

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

C.M. No. 3075-CWP of 2016 in/and
CWP No. 5707 of 2011
Date of decision: 06.05.2016

Bahadur Singh

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Manish Dadwal, Advocate,
for the applicant-petitioner.

Mr. L.S. Virk, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 3075-CWP of 2016

The present application has been filed to dispose of the main case in view of the same terms as per the judgment of the Division Bench in ***CWP No. 2371 of 2010, Harbans Lal vs. State of Punjab and others*** decided on 31.08.2010 (Annexure P-5), which has been upheld by the Apex Court in SLP No. 17901 of 2011.

The case is already on the regular board and pleadings are complete. Accordingly, the same is taken up for hearing today itself.

CWP No. 5707 of 2011

The petitioner seeks counting of the period from 25.11.1971 to 11.01.1977 for qualifying service towards pension. It is the case of the petitioner that he was appointed as a Beldar on 25.11.1971 with Pandoh Dam and was promoted to the post of Junior Mechanic on 01.08.1973 and thereafter to the post of Mechanic on 01.11.1974 and subsequently he was

retrenched on the completion of the project (Annexure P-1). He thereafter was appointed on 09.05.1982 and remained continuously serving the respondents and was ordered to be regularized on 13.02.2009. Thereafter, he was asked to join the Superintending Engineer, Drainage Circle, Gidarbaha and retired on 31.03.2011. Instead of payment of pension, his case was considered under the new contributory pension scheme and thus, his grouse is that he was already in service from 1982 onwards and he was entitled for pension and pensionary benefits by treating the earlier period as qualifying service. In spite of the representations made, his case was not considered. Reliance was placed upon the judgment in CWP No. 383 of 2007, Smt. Salochana Devi vs. State of Punjab and others decided on 05.04.2010 (Annexure P-4).

Respondents, in their reply, have admitted the factum of the appointment from 1982 onwards and the regularization and accordingly held out that the petitioner is entitled for the new restructured defined contributory pension scheme issued by the Punjab Government from 01.01.2004 to submit that since services were regularized w.e.f. 04.03.2009, i.e. after 01.01.2004, therefore, the said scheme would be applicable. The service from 1971 to 1977 has been denied on the ground that there is no record of the previous service. The plea taken is that even in the appointment letter dated 10.05.1982 (Annexure R-1), there is no reference of the earlier service and the petitioner had never submitted any representation regarding counting of the period as alleged in the petition. It has been further averred that the petitioner has already retired on 31.03.2011 and has been paid a sum of ₹2,19,100/- on account of leave encashment.

The petitioner has not filed any replication to controvert the

allegations made in para no. 10 of the written statement that there was no previous service record of the respondents. Counsel for the petitioner has though submitted that the certificate was issued by the Sub Divisional Officer, Pandoh (Area Superintendent) but nothing has been brought on record that the petitioner had worked with the respondents at the Pandoh Dam. Annexure P-1 also does not demonstrate in any manner that the discharge certificate was from the respondents. Resultantly, this Court is of the opinion that the relief claimed for counting the period from 1971 to 1977 for purposes of pension is not admissible. However, regarding the other issue of the entitlement of the petitioner for pension, this Court is of the opinion that the case of the petitioner is covered by the judgment of the Division Bench in *Harbans Lal's case (supra)* wherein, it has been held that persons who had been appointed on daily wage service prior to 01.01.2004 and regularized subsequently would be deemed to be in government service prior to 01.01.2004 and would be continued to be governed by the GPF scheme and entitled to receive pensionary benefits. The relevant portion reads thus:-

“From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 1.1.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing

clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 1.1.2004.

In view of the above, the writ petition is allowed. Accordingly respondents are directed to treat the whole period of work charge service as qualified service for pension because accordingly to clarification issued on 30.5.2008 (Annexure P-3), the new defined Contributory Pension Scheme would be applicable to all those employees who have been working prior to 1.1.2004 but have been regularized thereafter. Let his pension and arrears be calculated and paid to him expeditiously, preferably within a period of three months from the date of receipt of copy of this order.

No order as to costs.”

Resultantly, the writ petition is allowed in the same terms as in *Harbans Lal's case (supra)*. The petitioner will be offered the pensionary benefits subject to his depositing the amounts, if any, he has received alongwith interest. The needful be done within a period of 3 months from the date of receipt of certified copy of the order.

06.05.2016
shivani

(G.S. SANDHAWALIA)
JUDGE