

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

205 (05 cases)

(1) CWP-18043-2018

Hitesh Kumar and others

...Petitioners

Versus

State of Haryana and others

....Respondents

(2) CWP-24698-2018

Suman Singh and others

...Petitioners

Versus

State of Haryana and others

....Respondents

(3) CWP-2030-2020

Kanwal Deep Kaur and another

...Petitioners

Versus

State of Haryana and others

....Respondents

(4) CWP-2653-2021

Satish

...Petitioner

Versus

State of Haryana and others

....Respondents

(5) CWP-35887-2019

Hawa Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

Date of Decision :18.11.2022

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anurag Goyal, Advocate for the petitioners
(in CWP-18043 & 24698 of 2018).

Mr. R.S. Malik, Advocate for the petitioner
(in CWP-35887-2019).

Mr. Jawahar Lal Goyal, Advocate and
Mr. Parth Goyal, Advocate for the petitioners
(in CWP-2030-2020).

Mr. I.S. Sidhu, Advocate
for respondent-A.G. (A & E), Haryana in CWP-2030-2020.

Mr. R.S. Budhwar, Addl. A.G. Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

By this common order, above mentioned writ petitions are being disposed off as all the writ petitions involve the same question of law and similar facts.

For the purpose of this order, facts are being taken from **CWP-24698-2018** titled as **Suman Singh and others vs. State of Haryana and others.**

The grievance of the petitioners is that they have competed for direct recruitment for the posts JBT teachers, which were advertised much prior to 01.01.2006 and they were also found eligible to be either selected or

put on waiting list and the posts on which they were to be appointed were also vacant prior to 01.01.2006 but as the petitioners were actually given appointment by the respondents after 01.01.2006, New Defined Contributory Pension Scheme was made applicable upon them instead of Old Pension Scheme by the respondents only on the ground that they were given appointment after 01.01.2006.

The prayer of the petitioners in these petitions is that as the petitioners not only stood selected prior to 01.01.2006 and the posts were also available for their appointment prior to the said date but as the Government took its own time to grant the said benefit to the petitioners and the actual appointment order was passed after 01.01.2006, the said delayed action of the respondents cannot cause prejudice to the petitioners so as to deny them the claim for the grant of pensionary benefits under the Old Pension Scheme.

As per the facts mentioned in the petition, 2977 posts of JBT teachers were advertised by the respondents on 23.09.2004. The petitioners who were fully eligible under the said advertisement applied and as the said posts were only to be filled up on the basis of the interview, the interview were conducted on various places and the result of the final selection was declared on 14.12.2004. Though, the petitioners did not make it to the initial selection list keeping in view the number of posts advertised but they were put in the waiting list so that they can be considered in case any candidate higher in merit than them fails to join. As per the petitioners, despite the fact that number of posts had become available due to the non-joining of selected candidates, the petitioners who were in waiting list, were not being given appointment which led to the filing of the writ petitions

bearing No.19783-2004 and CWP-278-2005. CWP-19783-2004 came to be decided on 29.08.2005 wherein, a direction was given to the department concerned to grant appointment to the petitioners who were in the waiting list against the advertised vacant posts. Similar order was passed in CWP-278-2005 wherein, a direction was given by this Court directing the respondents to grant appointment to the petitioners against 136 vacancies which remain vacant out of the advertised posts and that too within a period of 03 months of the passing of the said order.

The period of three months given by this Court was to expire prior to 01.01.2006 but, the respondents did not comply with the direction of this Court which led to filing of contempt petition No.1643-2006 and ultimately during the pendency of the said contempt petition, the petitioners were given appointment by the respondents vide order dated 29.08.2006 and thereafter, keeping in view the fact that the petitioners were given appointment after 01.01.2006 and by the said date, Old Pension Scheme had already been scrapped and New Defined Contributory Pension Scheme came into being, the petitioners were not given the benefit of Old Pension Scheme on the ground that the petitioners were appointed after 01.01.2006.

Learned counsel for the petitioners argues that once the posts against which the petitioners were appointed were advertised in the year 2004 and their selection was also prior to 01.01.2006 and even the order passed by the competent Court of law directing the respondents to grant appointment to the petitioners by a date which was also prior to 01.01.2006, merely because State took time to comply with the directions of this Court and complied with the same after expiry of time period granted, the petitioners cannot be prejudiced so as to deny them benefit of Old Pension

Scheme.

Further argument of the petitioners is that once common selection process was undertaken to make recruitment to 2977 posts of JBT teachers, the candidates who have been selected against the said posts cannot be governed by two different set of pension scheme merely keeping in view the date of appointment which was offered by the respondent-State despite selection of all the candidates prior to 01.01.2006 and vacancies being available to accommodate all prior to 01.01.2006.

After notice of motion, reply has been filed by the respondents wherein, it has been mentioned that keeping in view the notification of the Government of Haryana i.e. notification No.01/01/2004-1 dated 28.10.2005 w.e.f. 01.01.2006, New Defined Contributory Pension Scheme has been notified and as the appointment of the petitioners was after the said date, the petitioners are to be governed under the said scheme, keeping in view the notification of Government of Haryana. As per the respondents, facts leading to the appointment are not be seen and only the date of appointment is to be seen to adjudicate whether the petitioners are to be governed by the Old Pension Scheme or by the New Defined Contributory Pension Scheme. As per the respondents, even if, the candidates are selected in pursuance to the same selection, different rules can be made applicable upon them keeping in view the date of appointment.

Further argument of the State is that the petitioners were appointed in the year 2006 but the present petitions have been filed from 2018 onwards hence, keeping in view the delay and latches, the benefit of Old Pension Scheme, which is being sought in the present writ petitions, needs to be declined especially, when the petitioners have already accepted

to be governed by the New Defined Contributory Pension Scheme, keeping in view the terms and conditions, they accepted upon their appointment.

Another argument of the learned State counsel is that the petitioners were appointed in pursuance to order passed by this Court to consider their claim against the posts which had become vacant and once there is no direction in the said order of this Court that they are to be governed by the Old Pension Scheme therefore, the benefit of the said scheme cannot be given to the petitioners.

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

The prayer of the petitioners for being governed under the Old Pension Scheme needs to be adjudicated by keeping in view the particular facts and circumstances. It has to be seen whether the delay in appointment is attributable to the Government or despite due diligence, appointment could not be made prior to 01.01.2006, even if, posts were advertised prior to the said date. It is only in case, an appointee is able to prove that not only posts were advertised prior to 01.01.2006 but, he/she was also selected prior to the said date and there existed clear vacancies for his/her appointment prior to 01.01.2006 but the Government in its own wisdom only offered the appointment after said date, which fact alone cannot cause prejudice to the appointee so as to ignore him/her from being governed by the Old Pension Scheme, thus, his/her claim can be granted.

The same question as raised in this petition also came up for consideration before the Delhi High Court in **W.P.(C)2810/2016** titled as

Inspector Rajendra Singh and others vs. UOI and others decided on 27.03.2017 wherein, in somewhat similar circumstances where a selection

process had already been undertaken prior to the date when the New Defined Contributory Pensionary Scheme had come into being but appointment was made after the date when New Defined Contributory Pensionary Scheme had come into force, the Hon'ble Court held that the employees, who got selected prior to the date when New Defined Contributory Pensionary Scheme had come into being but were appointed after the promulgation of the New Defined Contributory Pensionary Scheme are to be governed by the Old Pension Scheme as a right has accrued with them keeping in view their selection against the vacant posts prior to the date when New Defined Contributory Pensionary Scheme had come into being. Relevant paragraph of the judgment of Delhi High Court is as under:-

“13. Having regard to the facts and circumstances of this case, where advertisements for recruitment to the posts of Sub Inspectors in CAPFs were issued in November, 2002, written examinations were held on 12.01.2003, Physical Efficiency Test had been held in or before April, 2003, and the petitioners appeared before the Medical Board between April, 2003, to June, 2003, and declared fit upon medical re-examination by Review Medical Board in December, 2003, it would be grossly unjust and arbitrary to deny the petitioners the benefit of the Old Pension Scheme, applicable at the time when the posts were advertised, only because of the fortuitous circumstance of their joining service after the enforcement of the New Pension Scheme, for reasons not attributable to them.

14. As observed above, the authorities concerned took six months' time to decide the appeal against the decision of the Medical Board, declaring the petitioners medically unfit. The petitioners were found fit by other Medical institutions of repute and ultimately found fit by a Review Medical Board constituted by the respondent authorities themselves on 28.12.2003. The respondent authorities unnecessarily delayed constitution of a Review Medical Board. Had the respondent authorities

and in particular Staff Selection Commission acted with diligence, the petitioners could have been appointed within 31.12.2003.

15. The advertisements were for appointment of Sub Inspectors to Central Armed Police Forces including CRPF, ITBP and BSF. A common entrance examination was held for all the services. However, services were allotted having regard to the merit position of the candidates, as also the option exercised by them.

16. The differentiation between Sub Inspectors who applied pursuant to a common advertisement and were selected after going through a common selection process but appointed to different armed forces, on the basis of a notification issued long after commencement of the selection process, depending on the fortuitous event of the date of joining service is arbitrary, discriminatory and violative.

17. Had the petitioners and others, who opted for the Border Security Force, known that by opting for the Border Security Force, they would have been denied the benefit of the Old Pension Scheme, they would perhaps have not opted for the Border Security Force.

18. In our view, basic terms and conditions of service, such as the right to receive pension upon superannuation, as applicable at the time of notification of the posts, cannot later be altered to the prejudice of the incumbents to the post, after commencement of the selection process.

