

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

(304) CWP-5897-2003
Date of Decision: January 09, 2019

Prem Chand Tagla and others ..Petitioners

Versus

State of Haryana and others ..Respondents

(2) CWP-4861-2004

Ram Dutt Sharma and others ..Petitioners

Versus

State of Haryana and others ..Respondents

(3) CWP-17504-2004

Daya Devi Gupta ..Petitioner

Versus

State of Haryana and others ..Respondents

(4) CWP-2512-2005

Shyam Sunder ..Petitioner

Versus

State of Haryana and others ..Respondents

(5) CWP-19138-2004

Ran Pal Sharma ..Petitioner

Versus

State of Haryana and others ..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

**Present: Mr. R.K. Malik, Sr. Advocate, with
Mr. Yogesh Sheoran, Advocate, for the petitioners
in CWP-5897-2003.**

**Mr. Sanjiv Gupta, Advocate,
for the petitioners in CWP-4861-2004.**

Mr. Vikas Chatrath, Advocate,
for the petitioner in CWP-17504-2004.

Mr. Deepak Manchanda, Advocate,
for the petitioner in CWP-2512-2005.

Mr. Tarun Singhal, Advocate,
for the petitioner in CWP-19138-2004.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana.

Mr. Deepak Sharma, Advocate,
for respondent No.4 in CWP-2512-2005.

HARSIMRAN SINGH SETHI, J.(ORAL)

By this order of mine, five writ petitions, which involve the same question of law and similar facts, are being decided. The question of law which is being decided in the present writ petitions is as to whether the total length of service of an employee is to be taken into account for computing his/her pensionary benefits or only the period for which the contribution was deducted by the authorities, is to be taken into account for computing the pensionary benefits. For the sake of convenience, the facts are being extracted from CWP No.5897 of 2003.

In the said writ petition, the prayer which has been made by the petitioners is that the total length of service should be counted for calculating the pensionary benefits and the same should not be restricted only for the period for which the respondent-department deducted the contribution for the provident fund. The factual matrix as averred in the present writ petition is as under:-

Petitioner No.1 joined as an Agriculture Master on 16.08.1965 and the respondents started deducting employees' share w.e.f. 01.10.1969.

Petitioner No.2 joined as S.S. Mistress on 24.04.1967 and in her case, the

respondents started deducting the employees' contribution towards CPF on 01.08.1969. Petitioner No.3 joined as S.S. Mistress on 15.07.1968 and in her case, the deduction was started from 01.04.1973. All the petitioners have already retired from service. Petitioner No.1 retired on 31.07.2000, Petitioner No. 2 retired on 30.04.2001 and Petitioner No.3 retired on 31.07.1999. The contention which has been raised by the petitioners in the present writ petition is that though they were serving continuously from the initial date of appointment, but their service has only been taken from the date of deduction of the contribution towards the CPF as a qualifying service and the service for which the respondents did not deduct the contribution, has not been treated as a qualifying service for computing the pensionary benefits of the petitioners.

Learned counsel for the petitioners states that once the petitioners were regular employees of the respondents, it was incumbent upon the respondents themselves to deduct the CPF and the petitioners had no role to play and therefore, non-deduction of the CPF by the respondents, cannot cause prejudice towards their right to count the total service which they have rendered for computing the pensionary benefits.

The respondents in rebuttal to the claim have stated that the qualifying service has been computed as envisaged under Haryana Aided Schools (Special Pension Contributory Provident Fund Rules-2001). As per Rule 5 (i) (ii) of the said Rules, only the service for which the contribution has been made towards the contributory provident fund can be taken into account for computing the pensionary benefits. The said Rule is as under:-

“ The service rendered till the attainment

of the age of sixty years in the case of Group-D employees, and in case of others, service rendered till the attainment of the age of fifty-eight years. However the qualifying service will be taken into account with effect from the date an employee subscribes contribution towards contributory Provident fund.”

Therefore, the action of non-computing the service as a qualifying service prior to date when the contribution was deducted, cannot be treated as illegal and arbitrary.

I have heard learned counsel(s) for the parties.

It is a matter of fact that the petitioners were appointed on regular basis and they continued working uninterruptedly without any break. The deduction of the contribution was to be done by the employer and there is no role to be played by the employee in this regard. Once, the respondents authorities failed to make deductions, the same act cannot cause prejudice to the claim of the petitioners to claim for treating the total length of service which they have rendered as a qualifying service. This is especially in view of the fact that there has been no opposition from the petitioners to pay the contributory provident fund for the period the same has not been deducted by the respondents. The Rule only postulates that the service for which the contributory provident fund is deducted, is to be treated as a qualifying service, Rule does not prohibit that in case there is a default by the authorities in deducting the provident fund from the employees, the same cannot be deposited at a later stage so as to fulfill the requirement of the Rule. Further, this aspect has already been considered by this Court more than once.

A similar Rule, which provides for only taking into account the service in which the contributory provident fund was deposited has been interpreted by this Court in **CWP No.14051 of 2005 titled as Ram Lubhaya Khanna and others Vs. State of Punjab and another, decided on 17.05.2007.** The similar Rule as in Punjab Private Recognized Aided School Retirement Benefit Scheme, 1992, has been interpreted to mean that total service of an employee is to be counted subject to the condition that the employee deposits the contributory provident fund for the period which the same was not deducted by the authorities.

The relevant Rule 6 of 1992 Scheme, as interpreted by this Court in **Ram Lubhaya Khanna's case (supra)** is 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

(6) The qualifying service will be taken into account with effect from any employee started contributing towards the Contributory Provident Fund.”

By interpreting the above Rule, which is similar to Rule in the present case, this Court allowed the benefit of counting of total service rendered by an employee subject to the condition that the employee was to

deposit the contribution for the period the same was not deducted.

Not only this, this question again came for consideration in CWP No.19292 of 2010 decided on 23.02.2012. The same relates to the employees of the Punjab Roadways Transport Corporation. In the Rules governing the service of the said Corporation, the Rule 6 which was also similar to the Rule in the present case, was interpreted by this Court and the writ petitions were allowed with a direction to treat the total length of service as a qualifying service subject to the condition that the employee will deposit the contribution for which it was not deducted.

Again, this Court while deciding CWP No.24543 of 2016 decided on 27.11.2018 consider the same question of law wherein, the similar Rule as it exist in the present case was pressed into service for denying the benefit. This Court passed an order allowing the said writ petition and again a direction was given to compute total length of service as a qualifying service for computing the pensionary benefits subject to the condition that the petitioner therein to deposit the contribution for the period the same was not deducted.

All the above mentioned cases related to the State of Punjab.

In respect of the State of Haryana also, this Court allowed the writ petition bearing CWP No. 8441 of 2015, decided on 05.01.2016 by giving a direction to treat the total length of service as a qualifying service subject to the condition that the petitioners were required to make good the contributory provident fund for the period when the same was not deducted.

The relevant part of the order is as under:-

“Applying the ratio of judgments mentioned

above, impugned orders dated 15.07.2013 and 02.08.2013 in CWP No.8441 of 2015, impugned order dated 10.10.2013 (P-4) in CWP No.8442 of 2015 are set aside and a direction is issued to the respondents to grant to the petitioners benefit of service rendered by them by treating the same as qualifying service for the purposes of pension from the date of their appointments. However, the contribution to the contributory provident fund, which was required to be made by the petitioners, shall be adjusted and deducted from the arrears of their pension. The respondents, are therefore directed to calculate the pension of the petitioners and fix the same within a period of two months from the date of receipt of certified copy of this order. The arrears after calculation in the aforementioned manner be paid to them within a period of three months along with retiral benefits, if any.

The writ petition stands disposed of in the above terms.”

As the law on the question has already been settled more than once, it was incumbent upon the respondents to implement the said order qua the similarly situated employees including 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 writ petitions are allowed. The respondents are directed to take into consideration the total length of service rendered by the petitioners into consideration as a qualifying service and then compute their pensionary benefits for which they are entitled for. Let the refixation of the pensionary benefits of the petitioners as directed above, be done within a period of two months from the receipt of copy of this order. Whatever the contribution is to be made by each petitioner, towards the period for which the contribution was not deducted, will be deducted

interest @ 6% and the amount will be released with interest @ 6% from the total arrears to be paid to the petitioners in each case before making the payment.

The arrears for which the petitioners become entitled for ultimately, shall be released within one month after the computation of the same.

(HARSIMRAN SINGH SETHI)
JUDGE

January 09, 2019
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Whether speaking/reasoned: Yes
Whether reportable: Yes