

# **HIGH COURT OF JAMMU AND KASHMIR**

AT JAMMU

LPASW No.29/2007

MP No.28/2007

Date of order: 25.02.2016

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1. Chief General Manager,  
Telecommunication, J&K Circle, Bah Plaza, Jammu.
  2. Senior Accounts Officer, (DOT) Cell  
Office of Chief General Manager, BSNL.
  3. General manager, Telecommunication,  
B.S.N.L. Ranipark, Jammu Tawi.
  4. Union of India, through Secretary to Government of India  
Ministry of Communication, Sanchar Bhawan, 20 Ashoka Road,  
New Delhi-110001.

.....Appellants

Versus

Karnail Singh S/o Sh. Jasia Ram  
Res. Of Quarter No.18, PNT Colony, Bakshi Nagar,  
Jammu.

.....Respondent.

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## **Coram:**

**Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice**  
**Hon'ble Mr. Justice Tashi Rabstan, Judge**

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## **Appearing counsel:**

For the appellant(s)	:	Mr. K.K.Pangotra, Advocate.
For the respondent(s)	:	Mr. P.N.Raina, Sr. Advocate with Mr. J.A.Hamal, Advocate.

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| i/  | Whether to be reported in<br>Press/Media    | : | Yes |
| ii/ | Whether to be reported in<br>Digest/Journal | : | Yes |
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## **N. Paul Vasanthakumar-CJ**

1. Heard Mr. K.K.Pangotra, learned counsel appearing for the appellants and Mr. P.N.Raina, Sr. Advocate appearing for the respondent.

2. This appeal is preferred against the order made in SWP No.369/2005 dated 07.12.2006, giving direction to give credit of service rendered by the respondent w.e.f. April, 1979 to 27<sup>th</sup> February, 1989 as daily rater worker, in addition to his regular

service for computing his qualifying service for the purposes of pension and grant pension within a period of four weeks, if respondent is having qualifying service.

3. The case put forth by the respondent before the Writ Court was that he was engaged as Daily rated mazdoor in April, 1979 in the department of telecommunications and he served in the said capacity up to 27.02.1989. His services were regularized as temporary regular mazdoor w.e.f. 28.02.1989, taking note of his daily rated mazdoor services and he performed his duties in the said capacity until 06.10.1997 whereafter he met with an accident and became unfit for the service and he was given retirement on medical grounds. He having been denied pension, filed the writ petition stating that his services from April, 1979 till 27.02.1989 shall be computed for pension purposes and pension claim was denied on the ground that after making him as temporary regular mazdoor, if his service is counted he is having only 8 years, 7 months and 6 days in his credit till his retirement on medical grounds.

4. Learned Single Judge allowed the writ petition taking note of the Rules 13 and 14 of CCS (Pension) Rules, which states that qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity provided he has been substantively

appointed in the same or another post without interruption. As per rule 14 (2), the expression “service” means service under the Government and paid by that Government from the Consolidation fund of India or a local fund administered by that government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that government.

5. Learned Single Judge also taken notice of the fact that though the writ petitioner’s service was daily rated initially, he was absorbed without interruption on regular basis and the post on which he was working was also a pensionable post carrying a regular scale. Thus the payment made to the respondent as daily rated pay be treated as paid from the consolidated fund and could be from the contingency fund.

6. If a person is paid salary from contingency fund, only 50% of the service can be computed for pension, provided the job shall for which the person was engaged is a whole time job and not part time and the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned i.e. malis, chowkidars, khalasis etc. The payment should have been made either on monthly or daily rates computed and paid on monthly basis, which should be followed by absorption in regular employment without any break. The said position is made clear in Government of India’s decision

with referred to Rule 14 by Government of India, Ministry of Finance, O.M. No.F-12(I)-E, V/68 dated 14.05.1968, which reads thus:-

“GOVERNMENT OF INDIA’S DECISIONS

(1) Benefit of service rendered under Government in respect of scientific employees-----

(2) Counting half of the service paid from contingencies with regular service.—Under Article 368 of the CSRs (Rule 14) periods of service paid from contingencies do not count as qualifying service for pension. In some cases, employees paid from contingencies are employed in types of work requiring services of whole-time workers and are paid on monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit brought on to regular establishment. The question whether in such cases service paid from contingencies should be allowed to count for pension and if so, to what extent has been considered in the National Council and in pursuance of the recommendation of the Council, it has been decided that half the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions, viz:-

- (a) Service paid from contingencies should have been in a job involving whole-time employment (and not part-time for a portion of the day).
- (b) Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned ,e.g. malis, chowkidars, khalasis etc.
- (c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.
- (d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without break.
- (e) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1<sup>st</sup> January, 1961, for which authentic records of service may be available.

It has been decided that half the service paid from contingencies will be allowed to be counted for the purpose of terminal gratuity as admissible under the CCS (TS) Rules, 1965, where the staff paid from contingencies is subsequently appointed on regular basis. The benefit will be subject to the conditions laid down in OM, dated the 14<sup>th</sup> May, 1968, above.....”

7. From the above office memorandum issued by Government of India as early as in the year 1968, it is evident that if a person/daily wage employee employed in government Department served on whole time basis and his salary was calculated and paid at the end of the month, if absorbed without break in service, 50% of his daily rated whole time service shall be taken for counting pensionable service. Thus the respondent's 50% service from April, 1979 up to 27.02.1989 shall be added along with regular service of 8 years, 7 months and 6 days for calculating pensionable service. If 50% of the said service is added along with the regular service, it would be more than 13 years and 6 months.

8. In such circumstances, the respondent is entitled to get pension from the date of his retirement on medical grounds computing his pensionable period as 13 years 6 months and 20 days. The appellants are directed to sanction pension to the respondent from the date of his retirement. The respondent is entitled to get interest 6% per annum on the arrears of pension from the date of the judgment rendered by the learned Single Judge i.e. 07.12.2006. The said interest is ordered taking note of the fact that on 28.03.2007, this Court while entertaining the appeal without granting stay ordered that pendency of the appeal shall not come in the way of the appellants to process the case of the respondent for granting pensionary benefits to

him. Let this exercise be completed within a period of three months from the date of receipt of copy of this order.

9. Order of the learned Single Judge stands modified with the above directions. Appeal is disposed of. No costs.

**(Tashi Rabstan)**  
**Judge**

**(N. Paul Vasanthakumar)**  
**Chief Justice**

**Jammu,**  
**25.02.2016**  
**Vinod.**