

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1048-2016 (O&M)
Date of decision: - 01.03.2019

Jai Bhagwan

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Sandeep Singal, Advocate, for the petitioner.

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

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the claim which is being made by the petitioner is that part time service which he rendered from 06.08.1992 till 27.02.2012 should be treated as a qualifying service for computing his pensionary benefits.

The facts which have been stated in the present writ petition are that the petitioner was appointed as a Peon on part time basis on 06.08.1992 with respondent No.4 and he kept on working as such when his services were regularized by the respondents on 27.02.2012. Thereafter, petitioner rendered the service on the same post on regular basis and ultimately retired on 31.10.2015.

Counsel for the petitioner states that the service, which the petitioner had rendered on Adhoc basis from 06.08.1992 till 27.02.2012,

has not been taken into consideration while computing the pensionary benefits as the same has not been treated as qualifying service.

Counsel for the petitioner further states that keeping in view the settled principle of law settled by the Full Bench of this Court in **Kesar Chand Vs. State of Punjab and others'**, AIR 1988 Punjab 265, the past service rendered on daily wage service is to be counted for computing the pensionary benefits.

Upon notice of motion, the respondents have filed the reply.

In the reply, the factum of service of the petitioner from 06.08.1992 till 27.02.2012 on part time basis has been admitted. It has been stated that under Rule 3.17 (G)(iii) of the Civil Services Rules Vol.II, only the whole time employment can be taken into consideration and not the part time, therefore, the service which the petitioner has rendered on part time basis, cannot be treated as a qualifying service for the grant of pensionary benefits.

Another objection which has been taken by the respondents is that New Pension Scheme was notified by the Government of Haryana on 18.08.2008 and under the New Scheme, an employee is only entitled for the Contributory Provident Fund and not the pension and therefore, as the petitioner joined on 27.02.2012 on regular basis, he is not entitled for the pension, but will only be entitled for New Defined Pension Scheme. The relevant objection is as under:-

“4. That contents of Para No.4 of the civil writ petition are wrong and hence denied. Further, the provision of CSR Vol-II 3.17 (G) (iii) is reproduced as under: -

The entire service rendered by an employee as work charged shall be reckoned towards retirement benefits provided: -

- (i) Such service is followed by regular employment;
- (ii) there is no interruption in the two or more spells of service or the interruptions fall within condonable limits; and
- (iii) Such service is a whole time employment and not part-time or portion of day.

The petitioner has worked on part time basis for 3½ hours daily from 8 A.M. to 11.30 A.M. His services were regularized on 27.02.2012.

State Govt. notification dated 28.10.2005, Punjab Civil Services Rules Volume-I, Part-I (Haryana-Amendment) Rules 2006, came into force on 01.01.2006 (Annexure R-2). However, notification dated 28.10.2005 is reproduced as under: -

1. (1) These rules may be called the Punjab Civil Services Rules Volume-I Part-I (Haryana – Amendment) Rules, 2006.

(2) They shall come into force on the 01.01.2006.

2. In the Punjab Civil Services Rules Volume-I Part-I, in rule 1.2: -

(i) In clause (5), for sign “.” Existing at the end the sign “.” Shall be substituted; and

(ii) The following proviso shall be added at the end, namely: -

“Provided that the rules in Volume II of these rules called the 'Punjab Civil Services Rules, Volume II' shall not apply to the Government employees who are appointed to the posts mentioned in categories (1) to (5) above on or after 1st day of January, 2006, they shall be covered by the 'New Defined Contribution Pension Scheme' to be notified by the Government.”

The petitioner joined the department on regular basis w.e.f. 27.02.2012. Thus, the Punjab CSR Vol-II is not applicable to the petitioner.”

I have heard counsel for the parties and have gone through the record with their able assistance.

Counsel for the petitioner contends that once the petitioner had rendered service on part time basis starting from 06.08.1992 till 27.02.2012, the same is liable to be counted as a qualifying service for the

grant of pensionary benefits.

Counsel for the petitioner further contends that though the petitioner was working on part time basis, but as he worked for about 20 years, it cannot be said that he discharged the duties on part time basis. Further, as the petitioner was working as Peon in a school, it cannot be said that he was discharging the duties part time and the same has to be considered a regular employment for all intents and purposes.

On the other hand, counsel for the respondents states that once the appointment was made on part time basis, the same cannot be considered as a qualifying service in view of the provisions of Section 3.17 (A) of the CSR Vol-II, according to which, part time service cannot be treated as a qualifying service.

It is a matter of fact that the petitioner worked on part time basis continuously for 20 years. A person is engaged on part time only for a specific job and for specified period. It cannot be said that an employee, who is working continuously for 20 years as Peon in school, was a part time job. The said service is to be treated as a long term employment for all intents and purposes.

A Full Bench of this Court in **Kesar Chand's case (supra)** has held that daily wage service, followed by regularization of the services, is to be counted as a qualifying service for the grant of pensionary benefits. Once, the daily wage service is to be counted as a qualifying service, it cannot be said that continuous appointment rendered by the petitioner for 20 years though as part time basis, is less than the daily wage service rendered by an employee. There is no justification

given by the respondents to deny the said benefit, except the Rule 3.17 (A). The said Rule has already been considered in **Kesar Chand's case (supra)** and it has been held that the daily wage service followed by the regular service is good enough to be treated as qualifying service for computing the pensionary benefits. Therefore, the service which the petitioner has rendered for 20 years as a Peon from 06.08.1992 till 27.02.2012 cannot be ignored for computing the pensionary benefits of the petitioner.

Further, this Court while deciding CWP No.626 of 2015 titled as 'Zile Singh Vs. State of Haryana and others', on 17.03.2015, in somewhat similar circumstances, held that a part time sweeper will be entitled to count the said service for computing the pensionary benefits. This Court, after relying upon the judgment in **Kesar Chand's case (supra)**, held as under: -

“By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks directions to the respondents to count the past service of the petitioner from 27.03.1996 to 24.05.2013 towards qualifying service for pension and other retiral benefits and to release the arrears thereof along with interest @ 18% per annum.

It is contended that the petitioner was appointed as part time sweeper on daily wage basis on 27.03.1996 and he worked continuously till 25.03.2000. The services of the petitioner were temporarily dispensed with on 26.03.2000. The learned counsel refers to Annexure P-1 and states that even, thereafter, the petitioner worked without any break on the same post with respondent No.4. On the basis of Govt. Policy, the services of the petitioner were regularized against the regular post of sweeper, vide

office order dated 24.05.2013 (Annexure P-2). The petitioner retired on 31.05.2014, however, the service benefits have not been released to him.

On the other hand, the learned State counsel submits that the services of the petitioner were regularized on 24.05.2013 and he remained on regular post for 01 years and 07 days, therefore, he does not fulfill the condition and guidelines to get the retiral benefits as per Pension Rules.

In Kesar Chand Vs. State of Punjab and others, AIR 1988, P &H, 265, it has been held as under:-

“19. In the light of the above, let us examine the validity of rule 3.17(ii) of the Punjab Civil Services Rules, Vol. II. This rule says that the period of service in a workcharged establishment shall not be taken into account in calculating the qualifying service. After the services of a work-charged employee have been regularised he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1, 1972, between the workmen and the Chief Engineer, P.W.D. (B. & R), Establishment Branch, Punjab, Patiala, which was published in the Government Gazette dated July 14, 1972. Even otherwise. The matter was settled by the Punjab Government Memo No. 14095-BRI (3)-72/5383 dated 6th February, 1973(Annexure P7) where it was stated that all those work charged employees who had put in ten years of service or more as on 15th August, 1972, their services would be deemed to have been regularised. Once the services of a work-charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation equality. Even the temporary or officiating service under the State Government has. to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is

sought to be made among Government servants who eligible for pension and those who started work-charged employees and their services regularised subsequently, and the others is based on any intelligible criteria and, before, is not sustainable at law. After the services of a work-charged employee have n regularised, he is a public servant like other servant. To deprive him of the pension is not only unjust and inequitable is hit by the vice of arbitrariness, and for case reasons the provisions of sub-rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.”

Keeping in view the above, the instant petition is allowed in terms of Kesar Chand's case (supra). The respondents are directed to consider the case of the petitioner in terms of Kesar Chand's case (supra) and release the pensionary benefits to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

Disposed of.”

The State of Haryana filed an appeal being LPA No.426 of 2016 against the said judgment and vide order dated 18.03.2016, the Division Bench of this Court after noticing Rule 3.17 (A) of the CSR Vol-II held that it is only a short term employment and that too made for specific contingencies, has to be ignored while computing the qualifying service. A long term employment where an employee is continuously working for more than a decade cannot be treated as engagement only for contingencies and therefore, the same cannot be ignored while computing the pensionary benefits. The relevant order passed by a Division Bench dismissing the appeal filed by the State of Haryana is as under: -

“This appeal is directed against the judgment of the learned Single Judge dated 17.3.2015 holding the respondent – employee entitled to the benefit of previous service rendered by him on work

charge basis towards qualifying service as pension in terms of the Full Bench titled as **Kesar Chand vs. State of Punjab and others** AIR 1988, P&H 265.

