

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.25038 of 2014
Decided on : 26.05.2016

Chhinder Pal Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present : Mr. Pawan Kumar Goklaney, Advocate
for the petitioner.

Mr. L.S. Virk, Addl. AG, Punjab.

G.S. Sandhawalia, J. (Oral)

The petitioner seeks the benefit of release of pensionary benefits i.e. Gratuity, GPF, leave encashment, ex-gratia etc. against the post of Ruldu Singh (deceased) driver, who was the husband of the petitioner, after counting the entire work-charge service rendered by him. The relief is claimed on the basis of Division Bench judgment of this Court in '***Harbans Lal Vs. The State of Punjab and others' 2012 (3) SCT 362.***

It is the case of the petitioner that the petitioner's husband was working under the respondents on work-charge basis since 23.07.1992 and his services were regularized on 20.02.2008. He expired on 28.11.2012 during service and, therefore, the petitioner is entitled for release of the family pension, after counting entire work-charge service rendered by her husband. Reliance was placed upon ***Harbans Lal (supra)*** and it was averred that the review application is pending before the Apex Court. The case was ordered to be listed after the disposal of the review application,

which has admittedly now been dismissed by the Apex Court.

The State in its reply has not denied the factual aspect, but only has taken the plea that Ruldu Singh was appointed as work-charge Driver on 25.07.1993. It has further been averred that since the employee had become regular after 01.01.2004, the petitioner would not be entitled under the rules, because New Defined Contribution Pension Scheme is available to such employees. It was, accordingly, pleaded that the employee during his service was getting deducted 10% of his basic pay, in view of the scheme, which would be released to the petitioner, after the finalization of her family pension. The leave encashment had already been paid to the petitioner. The applicability of ***Harbans Lal's case (supra)*** has not been disputed and the plea had been taken regarding the review application pending adjudication before the Apex Court.

Resultantly, this Court is of the opinion that the matter would be squarely covered by the law laid down in ***Harbans Lal's case (supra)*** and is liable to be allowed in the same terms. The relevant part of the said judgment reads as under:-

“16. 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 regularisation 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.

17. 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 regularised 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.”

Accordingly, keeping in view the above, direction is issued to the respondents to process the case of the petitioner for pension/family pension, in view of the observations made within a period of 3 months from the date of the receipt of the certified copy of this order and make necessary payments. Whatever the petitioner is required to deposit, can be adjusted against the arrears of pension which are due to her.

Since, the employee had died on 28.11.2012 and the case was only moved for sanction on 11.09.2013 and the benefit has been denied, in spite of the fact that the Division Bench has decided the issue in ***Harbans Lal's case (supra)*** on 31.08.2010, the petitioner is entitled for the interest on the delayed payment from 01.07.2013 till payment @ 8% per annum.

With the abovesaid observations, the present writ petition stands allowed.

MAY 26, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE