IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13777 of 2020 (O&M)
Reserved on April 26, 2022
Date of Decision: May 16, 2022

Anand Singh **...Petitioner**

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Baljeet Singh Sidhu, Advocate
for the petitioner.

Ms. Ambika Bedi, AAG Punjab.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the order dated 18.02.2020 (Annexure P-8), vide which the claim of the petitioner for grant of service benefits of General Provident Fund (GPF) Scheme, as was applicable to the employees recruited in Punjab Govt. Service prior to 01.01.2014 in view of the law laid down by this Court in the case of ***Harbans Lal vs. State of Punjab and others, CWP No.2371 of 2010*** decided on 31.08.2010, has been rejected.

2. In brief, the facts of the case are that the petitioner was initially appointed as Class IV employee on daily wages basis against the post of Cook on 19.07.1993 with No.75/12-C and his services were subsequently regularized on 01.10.2009 with No.75/12-C. Thereafter, the petitioner was absorbed as a Constable on 02.04.2013 with Constable No.7/PAP-187. The respondent-State issued notification dated 02.03.2004 by which the service

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rules were amended and the employees, who were appointed after the date of issuance of notification, were ordered not to be granted pension. Thereafter, vide instructions dated 12.12.2006, issued by the Department of Finance, Punjab Government, a new contributory pension scheme was introduced w.e.f. 01.01.2004, which was made applicable to all the newly recruited employees in the Punjab Government Service and the employees, who were recruited prior to 01.01.2004, were covered under the GPF Scheme. The petitioner relied upon judgment rendered by this Court in the case of ***Harbans Lal (supra)*** to aver that where an employee is appointed prior to 01.01.2004 and is regularized on a subsequent date, then the new contributory pension scheme would not apply in such a case and the period of service rendered by an employee on daily wage basis would be deemed to be as qualifying service for the purpose of old pension/GPF scheme etc. It is stated that since the petitioner was already in service of the respondent-State much prior to 01.01.2004 i.e. since 1993, as such, on regularization in service, he is entitled to the benefits of old pension/GPD scheme etc. The petitioner also relied upon judgments rendered by this court in the case of **Rajinder Singh and others vs. State of Punjab and others, CWP No.20601 of 2014, decided on 08.09.2016** and in the case of **Budhi Singh and others vs. State of Punjab and others (a bunch matter of seven writ petitions), CWP No.1665 of 2017, decided on 09.08.2017** wherein, the law as laid down in the case of ***Harbans Lal (supra)*** was followed. The petitioner served a legal notice dated 25.11.2018 upon the respondents for grant of service benefits of old pension/GPF scheme in view of the law laid down by this Court in the case of ***Harbans Lal (supra)*** and when no action

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was taken, the petitioner preferred **CWP No.18580 of 2019 titled as Anand Singh vs. State of Punjab and others**, which petition was disposed of by an order dated 11.07.2019 with a direction to the respondents to decide the said legal notice. The claim of the petitioner for benefits under ***Harbans Lal's case (supra)*** stands rejected, being not applicable. The said order dated 18.02.2020 as passed by respondent No.4 has now been challenged in the instant writ petition by the petitioner being illegal and arbitrary.

3. Notice of motion was issued in the matter, pursuant to which appearance has been caused on behalf of the respondents.

4. Mr. Baljeet Singh Sidhu, learned counsel appearing on behalf of the petitioner, would submit that initially the petitioner was appointed as Cook on daily wage basis on 19.07.1993 and he was regularized as such on 1.10.2009 and subsequently, he was absorbed as a Constable by the department on 02.04.2013. It is contended that since there has been no break in service of the petitioner, as such, in view of the law laid down by this Court in the case of ***Harbans Lal (supra)***, the petitioner is entitled to the benefits of old pension scheme, GPF and other retiral benefits under the Punjab Civil Services Rules, which benefits have already been granted to the similarly situated persons, as detailed in Annexure P-9.

