

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

(107+217)

CWP-23469-2015 (O&M)

Date of Decision: May 06, 2019

Gurbachan Singh

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. P.S. Khurana, Advocate, for the petitioner.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

CM-4370-CWP-2019

Present application has been filed to place on record Annexure P-13.

The application is allowed and Annexure P-13 is permitted to be taken on record.

CWP-23469-2015

In the present writ petition, the grievance of the petitioner is in respect of the order dated 27.11.2014 (Annexure P-9) by which the petitioner has been declined the benefit of pension under the old pension scheme, which was effective till 31.12.2003.

The facts as mentioned in the writ petition are that the petitioner was appointed as a Pump Driver/Chowkidar in the Municipal Council, Pathankot (now Municipal Corporation), in April 1991. Petitioner kept on working on work charge basis and as his services were not being regularized, he filed a writ petition being CWP No.16325 of 2003, which

was disposed of by this Court on 17.10.2003 directing the respondents to take a decision on the representation filed by the petitioner seeking regularization of the services within a period of four months. Keeping in view the directions given by this Court, respondents passed an order on 23.01.2004 rejecting the claim of the petitioner for the grant of pension under the old pension scheme on the ground that as there was no vacancy available hence, the services of the petitioner cannot be regularized and as and when there will be a vacancy, the case of the petitioner will be considered. Ultimately, vide order dated 13.07.2005, by passing a resolution No.121 dated 09.11.2004, the services of the petitioner were regularized. Petitioner continued working as Chowkidar-cum-Mali and ultimately he retired from service on 31.08.2013. After the retirement, petitioner started making representation that as the petitioner continued working as a Mali-cum-Chowkidar from the year 1991 without there being any break till he retired on 31.08.2013, petitioner is entitled for the pension and other benefits under the old pension scheme. As the claim of the petitioner was not being decided, ultimately petitioner filed CWP No.15803 of 2014, which was disposed of by this Court on 11.08.2014 by directing the respondents to decide the claim of the petitioner within a period of three months.

In compliance of the order passed by this Court in CWP No.15803 of 2014, the respondents passed an order on 27.11.2014 declining the claim of the petitioner for the grant of pensionary benefits under old pension scheme, which was applicable till 31.12.2003. The said claim was declined on the ground that the services of the petitioner were regularized in November, 2004 and whereas w.e.f. 01.01.2004, the pension scheme has

been discontinued and there is only contribution provident fund scheme, which is in operation since 01.01.2004 and therefore, the case of the petitioner cannot be considered for the grant of pension and the benefit for which the petitioner was entitled for under the contributory provident fund scheme, amounting to Rs.95,992/- have already been released to the petitioner.

This order dated 27.11.2014 (Annexure P-9) is under challenge in the present writ petition.

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

In the reply again, same stand has been taken that prior to 30.09.2004, there was no regular post of Mali-cum-Chowkidar and therefore, his service could not be regularized and on availability of regular post of Mali-cum-Chowkidar, the services of the petitioner were regularized in November 2004 and by the said date, the old pension scheme had already come to an end and only the contributory provident fund scheme was in operation since 01.01.2004 and therefore, the case of the petitioner will be covered under the contributory provident fund scheme. The relevant portion of the reply is as under:-

“2. That the grievances of the petitioners are regarding not governing them under the provision of Punjab Municipal Employee Pension and General Provident Fund Rules, 1994 instead of that provisions of New Defined Contributory Pension Scheme. The petitioners are also claiming their counting the service rendered by them before 01.01.2014 for deciding the pensionary benefits. This relief cannot be granted to the petitioners due to the reasons being specified in proceedings paragraphs.

3. That so far as about the final decision of the Industrial

Tribunal Punjab and orders of High Court Punjab in writ petition No.16325 of 2003 is concerned none of them decided in favour of the petitioner and dispute raised in this petition is never decided by any Court of law. The petitioner was not entitled for the appointment as there was no vacancy till 30.09.2004. When there is no post of Mali-cum-Chowkidar so there could not be any benefit to the petitioner in absence of such post. Till 30.09.2004 another person was working for the post of Mali-cum-Chowkidar, spend after his retirement case of petitioner was considered and he was appointed thereafter.

4. That it was clearly mentioned in order of deciding the resolution by the replying respondent it was also cleared that vacancy was on retirement of other person so the case was considered thereafter. As the vacancy raised after 30.09.2004 on retirement of other chowkidar-cum-Mali, before 30.09.2004 Government of Punjab introduced a new policy at 01.01.2004 whereby New defined Pension Contribution Scheme was introduced on employees appointed after 01.01.2004. This vacancy first time rise after 30.09.2004 so the petitioner can only be governed under the rule of New Pension Contribution Scheme.”

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

The facts stated above are not in dispute. The only question of law to be decided in the present writ petition is whether though the services of the petitioner were regularized after 01.01.2004, is he still entitled for pension under the old pension scheme or not.

This question of law has already been decided by the Division Bench of this Court while deciding **CWP No.2371 of 2010 titled as Harbans Lal Vs. State of Punjab and others, decided on 31.08.2010.** A

Division Bench of this Court held that though an employee's service might have been regularized after 01.01.2004, it in case he was in service prior to the said date even on daily wage basis or any work charge basis, he/she still will be entitled for pension under the old pension scheme. The relevant paragraph of the judgment is as under:-

“16. From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 01.01.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 01.01.2004.

17. In view of the above, the writ petition is allowed. Accordingly respondents are directed to treat the whole period of work charge service as qualified service for pension because accordingly to clarification issued on 30.05.2008 (Annexure P-3), the new defined Contributory Pension Scheme would be applicable to all those employees who have been working prior to 01.01.2004 but have been

regularized thereafter. Let his pension and arrears be calculated and paid to him expeditiously, preferably within a period of three months from the date of receipt of copy of this order.”

This judgment has already been upheld upto the Hon'ble Supreme Court of India and the question of law settled by this Hon'ble Court has already attained finality.

Counsel for the respondents has not been able to distinguish the case of the petitioner to contend that same is not covered by the judgment referred above.

Once, the petitioner was appointed in the year 1991 and he continued uninterruptedly in service till he retired on 31.08.2013 and in the meantime his services had already been regularized on 09.11.2004, the case of the petitioner is squarely covered by the judgment of this Court in **CWP No.2371 of 2010 titled as Harbans Lal Vs. State of Punjab and others, decided on 31.08.2010.**

The present writ petition is allowed. The impugned order dated 27.11.2014 Annexure P-9 is set aside and a direction is issued to the respondents to consider the case of the petitioner for the grant of pensionary benefits under the old pension scheme. Let the calculation of the amount of pensionary benefits be finalized in respect of the above direction within a period of three months from the receipt of the certified copy of this order.

Whatever the petitioner is found entitled for after the consideration, will be paid to the petitioner within a period of next three months.

Whatever the amount has been paid to the petitioner under the new contributory provident fund scheme, will be adjusted by the respondents while making the payments of the benefit under this order.

Learned counsel for the petitioner states that on the date when the petitioner retired, the question of law had already been settled by this Court and even by the Hon'ble Supreme Court of India and therefore, declining the claim of the petitioner despite the settled principle of law was void-ab-initio hence petitioner is entitled for the grant of interest on the payments to be released to the petitioner under this order.

Counsel states that the benefits which the petitioner was entitled for, keeping in view the settled principle of law in **Harbans Lal's case (supra)**, will be released to the petitioner approximately after a period of five and half years of his retirement, the petitioner has been made to agitate his right before this Court litigating with the respondents and therefore, the petitioner is entitled for interest on the payment, which the respondents will make to the petitioner in pursuance to the order passed by this Court.

Petitioner is held entitled for interest as the petitioner has been forced to litigate by the respondents despite the question of law already stands settled. Petitioner will be entitled for interest on the delayed payment @ 9% per annum from the date petitioner retired from 01.09.2013 onwards till the same was released.

(HARSIMRAN SINGH SETHI)
JUDGE

May 06, 2019
harsha

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No