

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

CWP No.28050 of 2017

Date of Decision: 07.08.2018

Lal Chand

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.D.S.Rawat, Advocate,
for the petitioner.

RITU BAHRI, J. (ORAL)

The petitioner is seeking directions to the respondents to count the entire period of the petitioner on adhoc basis as qualifying service for grant of pension and to treat the petitioner under the old GPF Scheme and to grant the petitioner the pensionary benefits as applicable to the employees recruited in the Haryana Govt. Services prior to 01.01.2006 in view of the judgment passed in **Harbans Lal Vs. The State of Punjab and others passed in CWP No.2371 of 2010.**

In the present case, ratio of judgment followed by this Court passed in the case of **Harbans Lal Vs. The State of Punjab and others passed in CWP No.2371 of 2010 (Annexure P-5)** wherein, it is held that the employee, who were appointed on daily wage basis before the introduction of New Pension Scheme but were regularized after introduction of New Pension Scheme will be governed under Old Pension scheme and their entire service of daily wage basis till regularization will be count as qualifying service for grant of Pension under Old Pension Scheme.

Thereafter, judgment has been passed on the same question in the case of **Som Nath and others Vs. State of Punjab passed in CWP No.1432 of 2012 (Annexure P-6)** against which an SLP has been filed which was dismissed by Hon'ble Supreme Court vide judgment dated 22.07.2013 (Annexure P-8) and thereafter, bunch of writ petitions were allowed on 05.02.2015 (Annexure P-9) in the case of **Amarjit Singh and others Vs. State of Punjab and others passed in CWP No.25106 of 2013** on the same question.

In this case, respondents were creating pressure on the petitioner to opt for the New Pension Scheme and get opened CPF account on the plea that since the services of the petitioner has been regularized on the post of driver only on 13.08.2014 i.e. after notification of New Pension scheme, so New Pension Scheme will apply on the petitioner. As per plain reading of Rule 3.17 A Clarification dated 17.03.2010 (P-3) and of New Pension Scheme (P-4), makes it clear that the petitioner who was appointed as driver on adhoc basis on 01.09.1997 has to be granted benefit of Old Pension Scheme by taking into account his entire adhoc service as qualifying service.

Learned counsel for the State has argued that as per judgment of Division Bench in the case of **Yogesh Tyagi and another v. State of Haryana and others passed in CWP No. 17206 of 2014** regularization policy upto 2014 has been quashed. Hence, the petitioner cannot be regularized under the aforesaid policy.

A perusal of the paragraph 73 of the DB judgment shows that the candidate whose services have been regularized in terms of the order passed by Hon'ble Supreme Court, will not be effected with the result of petition in the regularization policy. In the DB judgment, it has been observed that in

terms of the order dated 22.09.2016 passed by which regularization as per 2014 policy was stayed till the final decision of the writ petition. In the present case, petitioner's services have been regularized on 13.08.2014 and as such, no adverse effect is made in the case of petitioner or on the order which have been passed prior to 22.09.2016. The petitioner was appointed as Driver on adhoc basis on 01.09.1997 and he is continuing till 13.08.2014, so his prayer is genuine.

In view of the above, present writ petition is allowed and respondents are directed to treat the entire period of the petitioner on adhoc basis as qualifying service for grant of pension and to treat the petitioner under the old GPF Scheme and to grant the petitioner the pensionary benefits as applicable to the employees recruited in the Haryana Govt. Services prior to 01.01.2006 in view of the judgment passed in **Harbans Lal Vs. The State of Punjab and others passed in CWP No.2371 of 2010.**

(RITU BAHRI)
JUDGE

07.08.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No