

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

CWP-637-2017

Date of decision: - 25.11.2019

Yog Raj

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: - Mr. Rajeev Dev Sharma, Advocate
for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Mr. Sanjeev Soni, Advocate
for respondent No.3.

HARSIMRAN SINGH SETHI, J. (ORAL)

The grievance which is being raised by the petitioner in the present writ petition is that he is not being granted the benefit of the Old Pension Scheme, which existed within the State of Punjab prior to 01.01.2004 and upon his retirement on 31.07.2015, only the benefit accruing to him under the New Contributory Pension Scheme has been extended. The prayer of the petitioner is for issuance of a direction to the respondents to treat him under the Old Pension Scheme and grant him the pensionary benefits, for which he is entitled under the said pension

scheme.

The relevant facts are that petitioner joined the respondent-department as a Daily Wager in July, 1984 and he kept on working on the said post till 21.12.2011 when the Municipal Council, Pathankot regularized the services of the petitioner on the post of Gang-man. Thereafter, petitioner kept on working as such till he attained the age of superannuation on 31.07.2014, after which he was granted one year extension in service and after availing the said extension, petitioner retired from service on 31.07.2015. The grievance of the petitioner is that after retirement, he has been considered for the grant of pensionary benefits under the New Contributory Pension Scheme, which is applicable within the State of Punjab w.e.f. 01.01.2004. The prayer of the petitioner is that he is entitled for the grant of the pensionary benefits under the Old Pension Scheme and prays that direction be issued to the respondents for treating him under the Old Pension Scheme and grant the benefit of pension as well.

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

In the reply, the respondents have stated that once in the regularization order of the services of the petitioner it has been stated that the petitioner will be covered by the New Contributory Pension Scheme, which is applicable since 01.01.2004, he cannot claim any benefit, which is contrary to the said clause of the appointment order. On the basis of said clause, the claim of the petitioner has been objected by the learned counsel appearing on behalf of respondent No.3.

I have heard learned counsel for the parties and have gone

through the record with their able assistance.

It is not denied by the respondents that petitioner was in service on the post of Gang-Man starting from July, 1984 and his services were regularized by the respondents on 22.12.2011. It is also not disputed that as per Clause 8 of the regularization order, it was mentioned that the petitioner will be covered under the New Contributory Pension Scheme, but this Court while deciding **CWP No.2371 of 2010** titled as '**Harbans Lal Vs. State of Punjab and others**', decided on **31.08.2010**, which order has already attained finality up to the Hon'ble Supreme Court has held that if an employee was in service as on 01.01.2004 though his/her services might have been regularized after the said date, he/she will be entitled for the benefit of the Old Pension Scheme. The relevant portion 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.”

Moreover, learned counsel for the respondents has not been

able to point out as to how the case of the petitioner will not be covered by the **Harbans Lal's case (supra)** for the grant of benefit of pension under the Old Pension Scheme. Once, it is an admitted fact that the petitioner was in service on 01.01.2004, though his services were regularized in the year 2011, he will be governed by the Old Pension Scheme keeping in view the settled principle of law settled in **Harbans Lal's case (supra)**.

The said judgment passed by the Division Bench has already been upheld by the Hon'ble Supreme Court and therefore, the objection raised by the respondents 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 2011, 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. The respondents are directed to consider the claim of the petitioner for the grant of the pensionary benefits under the Old Pension Scheme.

As the action of the respondents in declining the relief to the petitioner in the year 2015 is contrary to the settled principle of law as settled in **Harbans Lal's case (supra)**, which judgment was rendered in August, 2010, the petitioner will be entitled for interest as he has been forced to approach this Court despite settled law, hence, the petitioner is held entitled for interest @ 9% per annum on the benefits, which will be released to him under this order, from the date he retired till the actual payment of the same.

Let the benefits under the Old Pension Scheme be granted to

the petitioner within a period of two months from the date of receipt of certified copy of this order.

Present writ petition stands allowed in the above terms

November 25, 2019
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes