

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

Civil Writ Petition No. 16478 of 2015

Date of Decision: 11th July, 2018.

The Home Secretary, Chandigarh Administration, Chandigarh & Ors.

.....Petitioners

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versus

Central Administrative Tribunal, Chandigarh Bench and another

.....Respondents

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**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Ms. Deepali Puri, Advocate, for the petitioners.
Mr. D.R.Sharma, Advocate, for respondent No.2.
Mr. H.S.Jugait, Advocate, for respondent No.4.

KRISHNA MURARI, CHIEF JUSTICE

The Chandigarh Administration has approached this Court by filing the instant petition challenging the judgment and order dated 17.10.2014 passed by Chandigarh Bench of the Central Administrative Tribunal, holding that respondent No.2 is entitled for payment of pension under the old pension scheme.

2. The facts in brief giving rise to the dispute are as under:-

Respondent No.2, who belongs to Other Backward Class (OBC), was appointed as bus driver on contractual basis with Chandigarh Transport Undertaking for a period of 89 days w.e.f. 15.12.1998. The memo of appointment contained a stipulation that the services were liable to be automatically terminated on expiry of the period of 89 days or joining of regular incumbent whichever is earlier. On expiry of the period of 89 days,

the services of respondent No.2 alongwith all other similarly situated contractual employees were dismissed by the competent authority vide order dated 13.07.1999. The said order was put to challenge before the Tribunal by means of OA No. 678/CH/1999 which was partly allowed vide order dated 30.01.2002 with the direction to the authorities to permit the applicants to continue in service till the regular appointments are made.

3. Subsequently, an advertisement was issued on 23.01.2003 for the posts of 106 bus drivers for appointment against the sanctioned posts on regular basis. Respondent No.2 was also an applicant in pursuance to the aforesaid advertisement in OBC category. He was selected for being appointed and was so informed vide office order dated 29.04.2004. The appointment was subject to verification of the documents. However, subsequently the offer of appointment was not made to him in view of the decision taken by the Administrative Secretary to the effect that he was not fit for being appointed having become over age and accordingly his selection was cancelled vide order dated 13.01.2005. This order was again put to challenge by respondent No.2 before the Tribunal by filing OA No. 485/CH/05. Vide judgment and order dated 24.05.2006, the aforesaid OA was allowed and petitioner herein was directed to withdraw the impugned order dated 13.01.2005 and to issue an order of appointment. In compliance of the aforesaid judgment of the Tribunal, respondent No.2 was issued an appointment letter dated 01.09.2006. One of the stipulations contained in the appointment order was that respondent No.2 will be covered under the Defined Contributory Pension Scheme promulgated by the Punjab Government bearing PAN No.4/16/05-3N4/227 dated 07.02.2006 which was duly adopted by the Chandigarh Administration.

4. Respondent No.2 continued to render his services and on attaining the age of superannuation he retired on 28.02.2013. For release of the pensionary benefits under the new pension scheme under which he was covered, he was required to complete certain formalities but instead he made an application that his appointment be considered notionally from 25.09.2003, the date of his selection and accordingly, the pensionary benefits be released to him under the old pension scheme. He also claimed parity with the case of another driver Shri Gurvinder Singh of the same department and also of certain employees of the Education Department. The aforesaid request made by respondent No.2 was rejected by the competent authority vide order dated 18.09.2013.

5. Respondent No.2 challenged the said order by filing OA No. 1565/CH/2013. The proceedings of the OA were contested by the Chandigarh Administration. The Tribunal vide impugned judgment and order dated 17.10.2014 allowed the OA filed by respondent No.2 and directed the petitioner herein to treat the date of regular appointment of respondent No.2 as 25.09.2003 notionally and also to count the contractual services rendered by him w.e.f. 15.12.1998 for calculating the qualifying service for the purpose of retiral benefits and to accordingly release the pension in accordance with the old pension scheme.

6. While allowing the OA filed by respondent No.2, the Tribunal has placed reliance on two facts. Firstly, the decision of this Court dated 31.08.2010 rendered in Civil Writ Petition No. 2371 of 2010 **Harbans Lal v. State of Punjab** and secondly by drawing parity with some of the employees of the Education Department, who had been issued appointment letters subsequent to 01.01.2004, when the new pension scheme was enforced and

have been allowed the benefit of the said scheme by treating the date of their selection as the date of their notional appointment.

7. Ms. Deepali Puri, learned standing counsel for the Chandigarh Administration vehemently contended that the Division Bench judgment in the case of *Harbans Lal* (supra) was a matter where the issue for consideration was whether the services rendered by the petitioner therein as a daily wage employee till the date of his regularization was liable to be counted as the qualifying service for the pension and hence the reliance placed by the Tribunal on the said judgment is totally misfounded.

She has further submitted that the parity drawn by the Tribunal with the employees of the Education Department to come to the conclusion that since in the said cases the date of selection was treated to be the date of notional appointment, hence in the case of respondent No.2 herein also the date of his selection was liable to be treated as the date of appointment notionally and thus he would be liable to be covered under the old pension scheme.

