

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

CWP-24543-2016

Date of decision: - 27.11.2018

Gurdial Singh and others

....Petitioners

Versus

Pepsu Road Transport Corporation and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. R.K. Arora, Advocate,
for the petitioners.

Mr. Aman Sharma, Advocate,
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

Petitioners have filed the present writ petition claiming that their entire service which they have rendered with the respondents should be considered for computing their pensionary benefits, which has not been done.

Petitioners joined PRTC on different dates, starting from the year 1974 onwards till 1983. Even though the petitioners were already working, the respondents only started deducting their Contributory Provident Fund (for short 'CPF') from a much later date, the details of which has been given in Annexure P-1. Petitioners kept on working till their retirement, but the petitioners' pensionary benefits were not

computed by taking into consideration the period starting from the date when CPF was deducted by the respondents till the date of retirement.

In the present petition, the petitioners have prayed that they are entitled for computing their pensionary benefits for the services which they had rendered and not the date from when their CPF was deducted by the respondents.

Notice of motion was issued.

In the reply, the respondents have come up with the plea that as per the PEPSU Road Transport Employees Pension/Gratuity and General Provident Fund Regulations, 1992, only the service after the CPF was deducted is to be taken into account while determining the qualifying service and therefore, no fault can be found in the computing the qualifying service which has been done by the respondents while fixing the pensionary benefits of the petitioners.

I have heard counsel for the parties and gone through the record.

Counsel for the petitioners states that question of law arising in the present petition already stands decided in CWP No.19292 of 2010, decided on 23.02.2012.

In the said case also, one Pritam Singh, who was an employee of the respondents-Corporation and working as a Conductor, had approached this Court, seeking the same relief as being sought by the petitioners herein. He also prayed that his full service, which he rendered with the respondents, should be taken into account while fixing the pensionary benefits and not the service after the CPF was deducted by the

respondents. In that case also, the same regulations were brought before the Court to contend that only the service which an employee has rendered after the deduction of the CPF can be termed as a qualifying service and hence, the service which a person has rendered prior to the deduction of CPF, cannot taken into consideration. This Court while relying upon an earlier judgment in **Ram Lubhaya Khanna and others Vs. State of Punjab and another**, rendered in CWP-14051-2005, decided on 17.05.2007, allowed the writ petition. In **Ram Lubhaya Khanna's case (supra)** also, Punjab Privately Managed Recognized Aided Schools Retirement Benefits Scheme, 1992, which also had identical clause, was considered and ultimately this Court found that total service rendered by an employee is liable to be counted as a qualifying service subject to the condition that the authorities will adjust/deduct the CPF amount, which was not deposited/deducted by the employer for the relevant years alongwith interest. The relevant Rule 6 of the said 1992 Scheme in **Ram Lubhaya Khanna's case (supra)** reads as under: -

- “6. Qualifying service – [1] The service of an employee shall not qualify for retirement benefits under this Scheme unless-
- [i] he attains the age of eighteen years;
 - [ii] he takes charge of the aided post to which he is first appointed except for which it is otherwise provided by special rules or contract; and
 - [iii] the service is on an aided post on regular basis
- XX XX XX XX
- [6] The qualifying service will be taken into account with effect from any employee started contributing towards the Contributory Provident Fund”.

In the present case also, the Rule 6 of the 1992 Scheme, on the basis of which the petitioners are being denied the benefit of service for which the CPF was not deducted, is similarly worded. The same is as under: -

- “6. Qualifying Service: [1] The qualifying service will be taken into account with effect from the date of an existing employee started contributing towards the Contributory Provident Fund.
- [2] The service of an employee shall not qualify for retirement benefits under the said regulations unless:
- [i] he attains the age of eighteen years;
 - [ii] he takes charge of the post to which he is first appointed except for which it is otherwise provided by special rules or contract; and
- [3] The leave admissible under the Corporation regulations and under the instructions issued by the Corporation from time to time, shall qualify the pension but leave without pay and period of suspension, overstay of leave not subsequently regularized under the above said regulations and the period of break in service shall not be reckoned as qualifying service.”

Keeping in view above, this Court allowed the writ petition i.e. CWP No.19292 of 2010 and directed that total service of the employee will be counted as a qualifying service subject to the deposit of the amount of CPF drawn for the period the same was not deducted, along with interest deposited by the concerned employee.

Once, there was already an order passed by this Court in similar situation and relief claimed by the petitioners herein has already been allowed to similarly situated persons, it was incumbent upon the

respondents to implement the said order qua the similarly situated employees i.e. the petitioners. The retired employees should not be made to run to this Court to seek the same relief, which the respondents themselves have granted after the adjudication by this Court to other employees.

Reliance can be placed on the judgment of this Court rendered in **Satbir Singh Vs. State of Haryana, 2002(2) S.C.T. 354**. The relevant portion of the said judgment is as under: -

“When judgments attain finality to which the State is a party, duty is casted upon the State to grant relief to its employees who are similarly situated and on identical facts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is not necessary for the State to require each one of its employees to approach the Courts of law for grant of a relief which the State ought to grant to the employees in normal course of its administration, particularly, the cases of the kind afore-referred. Such principles is well known and accepted for years now. By referring to few judgments we would only predicate the principle with greater emphasis of its application in the day-to-day affairs of the State. In the case of **Dr. (Mrs.) Santosh Kumari v. Union of India and others, JT 1994 (7) SC 565 : 1995(1) SCT 527 (SC)** the Hon'ble Apex Court held as under : -

“The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means of approach the Court.”

In view of the above, the present writ petition is allowed. The respondents are directed to take into consideration the full period for

which the petitioners have worked with them as a qualifying service. Further, the respondents shall calculate the amount of CPF which each petitioners have to deposit for the period, when the same was not deducted alongwith interest. The said calculation shall be brought to the notice of the petitioners within a period of three months from the date of receipt of certified copy of this order. All the petitioners shall deposit the said amount as asked by the respondents within a further period of one month.

On the deposit of the amount of CPF by the petitioners, the respondents shall calculate and re-fix the pensionary benefits of all the petitioners within a period of two months thereafter and release the difference of the amount for which each petitioner is entitled for.

Present writ petition is allowed in the above terms.

November 27, 2018
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes