

**CWP-13095-2020 along with
CWP-23438-2021**

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

Date of Decision: 26.04.2022

(I) CWP-13095-2020

Musthaq Masih

..... Petitioner

Versus

State of Punjab and others

..... Respondents

(II) CWP-23438-2021

Charanjit 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(s) (in both the cases).

Ms. Anju Sharma Kaushik, DAG, Punjab.

Ms. Kavita Arora, Advocate,
for respondent No.4.

HARSIMRAN SINGH SETHI J. (ORAL)

This common order will dispose of two petitions, details of which have been given in the heading, as both these petitions are based on the similar facts and involve the same question of law and for the purpose of passing this order, the facts are being taken from CWP-23438-2021.

Prayer of the petitioner in CWP-23438-2021 is for quashing of the impugned speaking order dated 14.10.2021 (Annexure P-6), passed by

Respondent No.4, vide which, claim of the petitioner for the grant of

pensionary benefits under the old Pension Scheme has been declined. Further, claim of the petitioner in this petition is that as he was working with the respondent-Council starting from the year 1995 and he was in service as on 01.01.2004, after which date his services were regularized by the respondent-Council, therefore, the petitioner is entitled for the grant of pensionary benefits under the old Pension Scheme keeping in view the judgment of the Division Bench of this Court passed in **CWP-2371-2010** titled as ***“Harbans Lal Vs. State of Punjab and others”***, decided on 31.08.2010.

Learned counsel for the petitioner submits that the petitioner initially joined as an Octori Clerk on 26.06.1995 in the respondent-Council on temporary basis and he continued working on the said post till 30.07.1997, when his services were terminated by the respondent-Council, which action was challenged by the petitioner before the Labour Court and vide award dated 08.09.2003, passed by the Labour Court, in reference No.90 of 1999, the termination of services of the petitioner was held to be bad in law and the petitioner was reinstated with continuity of service and with 50% back wages. The said award of the Labour Court dated 08.09.2003 was initially upheld by this Court and thereafter by the Hon'ble Supreme Court of India as well, after which, the petitioner was allowed to join the services.

Learned counsel for the petitioner further submits that while the petitioner was working with the respondent-Council on temporary basis, a resolution was passed on 01.11.2011 by the Municipal Council (Annexure P-2), regarding approval of regularization of services of the petitioner.

Learned counsel further submits that in pursuance to the said resolution, an

appointment letter dated 23.12.2011 (Annexure P-3) was issued to the petitioner, wherein it was mentioned that the petitioner is appointed in a particular pay scale and will be governed by the new Pension Rules and thereafter, the petitioner continued working as such till his retirement, i.e. on 31.03.2021. Learned counsel further submits that after the retirement of the petitioner, as the petitioner was being extended his pension benefits under the Contributory Provident Fund Scheme, which had come into effect from 01.01.2004, therefore, the petitioner approached the respondent-Council for the grant of pensionary benefits under the old Pension Scheme, which prayer of the petitioner was declined by the respondent-Council, vide impugned order dated 14.10.2021 (Annexure P-6), which order is under challenge in the present petition.

Same is the prayer of the petitioner in CWP-13095-2020 on similar facts.

Upon notice of motion, the respondents have filed the reply, wherein they have stated that the appointment which was given to the petitioner in December, 2011, was a fresh appointment and not the regularization of his prior services and in the appointment letter dated 23.12.2011 (Annexure P-3), it was clearly mentioned that the petitioner will be governed by the new Pension Scheme, and therefore, now the petitioner, having accepted the said terms and conditions, cannot turn around to claim that he should be considered under the old Pension Scheme.

Learned counsel for respondent No.4 places reliance upon the judgment of the Division Bench of this Court, passed in LPA-1105-2017, titled as ***“State of Haryana and others Vs. Nathu Singh”***, to contend that the terms and conditions, once accepted by a party, are liable to be adhered

to and cannot be disputed at a later stage.

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

It is a conceded fact that starting from the year 1995 till 1997 initially and thereafter being reinstated in services, keeping in view the award dated 08.09.2003, passed by the Labour Court, the petitioner is deemed to have continued in service uninterruptedly from the date of his initial appointment, i.e. on 26.06.1995. It is also a conceded fact that as on 01.01.2004, when the new Contributory Provident Fund Scheme came into being, the petitioner was not only in service but was continuing. That being so, the only question which arises for the consideration before this Court in the present petition is whether vide appointment letter dated 23.12.2011 (Annexure P-3), the petitioner was given the fresh appointment or his temporary services were regularized by the respondent-Council.

To appreciate the said fact, the resolution, which is the basis of the appointment letter dated 23.12.2011 (Annexure P-3), needs to be looked into. The resolution dated 01.11.2011, passed by the Municipal Council is as under:-

***“Urgent/Ordinary Meeting dated 01.11.2011 at 11:00 AM of
Municipal Council, Qadian
PROCEEDING BOOK***

- 1. Proceeding of the Special/Urgent/Ordinary meeting held on***
- 2. Name of Members and Advisers present :***
 - 1. Gurnam Singh***
 - 2. XXXXX***

<i>Sr. No.</i>	<i>Business Transacted as per or on arrequisition</i>	<i>Advice if five by the Adviser</i>	<i>Resolution of the Committee</i>
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119	<i>The establishment branch has reported that Director Local Government Punjab, Chandigarh has vide its letter Endst. No.11/1777 dated 7.6.2011 and Deputy Director Urban Local Bodies, Amritsar vide its letter Endst. No.1/1565 dated 4.7.2011 has taken a decision that employees working in various Municipal Councils who are having more than 10 years of service on contract basis their services are to be regularized. In Nagar Council, Qadian two clerks/4 Safai Sewaks are working on contract basis. The case regarding regularization of the same is being presented it the meeting of the Nagar Council for discussion and approval by the concurrence of the Executive Officer.</i>	<i>It is passed by full majority that in terms of the orders of the Punjab Government the services of two Clerks and four Safai Sewaks working on contract basis be regularized as per their qualifications and they be made permanent. Necessary action in this regard and proceedings be undertaken.</i>
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A bare perusal of the above would show that the respondents themselves are mentioning therein that the petitioner is in service for the last more than ten years and his services need to be regularized, and therefore, the proposal is for the regularization of his services, which proposal was

also approved by the Government, before the same came to be implemented. No doubt, in the consequential order, i.e. appointment letter dated 23.12.2011 (Annexure P-3), it is being mentioned by the respondents that the petitioner will be governed by the new Pension Scheme, but whether the said clause can take away the right of the petitioner for the grant of pension under the old Pension Scheme, or not, is to be seen keeping in view the settled principle of laid down in **Harbans Lal's case** (supra).

Once the appointment letter dated 23.12.2011 (Annexure P-3) is a consequential order of the resolution dated 01.11.2011 (Annexure P-2), it cannot be said that the said appointment letter dated 23.12.2011 is regarding the fresh appointment. Once appointment letter dated 23.12.2011 is harmoniously read with the said resolution dated 01.11.2011, there is no doubt that the appointment letter is only regarding regularization of services of the petitioner, who was in service since the year 1995 and was deemed continuing in service uninterruptedly.

The Division Bench of this Court while passing judgment in **Harbans Lal's case** (supra) held that where an employee is already in service as on 01.01.2004, though might be on daily wage services, and his/her services are regularized thereafter, the said employee will be governed by the old Pension Scheme. The said law is also not disputed by learned counsels for the respondents. That being so, once it is already held by the respondent-Council that the petitioner was in service as on 01.01.2004, and the appointment letter dated 23.12.2011 (Annexure P-3) is actually an order regularizing the services of the petitioner in pursuance of the resolution dated 01.11.2011 (Annexure P-2), the case of the petitioner is to be governed under the old Pension Scheme and is squarely covered by

the judgment passed in **Harbans Lal's case** (supra). That being so, claim of the petitioner deserves to be allowed, and therefore, the petitioner is directed to be considered under the old Pension Scheme for the grant of pensionary benefits.

Let the respondents re-calculate the pensionary benefits of both the petitioners (in CWP-13095-2020 as well as in CWP-23438-2021) under the old Pension Scheme, under this order, within a period of two months from the date of receipt of the copy of this order and the emoluments, for which the said petitioners become entitled for, upon the said re-calculation, be released in their favour within a period of one month thereafter.

Allowed in the above terms.

Photocopy of this order be placed on the file of connected case.

26.04.2022

Apurva

**(HARSIMRAN SINGH SETHI)
JUDGE**

1. Whether speaking/reasoned : Yes

2. Whether reportable : Yes