

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

115

CWP-7694-2022

Date of Decision: April 18, 2022

Union of India & another

....Petitioners

VERSUS

Dr.Sameer Aggarwal & another

....Respondents

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present:- Mr.Namit Kumar, Advocate, for the petitioners.

Mr.Anil Malhotra, Advocate, for caveator-respondent No.1

G.S. SANDHAWALIA, J. (Oral):

The present writ petition, filed under Articles 226/227 of the Constitution of India is directed against the order dated 27.09.2021 (Annexure P-8) passed by the Central Administrative Tribunal, Chandigarh whereby the Original Application, filed by respondent No.1 herein was allowed on account of the fact that the matter was squarely covered by the judgment rendered by the Tribunal in Original Application No.060/00105/2018 titled *Dr.Neelam Aggarwal & others Vs. Union of India & others*, decided on 13.03.2018.

It was also noticed by the Tribunal that the said judgment had been upheld by the Co-ordinate Bench in **Union of India & others Vs. Dr.Neelam Aggarwal & others, 2019 (4) SCT 842** on 22.10.2018. Resultantly, the Senior Standing Counsel for Union of India could not dispute the fact that the application was allowed in the same terms and the applicant-respondent No.1 herein was granted the benefit of GPF-

cum-Old Pension Scheme (OPS). It is pertinent to mention that the Tribunal did not grant any benefit for the past service rendered by him with Punjab Government but for the arrears towards his claim for pension. The said respondent has also not filed any cross-petition against that claim.

Counsel for Union of India has vehemently submitted that the SLP (Civil) Diary No.43765/2019 was dismissed on 10.01.2020 on the ground of delay of 317 days in filing the petition since the question of law had been kept open and therefore, the matter needs to be decided on merits. It is accordingly argued that respondent No.1 has been given the benefit of the OPS wrongly on account of the fact that he was appointed on ad-hoc basis on 07.10.2002 as an Assistant Professor of Orthopedic Surgery and he had been given regular appointment only on 21.12.2005 (Annexure P-3). Therefore, as per the terms and conditions of his appointment letter (Annexure P-2), the New Pension Scheme would govern him as per Clause 6. It is submitted that it was a fresh appointment and therefore the Tribunal was not justified in allowing the Original Application.

The writ petition has been opposed by counsel for the caveator-respondent No.1 who has brought to our notice that respondent No.1 is identically situated to the applicants in the earlier OA (Dr.Neelam Aggarwal's case) and therefore, filing of the writ petition and challenge to the order passed by the Tribunal is not justified, especially when

concession had also been granted by counsel for the Union of India before the Tribunal.

We are in agreement with the arguments raised by counsel for the caveator-respondent No.1. A perusal of the paperbook would go on to show that after the order had been passed by the Division Bench on 22.10.2018 (Annexure A-9) and the SLP was dismissed on 10.01.2020 (Annexure A-10), the implementation was done on 02.05.2020 qua 21 similarly situated Doctors by the Post Graduate Institute of Medical Education & Research, Chandigarh, petitioner No.2 herein. A perusal of the said order would go on to show that those Doctors were appointed on ad-hoc basis between 1996-2003 and had been appointed on regular basis between 21.12.2003 to 23.04.2011 and thus, it would be apparent that they were also appointed on regular basis like respondent No.1 herein who was appointed on 21.12.2005. The said implementation order reads as under:

“No.F.11012/EI(I)/PGI/2020

Dated: 02.05.2020

In compliance of the orders of the Hon'ble CAT passed in O.A.No.0060/00105/2018 dated 13.03.2018 and the dismissal of the appeal filed by the PGIMER in the Hon'ble High Court of Punjab & Haryana vide CWP No.26482/2018 dated 22.10.2018 and finally decided by the Hon'ble Supreme Court of India on 10.01.2020 SLP (Civil) Diary No.43765/2019 and in view of the approval conveyed by the Govt. of India, Ministry of Health & Family Welfare vide letter F.No.V-17020/39/2009-INI-II(Pt) dated 04.03.2020 to implement the orders dated 13.03.2018 of the Hon'ble Tribunal in the O.A. titled as Neelam Aggarwal & Others in favour of the Petitioners only, the following petitioners are

granted the benefit of General Provident Fund-cum-Old Pension Scheme prevalent at the time of their respective initial appointments along with all the consequential benefits, arising therefrom, in accordance with rules and law:-

Sr. No.	Name	Department	Date of appointment on adhoc basis	Date of appointment on regular basis
1.	Dr.Neelam Aggarwal	Obst. & Gynae	12.06.1996	10.01.2008
2.	Dr.Sadhna B.Lal	Gastroenterology	22.03.2000	10.01.2008
3.	Dr.Rajesh Chhabra	Neurosurgery	07.04.2000	21.12.2005
4.	Dr.Jasmina Ahluwalia	Haematology	01.09.2000	10.01.2008
5.	Dr.Ajay Duseja	Hepatology	24.04.2001	21.12.2005
6.	Dr.Parampreet Singh Kharbanda	Neurology	07.05.2001	21.12.2005
7.	Dr.Jaimanti Bakshi	ENT	27.07.2001	21.12.2005
8.	Dr.Rajesh Vijayvergiya	Cardiology	27.07.2001	21.12.2005
9.	Dr.Bhavneet Bharti	Pediatrics	24.09.2001	21.12.2005
10.	Dr.Sumeeta Khurana	Med.Parasitology	16.07.2002	21.12.2005
11.	Dr.Prema Menon	Pediatric Surgery	16.07.2002	23.04.2011
12.	Dr.Rijuneeta	ENT	05.10.2002	21.12.2005
13.	Dr.Sanjay Bhadada	Endocrinology	18.10.2002	21.12.2005
14.	Dr.Devi Dayal	Pediatrics	30.10.2002	21.12.2005
15.	Dr.Joseph Mathew	Pediatrics	06.11.2002	21.12.2005
16.	Dr.Ajay Behl	Cardiology	10.04.2003	21.12.2005
17.	Dr.Sandeep Mohindra	Neurosurgery	10.04.2003	23.04.2011
18.	Dr.Kushaljit Singh Sodhi	Radiodiagnosis	03.05.2003	21.12.2005

Sr. No.	Name	Department	Date of appointment on adhoc basis	Date of appointment on regular basis
19.	Dr.Akshay Anand	Neurology	04.11.2003	21.12.2005
20.	Dr.Manish Modi	Neurology	05.11.2003	23.04.2011
21.	Dr.Ashish Sharma	Renal Trans.Surg.	24.12.2003	21.12.2005

Dated, Chandigarh the

DIRECTOR

PGIMER, Chandigarh

Endst.No.F.11012/EI(I)/PGI/2020

Dated 02.05.2020”

The claim of the applicant-respondent No.1 was denied by the Union of India on 23.12.2020 (Annexure A-1) on the request received from PGIMER, on the ground that the merits of the case had not been decided by the Apex Court and therefore, the decision of the Apex court had been implemented in favour of the petitioners therein only. The Institute was asked to take necessary action in the matter accordingly. Relevant portion reads as under:

“3. It is further intimated that the Hon'ble Supreme Court had dismissed the SLP Dy.No.43765/2019 on the Technical Grounds. As per advice received from Department of Legal Affairs (DoLA), Ministry of Law & Justice, the merits of the case have not been discussed in the Hon'ble Supreme Court so far. Further, as advised by DoLA, the decision of the Hon'ble Supreme Court has been implemented in favour of Petitions (sic. petitioners) only.

4. In view of the facts mentioned above, the request of Dr.Sameer Aggarwal for grant of GPF-cum-Old Pension

Scheme could not be acceded to.

5. The Institute may take further necessary action in the matter accordingly.”

Resultantly, the rejection order was passed on 07.01.2021 (Annexure A-2). Respondent No.1 thereafter filed OA taking the specific plea that he was similarly situated and that there was no break in his service and thus, he was entitled for the benefit of Old Pension Scheme.

We have perused the OA and a reading of para Nos.4 (viii), (xii) and (xiii) would specifically show that there was no break in his service and the fact that no selection was conducted by the PGIMER for a period of 5 years and similarly situated persons had been granted the said benefit. A perusal of the written statement filed by the Union of India before the Tribunal would go on to show that there was no denial to these categorical pleadings. The only plea taken was that the earlier judgment would be distinguished at the time of final arguments. Similarly, under Clause 4(xiii), it was averred that since the SLP had been dismissed by keeping the question of law open and the appointment was on ad-hoc basis, therefore, the appointment order being accepted by the applicant, it would bind him down to the New Pension Scheme.

A perusal of the earlier order of the Division Bench would also go on to show that it was noticed by the Division Bench that the similarly situated persons were working against those posts since 1996 and there was continuity of service and the services rendered by them were safeguarded for the purpose of pay-protection. It was also noticed

that the PGIMER had extended the benefit of Old Pension Scheme to the similarly situated non-medical faculty and the same was not denied in the writ petition. Accordingly, we are of the considered opinion that respondent No.1 is identically situated and there was no denial of the said fact in the pleadings before the Tribunal.

Another aspect which is to be noticed is that another Division Bench of this Court in **Harbans Lal Vs. The State of Haryana & others, 2012 (3) SCT 362**, was also noticed in the earlier decision of the Tribunal which had upheld the principle that once the services of work-charge employees were regularized then the earlier service was also liable to be considered for the purpose of pension and the entire service was to be counted back from the said date of his initial appointment. It is not disputed that the SLP No.23578 of 2012 filed by the State of Punjab was dismissed on 30.07.2012 and Review Petition No.2038/2013 was also dismissed on 04.11.2015. The relevant portion reads as under:

“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 1.1.2004. The new Restructured 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 1.1.2004.”

Accordingly, keeping in view the above discussion we are of the considered opinion that the present writ petition is liable to be dismissed since respondent No.1 is identically situated and placed with similarly situated faculty members of petitioner No.2-Institute. There is no justifiable reason for this Court to interfere on account of the fact that there was an admission regarding all these aspects in the pleadings itself by the petitioner No.2-Institute. Resultantly, the present writ petition is hereby dismissed.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

APRIL 18, 2022
sailesh

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