No.6309 of 2017), the Supreme Court has introduced a provision for extending benefit to daily-waged employee and, therefore, interpretation of such direction, extending the benefit to daily-waged employee, should be construed and preferred in a manner which extends maximum benefit to the employee, but not prejudicial to his right of pension.

22. Learned Advocate General has supported the view expressed by the Division Bench in order dated 14.9.2021,

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whereby matter has been referred to this Larger Bench, with submissions that though earlier, in terms of O.M. dated 14.5.1968, 50% of daily-waged/contingent service was being counted by adding it in regular service of the employee for calculating qualifying service for granting pensionary benefits, however, after enactment of CCS (Pension) Rules, 1972, no such provision for counting daily-waged or contingent service is in existence, and further said issue has been set at rest by a Division Bench of this High Court in CWP No.180 of 2001, decided on 31.5.2012. He has further submitted that after verdict of the Supreme Court of India in *Sunder Singh's* case (Civil Appeal No.6309 of 2017), a daily-waged employee, after regularization, will be entitled for counting 5 years daily-waged service equal to 1 year of regular service, for the purpose of calculation of qualified service for granting pension, but in case even after adding such benefit on the basis daily-waged service, an employee does not complete requisite years of qualifying service, as required under CCS(Pension) Rules, 1972, he shall not be entitled for pension and in such eventuality his service of more than 8 years but less than 10 years cannot be treated as 10 years for the purpose of granting pension. According to him, the order of Supreme Court does not extend benefit of 2 years on the basis of daily-waged service plus 2 years by way of legal fiction as claimed by the petitioner. He has also submitted that

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in case intention of the Supreme Court would have been for extending benefit of $2+2 = 4$ years, then instead of extending benefit of daily-wage service of 5 years to treat equal to 1 year of regular service, the Supreme Court would have directed to count $2\frac{1}{2}$ years of daily-waged service equal to 1 year regular service, instead of as directed in Para-6 of judgment/order in *Sunder Singh's* case (Civil Appeal No.6309 of 2017).

23. In rebuttal, it is argued on behalf of the petitioner that reference in last line of Para-6 of *Sunder Singh's* case (Civil Appeal No.6309 of 2017), of service of more than 8 years but less than 10 years, for reckoning such service as 10 years service, has been made with the intention to bring all those employees under the umbrella of pensionary benefit, who, after serving as daily-wagers for long period, were not able to complete the qualifying service even after addition of year(s) on the basis of daily-waged service and, according to him, therefore, the reason, on the basis of which reference has been made by expressing that less than 10 years can never be 10, is a wrong interpretation of *Sunder Singh's* case (Civil Appeal No.6309 of 2017) because in said case there is an unambiguous direction of the Supreme Court to reckon service, of more than 8 years but less than 10 years, to be 10 years service for extending benefit of pension to employees regularized after serving as daily-wager and direction of the Supreme Court is to

be interpreted on the basis of proportionate equality, instead of numeric equality. It is also contended that in case view explained by the Division Bench in order dated 14.9.2021 is accepted then Rule 39 of CCS (Pension) Rules, 1972 shall become redundant and even those employees who are eligible for pension in terms of Rule 49 (supra) shall also be excluded from pensionary benefits.

24. It has also been submitted that in case 10 years is to be taken 10 years only, then it would be contrary to the provision of Rule 49 of the CCS (Pension) Rules, 1972, wherein service 9 years 9 months is taken as 10 years service for granting pension.

25. In judgment dated 2.3.2021, passed in CWP No.5067 of 2020 (supra), the Division Bench has not interpreted the directions passed by the Supreme Court in *Sunder Singh's* case (Civil Appeal No.6309 of 2017). In that case, submissions of learned counsel for the petitioner made on the basis of *Sunder Singh's* case (Civil Appeal No.6309 of 2017) have been recorded, whereby it was claimed that after serving for 8 years, petitioner therein, was entitled to reckon his service as 10 years for the purpose of pension. Thereafter, it is observed that it has been held that where a person has completed 8 years but less than 10 years, it would be reckoned as 10 years for the purpose of pensionary benefits. Lastly, statement of learned Advocate

General has been recorded in that case, wherein he submitted that in case the petitioner had rendered 9 years service, it will be counted 10 years qualifying service for the purpose of pensionary benefits, and thereafter, the petition was disposed of permitting the petitioner therein to make a representation to respondents for extension of the pensionary benefits, with further direction that such representation shall be considered by the respondents-State and if the petitioner is found entitled for the pensionary benefits, appropriate orders be passed and benefits of the same shall be released to him within a period of three months thereafter.

26. In *Baryam Singh's* case, there is no mandate of the Court that service of 8 years shall be reckoned as 10 years, but the petition was disposed of, on the basis of statement of learned Advocate General, with direction to pass appropriate order if petitioner was considered to be entitled for benefit of pension. In any case, in that judgment, ratio of *Sunder Singh's* case (Civil Appeal No.6309 of 2017) has been considered on the analogy of view taken in CWP No.3396 of 2021 and CWP No.2110 of 2020, decided by this High Court, which view is already subject matter of this reference. As referred supra, view taken in Execution Petition No.117 of 2018 in CWP No.267 of 2015 stands recalled in Review Petition No.91 of 2021, preferred by the State and, therefore, the said view is not in existence.

However, that view was similar to the view taken in CWP No.3396 of 2021, which is in existence and under reference.

27. For giving meaning to the direction issued by the Supreme Court in *Sunder Singh's* case (Civil Appeal No.6309 of 2017), in Para-6, vide order dated 8.3.2018, the said order is to be read in totality, as a single unit but not in piece-meal manner by picking up a line from the entire order, in isolation to the other observations, which, in fact, are background of the directions issued by the Supreme Court.

28. It has already been noticed that Sunder Singh was agitating for counting of his daily-waged service alongwith his post-regularization service of more than 9 years for the purpose of granting pensionary benefits. He was regularized in pursuant to decision of the Supreme Court in *Mool Raj Upadhaya's* case under a Scheme of Regularization after 10 years of daily-waged service.

29. It has been recorded by the Supreme Court that, undisputedly, post-regularization, an employee, who had served for 10 years, is entitled to pensionary benefits and for counting such service, work-charge service is counted, but for change in the Rules, no benefit of 50% of daily-waged service was available to an employee and, thus, it has also been observed by the Supreme Court that Sunder Singh and others have not

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rendered requisite 10 years service and, therefore, they were denied pension.

30. In Para-5 of *Sunder Singh's* case (Civil Appeal No.6309 of 2017), it has been observed that strictly construing the Rules, Sunder Singh and others, might not be entitled to pension, but a view was expressed by the Supreme Court that they were entitled to weightage of service rendered as daily-wagers towards regular service for the purpose of pension, in furtherance to provisions of Articles 14, 38 and 39 of the Constitution of India and applying the doctrine of proportionate equality. In the aforesaid facts and circumstances, direction in Para-6 in *Sunder Singh's* case (Civil Appeal No.6309 of 2017) stood passed.

31. First sentence of Para-6 of *Sunder Singh's* case (Civil Appeal No.6309 of 2017) declares and affirms the Rules by stating that with effect from 1.1.2018, Sunder Singh and other similarly placed Class-IV employees will be entitled to pension only if after regularization, they have completed total eligible service for more than 10 years. The second sentence gives a formula for extending the weightage of daily-waged service rendered by them by providing that 5 years daily-waged service will be equal to 1 year of regular service for the purpose of pension. As petitioners before the Supreme Court had been regularized after serving for 10 years as daily-wagers, but post-

regularization they were not having regular service of 10 years qualified service for the purpose of pension, and after applying the formula for counting their 5 years of daily-waged service equal to one year, they were to be considered entitled for benefit of 2 years regular service on the basis of their length of daily-waged service. Therefore, an illustration has been given by the Supreme Court in the last line of Para-6, by saying that in case of employees, whose service is more than 8 years but less than 10 years, then by adding benefit of 2 years of regular service on the basis of 10 years daily-waged service of such employees, their service, of more than 8 years but less than 10 years, shall be reckoned as 10 years.

32. First part of Para-6 of judgment in *Sunder Singh's* case (Civil Appeal No.6309 of 2017) is the Rule. Its second part, directing to count 5 years daily-waged service equal to 1 year, is legal fiction, whereas third part is an illustration with reference to the facts of *Sunder Singh's* case and also of other connected matters. Words "total eligible service" in first part is referring to service prescribed as qualified service in Pension Rules. In second part "daily wage service" refers to pre-regularization daily-waged service to be counted for treating it as regular service for adding in post-regularization service, as directed by the Supreme Court, i.e. 5 years daily-waged service equal to 1 year regular service. In third part, i.e. illustration "service"

refers to actual post-regularization service, which, by giving benefit of daily-waged service, is to be counted and reckoned as 10 years for completing deficit in total eligible service necessary for pension under relevant Rules. By doing so, services of Sunder Singh and other similarly situated persons were to be reckoned as 10 years. There is no other harmoniously possible plausible view or interpretation of direction of the Supreme Court which can be taken. Therefore, there is no question of adopting or taking view beneficial one as there is only one view. Other view, being propounded, is not a possible view because in that eventuality there was no necessity to create a legal fiction that 5 years daily-waged service shall be treated as 1 year, as petitioners before the Supreme Court had already served for more than 8 years regular service and without counting their daily-waged service, the direction would have been issued that service of such employees shall be reckoned as 10 years. Thus, to draw different meaning of word "service", as contended by learned counsel for the petitioner, is not tenable and submission with respect to proportionate equality and numeric equality as well as view beneficial to employee are also misconceived.

