

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

(260)

CWP-29701-2017

Date of Decision: May 09, 2019

Ranjita

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Neeraj Sharma, Advocate, for the petitioner.

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

HARSIMRAN SINGH SETHI, J.(ORAL)

Today, during the course of hearing, learned counsel for the petitioner states that the petitioner does not wish to press the challenge to Annexure P-9 and P-11 by which the date of the regularization of the services of the husband of the petitioner was changed from 1995 to 2012. Learned counsel for the petitioner argues that even if the services of the husband of the petitioner were regularized in the year 2012, as he was appointed prior to 01.01.2004, in view of the settled principle of law settled by the Division Bench 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 husband of the petitioner was entitled to be considered under the old pension scheme for the grant of pensionary benefits.

Learned counsel for the petitioner states that judgment of the Division Bench of this Court has attained finality upto the Hon'ble Supreme Court of India and therefore, in any case, the husband of the petitioner, who unfortunately died on 06.08.2016 while in service, would have been entitled

for pension under the old pension scheme and the consequent family pension to the petitioner after his death.

The respondents, in their reply, are totally silent in respect of the averments which have been made in the writ petition qua the above said arguments.

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

On the basis of the judgment of *Harbans Lal's case (supra)*, a large number of employees have been granted benefit and that too of the department of transport, who were in service on 01.01.2004 but their services were regularized after the said date, have been held entitled for pension.

From the pleadings, it is clear that the husband of the petitioner was initially appointed as a work charge employee in March, 1985 and the services of the husband of the petitioner were regularized by the respondents w.e.f. 09.02.2012. He continued working with the respondents-department till 06.08.2016, when he unfortunately died leaving behind the petitioner and two minor children. The claim of the petitioner is that the benefits of the service rendered by her late husband including the family pension, has not been extended to the petitioner on the ground that as the services of the husband of the petitioner were regularized in the year 2012, new contributory provident fund scheme will be applicable upon the husband of the petitioner and therefore, the petitioner is not entitled for the benefit of family pension.

In the short reply, which has been filed, the said averments made have not been denied but it has been stated that as new contributory provident fund scheme was applicable w.e.f. 01.01.2004, therefore, the husband of the petitioner was not entitled to be considered under the old pension scheme and consequently the claim of the petitioner for the grant of family pension is liable to be rejected.

The question which arises for the determination of this Court as to whether, an employee who was in service prior to 01.01.2004 though his services were regularized after 01.01.2004, is entitled to be considered under the old pension scheme or will be governed by the new contributory provident fund scheme, has already been settled 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.** Vide order dated 31.08.2010, the Division Bench of this Court has held that an employee, who was in service prior to 01.01.2004, though his/her services were regularized after the said date, will be governed by the old pension scheme. The relevant paragraph of the said 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.”

The said judgment has already attained finality and the relief has already been granted in number of cases by this Court relying upon the said judgment.

Learned counsel for the respondents is unable to distinguish the case of the petitioner herein in respect of the claim that the late husband of the petitioner, was in service prior to 01.01.2004 though his services were regularized in the year 2012 and hence will be entitled for pension under the old pension scheme.

In view of the facts and circumstances mentioned above, the case of the petitioner is squarely covered by **Harbans Lal's case (supra)** and therefore, the claim of the petitioner that the late husband of the petitioner will be treated under the old pension scheme for the grant of benefits is allowed. As the late husband of the petitioner will be governed under the old pension scheme, petitioner will be entitled for the grant of

family pension after his death on 16.08.2016 being fully covered under the provisions of Punjab Civil Services Rules for the grant of family pension.

A direction is issued to the respondents that by considering the husband of the petitioner entitled under the old pension scheme, the claim of the petitioner should be considered and finalized within a period of two months from the receipt of copy of this order under the old pension scheme. The claim of the petitioner for the grant of family pension should also be finalized within above said period of two months and whatever the amount, the petitioner becomes entitled for on account of family pension, the arrears will be released to the petitioner within a period of one month thereafter.

The writ petition is allowed in above terms.

May 09, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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