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

(228) **CWP-11464-2020**
Date of Decision : April 28, 2022

Kuldeep Kaur **.. Petitioner**

Versus

State of Punjab and others **.. Respondents**

(230) **CWP-15526-2020**

Mangat Ram **.. Petitioner**

Versus

State of Punjab and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Prince Sarangal, Advocate, for
Mr. B.S. Sidhu, Advocate, for the petitioner,
(in CWP No.11464-2020).

Mr. Pawan Kumar Goklaney, Advocate and
Mr. Ashish Goklaney, Advocate, for the petitioner,
(in CWP No.15526-2020).

Ms. Anju Sharma Kaushik, Deputy Advocate General,
Punjab

<u>HARSIMRAN SINGH SETHI J. (ORAL)</u>

By this common order, two writ petitions, the details of which have been given in the heading of the order, are being disposed of as the same question of law is raised in both the petitions.

Present petitions have been filed with a prayer that the petitioner Kuldeep Kaur (in CWP No.11464 of 2020), who is the widow of late Satnam Singh and petitioner Mangat Ram (in CWP No.15526 of 2020) who is the husband of late Shakuntla, be granted the benefit under the Old Pension Scheme in respect of the services rendered by the respective deceased spouses, keeping in view 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.***

For the purpose of the present order, the facts are being taken from CWP No.11464 of 2020.

As per the facts mentioned in the present petition i.e. CWP No.11464 of 2020, husband of the petitioner was appointed as SPO on 28.08.1992 in the Punjab Police and while working on the said post, his services were regularized on 23.04.2010. The husband of the petitioner unfortunately died while working on the post of Constable, on 28.09.2019. After the death of her husband, the petitioner applied for the grant of the benefit for which she is entitled in respect of the services rendered by her late husband but the respondents by treating the late husband of the petitioner under the Contributory Provident Fund Scheme, only granted the benefit under the said scheme but did not grant the benefit of family pension by applying the old pension rules. The said act of the respondents is under challenge in the present petitions.

Similar is the case of petitioner in CWP No.15526 of 2020 and prayer in the said petition is that petitioner be granted the benefits under the Old Pension Scheme in respect of the services rendered by his wife prior to her death.

Learned counsel for the respondents submits that as the services of the husband of the petitioner was regularized on 23.04.2010, on which date the New Contributory Pension Scheme was in operation, the benefits for which the petitioner is entitled for under the New Contributory Pension Scheme, have already been released to her.

In respect of CWP No.15526 of 2020, the respondents have conceded the factum that the wife of the petitioner was working as a part time worker and in view of the regularisation policy dated 04.03.1999, her services were regularized after 01.01.2004 and therefore, she will be governed by the New Contributory Provident Fund Scheme which had come into being w.e.f 01.01.2004, which benefits have already been released.

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

It is a conceded fact that the husband of the petitioner was initially appointed as SPO on 28.08.1992 on which post he continued even as on 01.01.2004 when the New Contributory Provident Fund Scheme was brought into operation. The services of the late husband of the petitioner were regularized on 23.04.2010 and he died while in service on 28.09.2019.

As per the settled principle of law settled by the Division Bench of this Court in ***Harbans Lal's case (supra),*** an employee, who was in service on 01.01.2004 though on daily wage basis or on work charge basis, is entitled for to be considered under the Old Pension Scheme even if, the services of the said employee were regularized after 01.01.2004. The relevant paragraph of the said judgment is as under:-

> *"* *xxx xxx xxx xxx*
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> 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 causal/daily rated service is also bound to be counted as qualifying service.*
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> *11. xxx xxx xxx xxx*
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> *12. xxx xxx xxx xxx*
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> *13. xxx xxx xxx xxx*
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> *14. xxx xxx xxx xxx*
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> *15. xxx xxx xxx xxx*
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> *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.

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."

In the present cases, once it is conceded that deceased spouses of the respective petitioner were in service as on 01.01.2004, merely that their services were regularized after the said date, will not take away the right of the petitioners for getting the service benefits in respect of their respective spouses under the Old Pension Scheme.

Learned counsel for the respondents has not been able to point out any differentiating fact so as to submit that the case of the petitioners is not covered by the judgment in ***Harbans Lal's case (supra).*** That being so, the petitioners are entitled for the grant of benefit under the Old Pension Scheme.

Further, the petitioners in these petitions have also placed reliance upon a case of similarly situated person namely Ranju, who had sought the similar relief by filing ***CWP No.16918 of 2015 titled as Ranju versus State of Punjab and others decided on 04.11.2016***, which has been allowed in her favour keeping in view the decision of another similarly situated employee namely Paramjit Kaur, in whose favour, the similar order was passed by the Coordinate Bench of this Court while deciding CWP No.11802 of 2008 decided on 11.05.2016. That being so, the case of the petitioners is squarely covered in their favour for the grant of benefit under the Old Pension Scheme.

Keeping in view the above, the prayer of the petitioners is allowed. The petitioners are entitled for the grant of service benefits in respect of the services rendered by their respective spouses under the Old Pension Scheme only and not under the Contributory Provident Fund Scheme, which came in operation on 01.01.2004.

Accordingly, both the petitions are allowed. The respondents are directed to reconsider the claim of the petitioners under the Old Pension Scheme and calculate the benefits for which the petitioners are entitled for under the said Old Pension Scheme within a period of three months of the receipt of copy of this order and the amount so calculated for which the petitioners become entitled for under this order be released to them within a period of four weeks thereafter. Further any monetary benefits released to the petitioners under the Contributory Provident Fund Scheme be adjusted from the amount payable to them under the Old Pension Scheme.

The question which remain for consideration is whether, the petitioners are entitled for the grant of interest on the said delayed release in payment of benefits or not.

It is a conceded position that on the date when the spouses of the respective petitioners died, the law i.e. ***Harbans Lal's case (supra)*** was already a settled principle of law and the petitioners were entitled for the grant of benefit even on the said date but the petitioners have been made to run from pillar to post to secure a simple undertaking from the respondents that the petitioner is entitled for the service benefits under the old pension scheme. This shows the attitude of the respondents towards the legal heirs of the deceased employee, who died while serving the respondents-State. Delay in release of benefits for which the petitioners are entitled, is attributable upon respondents and respondents have retained these benefits with them and used the said amount to their benefit.

Further, a Coordinate Bench of this Court in of ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*****,** has held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of ***J.S. Cheema's case (supra)*** is as under: -

> *"The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."*

As the respondents conceded themselves that the case of the petitioners is covered under the judgment of ***Harbans Lal's case (supra)*** and the said law was already settled in the year 2010 and should have been applied upon the petitioners cases, the petitioners will also be entitled for interest on the amount which will be calculated by the respondents after adjusting the same with the amount already paid under the Contributory Provident Fund Scheme under this order @ 6% per annum from the date of death of their respective spouses till the release of the same to the petitioners.

The present petitions are allowed in above terms.

April 28, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes