

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 14348 of 2015

Date of decision : July 09, 2018

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Anu W/o Jitender Mehta

.....Petitioner

Versus

The State of Haryana and another

.....Respondents

* * * * *

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Shalender Mohan, Advocate for the petitioner.

Mr. Hitesh Pandit, Additional Advocate General,
Haryana for respondent no.1.

Mr. A.S Shera, Advocate for respondent no.2.

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RITU BAHRI, J.

The petitioner is seeking writ of certiorari for quashing the order dated 6.7.2015 (Annexure P-9), vide which her claim for continuing in GPF Scheme has been rejected. Further prayer has been made by the petitioner for directing the respondents to re-fix the date of regular appointment of the petitioner by counting her ad hoc service towards qualifying service for pension, gratuity, regular pay scale, fixation of pay, promotion and other retiral benefits.

The petitioner was appointed on the post of Computer Operator vide appointment letter dated 08.01.1996 (Annexure P-1) in the State

Election Commission on ad hoc basis as a stop gap arrangement. The petitioner made representation for regularization of her service on 30.1.2013 (Annexure P-4) in continuation of her earlier representation dated 11.10.2012. The service of the petitioner was regularized w.e.f 31.12.2012 vide order dated 15.03.2013 (Annexure P-5). After the regularization of service, petitioner was pressurized to give her consent for new Defined Contributed Pension Scheme, 2008 (Annexure P-6). She again made a representation on 26.11.2013 (Annexure P-7) that she was not covered under the new Pension Scheme. She again made a representation dated 27.3.2015 (Annexure P-8). Her case was rejected vide order dated 6.7.2015 (Annexure P-9) on the ground that her services had been regularized after 01.01.2006 on 31.12.2012 and hence the employee falls under New Pension Scheme and the GPF account cannot be opened. Hence the present petition.

The petitioner has annexed a Division Bench judgment passed by this Court titled, '**Harbans Lal vs. The State of Punjab and others**' **decided on 31.8.2010 (Annexure P-10)** in which the petitioner whose services had been regularized on 28.3.2005 was permitted to continue with the GPF Scheme and he was held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 1.1.2004. In this case, the initial date of joining of the petitioner was 1.8.1988. The Division Bench of this Court came 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 was held to be deemed to be in govt. service prior to 1.1.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) which 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. Reference was made to a judgment passed by a Division Bench of this Court in the case of **Hans Raj vs. State of Punjab and others, 2005 (3) RSJ, 262** wherein the Division Bench examined the Punjab Municipal Employees Pension and General Provident Fund Rules 1994.

On notice, written statement was filed by respondent no.2 admitting that the petitioner was appointed as a Computer Operator against a purely temporary post for 60 days as a stop gap arrangement vide letter dated 8.1.1996. Vide letter dated 26.11.2012, a request was made to the State Govt. to accord approval for conversion of one post of Steno Typist to that of Computer Operator and the State Govt. vide letter dated 31.12.2012 accorded the approval for the same. The State Govt. vide notification dated 04.12.2008 had introduced Defined Contributory Pension Scheme, 2008. Since the services of the petitioner were regularized after 01.01.2006, she would fall under the ambit of this Scheme. The State Govt. vide its letter dated 06.07.2015, had informed that the petitioner was covered under the ambit of New Pension Scheme. Accordingly, vide letter dated 14.7.2015 the petitioner was informed and advised to submit the papers for opening of PRAN under New Pension Scheme.

Counsel for the State has not disputed that the case is squarely covered by a judgment of this Court in ***Harbans Lal's case (supra)*** which was upheld by Hon'ble the Supreme Court after dismissal of the **SLP (C) No.23578 of 2012** on 30.7.2012. The ratio of the Judgment in ***Harbans Lal's case (supra)*** is applicable to the facts of the present case as in that case, date of joining of the petitioner was 1.8.1988 and his services were regularized by the department on 28.3.2005. The petitioner was held

entitled to entire service as qualifying service for the purpose of pension.

In view of the ratio of the judgment passed in ***Harbans Lal's case (supra)***, this petition is being allowed. Impugned order dated 6.7.2015 (Annexure P-9) is set aside and a direction is given to the respondents to treat the whole period of work charge service as qualifying service for pension. 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.

July 09, 2018

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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No