

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.288

CWP No.9208 of 2020 (O&M)

Date of Decision: 04.07.2022

Jitpal Singh

.... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gagneshwar Walia, Advocate
for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

Mr. M.S.Virk, Advocate
for respondent No.4.

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-175-CWP-2022

Prayer in the instant application is for preponement of the main petition to an earlier and actual date of hearing.

The application is disposed of as having been rendered infructuous.

CWP No.9208 of 2020

In the present petition, the prayer of the petitioner is for the grant of pension under Old Pension Scheme keeping in view the judgment of this Court passed in **CWP No.2371 of 2010** decided on 31.08.2010 titled **Harbans Lal versus State of Punjab and others.**

Learned counsel for the petitioner argues that in the present case, the petitioner was appointed on daily wage basis in the year 1993 and

services of the petitioner were terminated on 08.06.1994, which action was challenged by the petitioner before the Labour Court and vide award dated 13.08.1997, the petitioner was reinstated with continuity of service.

Learned counsel submits that the petitioner was reinstated on 10.11.1997 and he continued working as such when his services were regularized by the respondents on 21.12.2012. Thereafter, the petitioner attained the age of superannuation and retired on 30.06.2020. The prayer of the petitioner is that keeping in view the judgment passed in *Harbans Lal (supra)*, the petitioner is entitled to be granted the pensionary benefits under Old Pension Scheme.

Upon notice of motion, the respondents have filed the reply wherein the factum of service rendered by the petitioner from 1993 onwards till the regularization in the year 2012, has not been denied. The only objection taken is that as the regularization of the service of petitioner is of the year 2012, therefore the contributory pension scheme, which became applicable from 01.01.2004, is applicable upon the petitioner.

Learned counsel appearing on behalf of the respondent-Municipal Bhawan submits that the GPF of the petitioner was not deducted at any given point of time during his service and therefore, the benefits as being prayed by the petitioner under the Old Pension Scheme, can not be allowed in his favour.

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

The fact that the petitioner was appointed on daily wage basis in the year 1993 and he continued working till his services were regularized in December, 2012, is not a disputed fact. That being so, the claim of the

petitioner for being covered by the judgment of this Court rendered in **Harbans Lal (supra)**, needs to be allowed. Hon'ble Division Bench of this Court in the said judgment of **Harbans Lal (supra)** has clearly held that an employee who was in service as on 01.01.2004 is entitled to be considered under Old Pension Scheme, though his/her services might have been regularized after 01.01.2004. The relevant paragraphs of the said judgment are reproduced hereunder:-

“Para 10. The consistent view of the judgment is that work charge service rendered before regularization, is liable to be counted as qualifying service for the purpose of pension. A Division Bench of this Court was seized of a case in which vires of Rule 3.17 A was challenged whereby half of the service paid out of contingency fund was to be counted as qualifying service. This rule has been struck down in a judgment of this Court in case of Joginder Singh v. State of Haryana , 1998 Vol.1, SCT 795. Once the entire service paid out of contingency, is liable to be counted for the purpose of qualifying service, a casual/daily rated service is also bound to be counted as qualifying service.

Para 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 1.1.2004. 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 1.1.2004.

Para 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 30.5.2008 (Annexure P-3), the new defined Contributory Pension Scheme would be applicable to all those employees who have been working prior to 1.1.2004 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 attained finality as far back in the year 2010 but the same is not being implemented by the respondent on one pretext or the other.

As far as the assertion that GPF was not deducted while the petitioner was in service, learned counsel for the petitioner has stated that in this act, respondents themselves are at fault as it was their duty to deduct the GPF, but still the petitioner is ready to deposit the GPF for the period concerned along with interest and therefore, no grievance can be made by

Keeping in view the above, the prayer of the petitioner for the grant of pensionary benefits under the Old Pension Scheme is allowed. The pensionary benefits under the Old Pension Scheme be calculated by the respondents.

At this stage, learned counsel for the petitioner submits that the amount, which is to be recovered from the petitioner in respect of the GPF plus interest, the same be deducted by the respondent from the arrears which the petitioner is found entitled for after considering his claim under the Old Pension Scheme. Learned counsel for respondent No.4 accepts the said proposal of learned counsel for the petitioner.

Keeping in view the above, it is directed that the claim of the petitioner for the grant of pensionary benefits be considered under Old Pension Scheme and the necessary relief be released to him within a period of two months from the receipt of copy of this order.

It is made clear that the respondents will be within jurisdiction to deduct the amount of GPF along with statutory interest to be paid by the petitioner while releasing the arrears/financial benefits.

(HARSIMRAN SINGH SETHI)
JUDGE

04.07.2022
Maninder

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