33. Word "reckoned" apparently has been used for the reason that as per Rule, qualifying post-regularization regular/work-charge service shall be 10 years but in case it is less than 10 years then after adding benefit of daily-waged

service, as directed by the Supreme Court, it shall be reckoned as 10 years. The term "of more than 8 years" has been referred for the reason that the petitioners before the Supreme Court had been regularized after 10 years of daily-waged service and, therefore, the persons, who are having entitlement for benefit of 2 years regular service, on the basis of 10 years daily-waged service, then they would have been eligible to reckon their service as 10 years, but only after completion of post-regularization regular and work-charge service of more than 8 years but less than 10 years. Therefore, for reckoning the service, of more than 8 years but less than 10 years, equal to 10 years shall occur only after adding benefit of daily-waged service as provided in *Sunder Singh's* case (Civil Appeal No.6309 of 2017) and as expressed in the reference order, but not as expressed in CWP No.3396 of 2021 or CWP No.2110 of 2020 and also not as construed in CWP No.5067 of 2020 or similar view taken in any other judgment.

34. Before parting, it would be appropriate to deal with the apprehension raised on behalf of the petitioner that the interpretation, as expressed in Reference Order, would be contrary to Rule 49 of the CCS (Pension) Rules, 1972, wherein 9 years 9 months are reckoned as 10 years. The apprehension is misconceived as for determining the qualifying service for the purpose of pension any benefit as provided in Rule 49 has not.

been taken away and an employee has not been precluded from getting such benefit. The benefit extended in *Sunder Singh's* case (Civil Appeal No.6309 of 2017) is in addition to that and 10 years service, referred in that case, is to be calculated in the manner as provided under the CCS (Pension) Rules, 1972, but definitely an employee shall be entitled for benefit of daily-waged service as directed in *Sunder Singh's* case (Civil Appeal No.6309 of 2017) that 5 years daily-waged service shall be treated equal to 1 year regular service for the purpose of granting pension and in case the person has served for 15 years or 20 years as a daily-wager then he shall be entitled for benefit of 3 or 4 years, as the case may be, of regular service for the purpose of calculating qualifying service for pension and, in such eventuality, if an employee, post-regularization, is having 7 or 6 years of regular service, then after adding benefit of daily-waged service, such employee shall be entitled for pensionary benefits. The term "more than 8 years but less than 10 years" in *Sunder Singh's* case (Civil Appeal No.6309 of 2017) is an illustration with reference to the petitioners therein, wherein the petitioners were having post-regularization service of more than 8 years with daily-waged service of 10 years and the cases of post-regularization service 6 years or 7 years or less than that with daily-waged service of 15 years or 20 years or more than that was not before the Supreme Court. But in any case if service of

an employee does not become 10 years, as required under rule 49 of CCS (Pension) Rules, 1972, even after adding benefit of daily-waged service as mandated in *Sunder Singh's* case (Civil Appeal No.6309 of 2017) i.e. counting 5 years equal to one year, then such employee shall not be entitled to reckon his service as 10 years, in terms of Rule 49 (supra). Thus, we hold that in such case 8 years cannot be taken as 10 years.

35. In view of above discussion, we are of the considered opinion that view expressed in Reference Order dated 14.9.2021 by the Division Bench, in CWP No.3598 of 2019, is appropriate application of the judgment of Supreme Court passed in *Sunder Singh's* case (Civil Appeal No.6309 of 2017).

Reference is answered accordingly.

(Vivek Singh Thakur)
Judge.

(Ajay Mohan Goel)
Judge.

(Chander Bhusan Barowalia)
Judge.

September 28, 2021(sd)

No. PER(AP)-C-B(12)-1/2013-L
Government of Himachal Pradesh
Department of Personnel (AP-III)

From

The Addl. Chief Secretary (Personnel) to the
Government of Himachal Pradesh

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All Divisional Commissioners in Himachal Pradesh.
3. All Heads of Departments in Himachal Pradesh.
4. All Deputy Commissioners in Himachal Pradesh.
5. All the Chairpersons/ Managing Directors/ Registrars/ Secretaries of various Corporation/ Boards/ Universities etc. in Himachal Pradesh.

Dated: Shimla-2, the 22 11. 2021

Subject: - Instructions in compliance of orders passed in CWPOA No. 2531 of 2019-titled as Santosh Kumar & Ors. Vs. State of H.P. & Ors. by the Hon'ble High Court.

Madam/Sir,

I am directed to invite your attention to the Order passed on 29.09.2021 in case CWPOA No. 2531 of 2019-Santosh Kumar & Ors. Vs. State of H.P. & Ors. (the copy of order/judgment be downloaded from the official website of Hon'ble High Court from following link <https://hphighcourt.nic.in/#> for strict compliance).

2. One of the basis on which the Petitioners have filed the CWPOA No. 2531 of 2019 is that in the year, 2017, Himachal Road Transport Corporation advertised 1300 posts of Transport Multiple Purpose Assistants out of which some posts were reserved for Ex-servicemen General category. Despite of clear-cut instructions dated 09.06.2014 on the issue in hand, the HRTC permitted some Wards of Ex-servicemen (petitioners) to participate in the selection process against the vacancy reserved for Ex-servicemen and they were kept in select list of 1235 after document verification. Since, name of petitioners did not figure in the final selection list, they approached to the Hon'ble Courts by filling the aforementioned Civil Writ Petition.

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