

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

(204)

CWP-14669-2015

Date of Decision: December 20, 2018

Jai Chand

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Alisha Arora, Advocate, for the petitioner.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present case, the petitioner joined as a daily wager labourer in the Forest Department, Punjab in the year 1978. The petitioner kept on working as Beldar till 02.11.2011, when the services of the petitioner were regularized. Copy of the order has been attached as Annexure P-1 with this petition. Thereafter, the petitioner served on regular basis till he superannuated on 31.01.2015. After the petitioner retired from service, the petitioner started demanding the pensionary benefits, which were not being released to him. No order was passed either to deny the benefit to the petitioner. The present writ petition was filed by the petitioner in the year 2015 claiming the pensionary benefits.

Notice of motion was issued on 24.07.2015 and the respondents have filed the reply. In the reply, it has been mentioned that the petitioner is not entitled for any other pensionary benefits except for the leave encashment, which has already been paid to the petitioner amounting to Rs.23,772/-. Further, the case for release of the contributory provident fund, was under process. In respect of the contributory provident fund, it was

stated that the petitioner has not filled any form after his services were regularized and therefore, no amount has been released to the petitioner on this account.

In respect of denying of the pensionary benefits, it has been mentioned that after 01.01.2004, there is only a contributory provident fund scheme which is applicable to the employees of the State of Punjab and as the petitioner's services were regularized only in November, 2011, by which date, the old pension scheme ceased to be in operation, the petitioner will not be entitled for any pensionary benefits and the case of the petitioner will be governed by new pension scheme, which became effective from 01.01.2004.

I have heard learned counsel for the parties.

The facts with regard to the service rendered by the petitioner from the year 1978 till 02.11.2011 on daily wage basis as Beldar is not disputed. Further, it is not disputed that the services of the petitioner were regularized as Beldar on 02.11.2011 and the petitioner retired from service on 31.01.2015. The only objection taken by the respondents-State is that after 01.01.2004, as there is no pension scheme available with the State of Punjab, the case of the petitioner will not be covered for the grant of pensionary benefits under the old pension scheme as the petitioner only became the regular employee on 02.11.2011, when there was no pension scheme available with the State of Punjab.

It is very unfortunate that this objection is being taken by the respondents even in case of the retirees, who retired even in the year 2015. This question already stands decided by the Division Bench of this Court while deciding **CWP No.2371 of 2010 titled as Harbana Lal Vs. State of**

Punjab and others, decided on 31.08.2010 2012 (3) S.C.T. 362 wherein, a categorical finding has been recorded that the employees who were in service though on daily wage basis or on adhoc basis prior to 01.01.2004, will be governed by the old pension scheme, even though their services might have been regularized after the said date. The said judgment has also attained finality upto the Hon'ble Supreme Court of India. Despite this fact, the benefit of pension has been declined to the petitioner even in the year 2015. The relevant paragraph of **Harbans Lal's case (supra)** 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 regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 01.01.2004. 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 01.01.2004.

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 30.05.2008 (Annexure P-3), the new defined Contributory Pension Scheme would

be applicable to all those employees who have been working prior to 01.01.2004 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.”

The case of the petitioner is squarely covered by the decision mentioned above as the petitioner had joined the department though on daily wage basis in the year 1978 and continued working as such till his services were regularized on 02.11.2011.

The present writ petition is allowed. A direction is issued to the respondents to consider the case of the petitioner for the grant of the pensionary benefits by treating him entitled for the pensionary benefits under the old pension scheme. The calculation of the pensionary benefits of the petitioner shall be done by the respondents within a period of three months from the date of receipt of copy of this order. The petitioner shall also be entitled for interest @ 9% on the amount which shall be calculated by the respondents for which the petitioner shall be entitled for under this order. All the monetary benefits shall be released to the petitioner within a period of next one month.

(HARSIMRAN SINGH SETHI)
JUDGE

December 20, 2018
harsha

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No