5. On the other hand, Ms. Ambika Bedi, learned AAG Punjab appearing on behalf of the respondents would submit that in fact the petitioner was not absorbed as a Constable from Cook on 02.04.2013, rather, he was recruited afresh as a Constable on 02.04.2013 as a special case. It is submitted that the petitioner was only 8th pass and overage by 12 years and 9 months and his enlistment as a Constable was approved by

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Addl. Director General of Police, Armed Battalions, Jalandhar Cantt. vide office order dated 22.02.2013, subject to the conditions that he will be governed by new contributory pension scheme. It is contended that by agreeing with the terms and conditions of his enlistment order, the petitioner had given a self-declaration dated 02.04.2013 before the department that he is joining afresh as a Constable and will not claim any benefits of his past services and will be governed by the new contributory pension scheme. It is argued that the petitioner was not found eligible for counting of his past service for pensionary benefits, which was rendered by him as Cook, as such, it was found that he is not squarely covered by the decision rendered by this Court in the case of ***Harbans Lal (supra)*** and consequently, his claim was rejected by the order as impugned in the instant writ petition.

6. I have heard learned counsel for the parties, apart from perusing the pleadings of the case.

7. The facts with regard to appointment of the petitioner as Cook on daily wages and regularization of his services as Cook is not disputed. It is the stand of the petitioner that by an order dated 02.04.2013 he was absorbed as a Constable whereas, the stand of the respondents is that in fact he was recruited afresh as a Constable as a special case. It is also the stand of the respondents that his enlistment order as a Constable dated 22.02.2013 enumerates his service conditions, which specially provides that he will be governed by the new contributory pension scheme and agreeing with the said terms and conditions of his enlistment order, he had joined afresh as a Constable and also given his self-declaration to this effect.

8. The judgment as rendered in the case of ***Harbans Lal (supra)***

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as well as subsequent judgments rendered by this court by following the ratio as laid down as in the case of ***Rajinder Singh and others*** & in the case of ***Budhi Singh and others (supra)***, are available on record as Annexures P-3, P-5 and P-6 respectively. A perusal of the said judgments would reveal that the entire daily wage service of an employee appointed prior to 01.01.2004 and regularized as such after 01.01.2004 i.e. till the date of his regularization is to be counted as qualifying service for the purpose of old pension scheme and he will be deemed to be in govt. service prior to 01.01.2004. It has been held that in such a case, an employee will continue to be governed by the GPF scheme and to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 01.01.2004.

9. From the reading of the aforesaid judgments, as relied upon by learned counsel for the petitioner, it is borne out that the employees in the said cases were Class-IV employees and their past services on daily wages was in a common cadre/sub-cadre, as such, they were held entitled to the benefits of old pension scheme etc. by this Court. Learned counsel for the petitioner has miserably failed to satisfy this Court as to how the past service rendered by him in an altogether different cadre can be taken into account for the purpose of extending the benefit of old pension scheme, whereas, in the cases as relied upon by counsel for the petitioner, Class-IV employees were working on daily wages and subsequently regularized in the same cadre, which is not so in the case of the petitioner. Moreover, the office order dated 22.02.2013 (Annexure R-1) whereby the name of the petitioner was approved for enlistment as a Constable as a special case in

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Armed Battalions would show that relaxation of 12 years and 9 months in age as well as in qualification was granted to the petitioner. Annexure R-1 would further show that this appointment of the petitioner was subject to the conditions issued by the Punjab Govt. vide notification dated 2nd March, 2004 as circulated by the Director General of Police, Punjab, Chandigarh, office endorsement dated 20.04.2004. The petitioner herein being aware of the said terms and conditions of his appointment, submitted his self-declaration dated 01.04.2003, which is available on record as Annexure R-2/T.

10. From the narration above, this court is of the considered view that the case of the petitioner is not covered by the judgment rendered by this Court in the case of ***Harbans Lal (supra)*** as relied upon by learned counsel for the petitioner. Therefore, this court finds no illegality or infirmity in the order dated 18.02.2020 as passed by respondent No.4, which has been impugned in the instant writ petition by the petitioner.

11. In view of the above discussion, the instant petition is hereby dismissed, being devoid of any merits.

May 16 , 2022 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : No

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