8. Mr. D.R.Sharma, learned counsel appearing for the contesting respondent No.2 on the other hand contended that since the Tribunal vide order dated 30.01.2002 directed the authorities to allow respondent No.2 to continue in service till the regular appointments are made, in view of the law laid down by the Division Bench in the case of *Harbans Lal* (supra), the said period of service was liable to be counted for determining the qualifying period of for pensionary benefits. He further submitted that equality of treatment is the entitlement of all employees and they cannot be subjected to pick and choose policy and in case the employees of the Chandigarh Administration of another department have been given the benefit of old

pension scheme by treating the date of their selection as the date of notional appointment, respondent No.2 cannot be permitted to be discriminated and such discrimination would be arbitrary and violative of Articles 14 and 16 of the Constitution of India.

9. We have considered the rival submissions made by learned counsel for the parties and perused the record.

10. Insofar as the judgment rendered in case of *Harbans Lal* (supra) is concerned, the same is clearly distinguishable on facts and in our considered opinion is not at all attracted in the facts and circumstances of the present case. In the said case the issue for adjudication before the Division Bench was whether the period of service rendered by another employee as a daily wage till his regularization on the said post is liable to be counted towards the qualifying service for extending the pensionary benefits.

11. In the case in hand, admittedly, respondent No.2 was appointed on contractual basis for a period of 89 days initially. After the expiry of the period of contractual appointment, his services were dispensed with. However, under the judicial order, the services were allowed to be continued till regular appointments were made. It is undisputed that the advertisement for regular appointments on the posts of bus drivers was issued on 23.01.2003 and respondent No.2 was successful in the said selection proceedings. Thus, it was not a case of regularization but of a fresh selection and appointment. Prior to being selected, respondent No.2 was neither a work charge employee nor a daily wage employee but the nature of his employment was contractual for a fixed period which though continued under a judicial order but mere continuance under a judicial order will not

change the nature of his employment and it will continue to remain contractual.

12. In view of the above facts, learned counsel for the petitioner appears to be right in contending that the case of *Harbans Lal* (supra) relied upon by the Tribunal is misfounded. The Tribunal committed an error of law in directing to treat the services rendered as contractual employee to be added to the period rendered after substantive appointment for determining the qualifying period.

13. In so far as the second argument advanced by learned counsel for the petitioner in respect of drawing parity with the employees of the Education Department is concerned, it appears that the Tribunal arrived at the conclusion of parity on the basis of misreading of facts. It is absolutely clear from the pleadings that certain lecturers in the Education Department were selected by the U.P.S.C. and recommended their appointments to the Chandigarh Administration on 06.01.2003, 03.02.2003 and 26.09.2002 respectively. However, since there was some clarification needed with respect to the status of the selected candidates and also with respect to their SC and OBC status, there was delay in issuance of actual appointment letters which ultimately came to be issued on 19.12.2003.

14. Referring to the pleadings contained in paragraph-3(i) of the writ petition, learned counsel for the petitioner contends that the appointment letter was actually issued on 19.12.2003 and the new pension scheme came to be enforced w.e.f. 01.01.2004 and since the said selected candidates were issued the appointment letters prior to the date of the enforcement of the new pension scheme, they were entitled to be covered under the old pension scheme. The Tribunal misreading the date of actual

joining of the said candidates which was after 01.01.2004 wrongly held that they have been extended the benefit of the old pension scheme treating their date of recommendation by the UPSC as the date of their notional appointment. It is asserted in the pleading for which there is no denial that the appointment letter in respect of those candidates is dated 19.12.2003 and thus the date of joining after the enforcement of new pension scheme w.e.f. 01.01.2004 has no relevance or bearing, whereas in so far as respondent No.2 is concerned, the appointment letter was issued to him on 29.04.2004 much after 01.01.2004 the date of enforcement of the new pension scheme.

15. From the above facts and discussion, it is clear that the difference in the case of the employees of the Education Department and respondent No.2 is based on intelligible criteria inasmuch as the appointment letters in case of former were issued prior to the enforcement of the new pension scheme whereas in the case of respondent No.2, it is subsequent thereto.

16. From the above discussion, we have come to the conclusion that since respondent No.2 was employed on contractual basis for a fixed period and even though the services were continued under a judicial order and thereafter he faced fresh selection proceedings for a substantive post and it was not a case of regularization of services, the services rendered prior to regular selection and appointment on a substantive post would not entitle him to be covered under the old pension scheme and thus the impugned judgment passed by the Tribunal suffers from a patent error of law and is not liable to be sustained and accordingly hereby stands quashed.

17. The writ petition accordingly stands allowed. The petitioner is held entitled for pensionary benefits under the new pension scheme which was enforced w.e.f. 01.01.2004. Let his pension and arrears be calculated accordingly and paid to him expeditiously by the respondents preferably within a period of three months from the date of receipt of a copy of this order.

In the facts and circumstances, we do not make any order as to costs.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

11th July, 2018
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No