Learned counsel for the appellant while impugning the said judgment refers to Rule 3.17 A to contend that the respondent-employee was engaged on part time basis and would thus not be entitled to have this service counted for qualifying service. Rule 3.17 A is extracted herebelow:-

3.17-A (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-

- (i) Service rendered in work charged establishment.
- (ii) Service paid from contingencies:

Provided that after the 1st January, 1973 half of the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions:-

(a) Service paid from contingencies should have been in a job involving whole-time employment (and not part time or for a portion of the day)

(b) Service paid from contingencies should have been in a type of work or job for which regular post could have been sanctioned e.g malis, chowkidars, khalasis etc.

(c) the service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishment.

(d) the service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.”

Apparently service rendered in work charge establishment is included but excluded if it is part time or for a portion of the day as is suggested by Rule 3.17 A(ii) (a).

We find that the employee was engaged on work charge basis in the year 1996 and his services were regularized on 24.5.2013 in terms of the regularization policy applied to him. There is nothing on record to suggest that employee's services were being paid from contingencies as this issue was never pleaded or raised before the writ Court. It is only for the first time that such a plea is raised before this Court in LPA which we shall not permit. There is also nothing on record which would even remotely suggest that the service of the employee was engaged only for contingencies and if the long term of employment is to be seen it clearly defies such a stand of the respondents. If a person can be engaged from 1996 till 2013 it could hardly be visualized to be a contingency as the need evidently was permanent. The ratio of the Full Bench in Kesar Chand's case (supra) has been correctly applied by the learned Single Judge and thus we do not find any reason to interfere in the present appeal, particularly, when it is also barred by a large unexplained delay of 318 days. Hence, instant appeal is hereby dismissed.”

The case of the petitioner is squarely covered by the above-said judgment wherein it was held that part time employment which continued for years together, is to be taken into account for the grant of pensionary benefits and therefore, the respondents are directed to count the said service which the petitioner had rendered from 06.08.1992 till 27.02.2012 as a qualifying service for computing the pensionary benefits.

The second objection which has been taken by the respondents is that after 2008, there is no pension scheme available with the Government of Haryana and therefore, as the services of the petitioner were regularized in the year 2012, he cannot be treated under the Old Pension Scheme for the grant of pensionary benefits and his case will be covered under the Contributory Provident Fund scheme, which came into

force w.e.f. 18.08.2008.

The abovesaid argument has already been considered by this Court in the case of the State of Punjab while deciding CWP No.2371 of 2010, decided on 31.08.2010 titled as 'Harbans Lal Vs. State of Punjab and others', wherein a Division Bench of this Court in unequivocal terms has held that in case an employee is appointed prior to the coming of New Pension Scheme, but his services were regularized after coming into force of the New Pension Scheme, still, he will be governed by the Old Pension Rules. The relevant part of the said judgment is as under: -

“The writ petition was allowed and the petitioners were held entitled to count their entire service w.e.f. 17.8.1965 to 30.9.2001 as qualifying service for the purposes of pension. However, the Contributory Provident Fund was required to be adjusted and deducted from the arrears of her pension. We come to the conclusion that the petitioners’ initial date of appointment after regularization will be the date on which employee takes charge of the post. Once the entire service of a daily wager is to be counted as qualifying service then his date of appointment will relegate back to his initial date of appointment i.e. 1988 and he cannot be ousted from pension scheme by applying the date of regularization i.e. 28.3.2005 which is evidently after the new scheme or new restructured defined Contribution Pension Scheme came into force w.e.f. 1.1.2004.”

The said judgment passed by the Division Bench has already been upheld by the Hon’ble Supreme Court and the same has already attained finality and therefore, even the second objection raised that the petitioner will be governed by the New Contributory Pension Scheme in view of the fact that his services were regularized in the year 2012, is

hereby rejected.

In view of the above, it is held that the petitioner is entitled for the pensionary benefits under the Old Pension Scheme and further the petitioner will be entitled for computing his service from 06.08.1992 till 27.02.2012 as a qualifying service for the grant of pensionary benefits.

Let the pensionary benefits be computed within a period of two months from the date of receipt of certified copy of this order and the same be released to the petitioner within a period of one month thereafter.

Present writ petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

March 01, 2019
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	Yes