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33. In support of their submissions, the respondent cited U.P. Jal Nigam and Another Vs. Jaswant Singh and Another 2006 (11) SCC 464, where the Supreme Court held that laches and delay were important factors that had to be considered by the Court before exercise of its discretionary power to grant relief under [Article 226](#) of the Constitution of India. The Court further held that when a person was not vigilant of his rights, his writ petition might not be heard after a couple of years to WP(C) NO. 2810/2016 consider on the ground of whether the same relief should be granted to him, as was granted to a person similarly situated, who had

been vigilant about his rights and had challenged his retirement, which was said to be made on attaining the age of 58 years.

34. The Supreme Court held that in determining, whether there had been such delay, would amount to laches, the points to be considered were acquiescence on the part of the petitioner, and any change of position that had occurred on the part of the respondent. The respondents were held to be guilty of laches, as they had acquiesced by accepting their retirement which they did not challenge in time. The Supreme Court held that if the writ petitioners had been vigilant, they would have filed writ petitions, as others did when they were made to retire on attaining 58 years of age. Relief was declined on the ground of delay.

35. The issue in U.P. Jal Nigam (supra) was, whether the employees could be retired on attaining the age of 58 years,

WP(C) NO. 2810/2016 when State Government employees were allowed to continue till the age of 60 years. The Court found that they had already accepted their retirement. They had retired from service, and, therefore, relief was refused.

36. However, in Tukaram Kana Joshi & Ors. vs. Maharashtra & Ors. vs. Maharashtra Industrial Development Corporation & Ors. reported in (2013) 1 SCC 353, the Supreme Court held:-

"14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non- deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide: [Durga Prasad v. Chief Controller of Imports and Exports & Ors.](#), AIR 1970 SC 769; [Collector, Land Acquisition, Anantnag & Anr.v. Mst. Katiji & Ors.](#), AIR 1987 SC 1353; [Dehri Rohtas Light Railway](#)

Company Ltd. v. District Board, Bhojpur & Ors., AIR 1993 SC 802; Dayal Singh & Ors. v. Union of India & Ors., AIR 2003 SC 1140; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors., AIR 2011 SC 2161)"

37. In *H.D Vora v. State of Maharashtra & Ors.* reported in (1984) 2 SCC 337, the Supreme Court condoned delay of 30 years in approaching the court where it found violation of substantive legal rights of the applicant in that case.

38. In this case, the petitioners have not retired from service. After persons similarly circumstanced, if not identically circumstanced, as the petitioners were, given the benefit of the Old Pension Scheme, may be, pursuant to orders of this Court, the petitioners approached this Court for relief. Rejection of the writ petition only on the ground of delay, would perpetrate discrimination between persons similarly circumstanced.

39. It is well settled that relief under [Article 226](#) of the Constitution of India is discretionary. When there is acquiescence and laches and delay in approaching this Court, discretionary relief might be declined. However, delay is no bar to entertaining a writ petition. If entertaining a delayed writ petition entails the consequence of unsettling things already settled, relief may be declined. However, flagrant discrimination cannot be allowed to continue, only because of delay. Illegality must be redressed. In this case grant of relief would not result in unsettling things already settled. We are not inclined to reject the writ petition on the ground of delay."

A bare perusal of the judgment in **Inspector Rajendra Singh (supra)** would show that the objections being taken by the respondents in the present petitions were also considered in the said judgment starting from paragraph 33 onwards and keeping in view the settled principle of law therein cited, ground of delay invoked before the Court was not accepted and declined.

The same question again came up for consideration before the Delhi High Court in **W.P. (C) 756/2020** titled as **Dr. Davinder Singh Brar**

vs. Union of India and others and again the same view was reiterated that once a candidate got selected in pursuance to the an advertisement issued prior to the date when the New Defined Contributory Pensionary Scheme had come into being and even selection was made prior to the said date, merely, issuance of appointment letter after the date when the New Defined Contributory Pensionary Scheme came into being, will not take away the right by the appointee to be governed under the Old Pension Scheme.

The judgment in **Davinder Singh Brar (supra)** was challenged before the Hon'ble Supreme Court of India by the Government of India and the view of Delhi High Court as noticed hereinbefore was upheld by the Hon'ble Supreme Court of India and the special leave petition was dismissed on 04.02.2021. Keeping in view the settled principle of law laid down by Delhi High Court, which has already been upheld up to the Hon'ble Supreme Court of India, the claim of the petitioners needs to be allowed especially, in the facts and circumstances, where not only the petitioners were selected prior to 01.01.2006 i.e. the date when the New Defined Contributory Pensionary Scheme had come into being but, even the order was passed by this Court to grant the petitioners appointment prior to the said date hence, merely because the Government took time more than granted by this Court to implement the said order as the respondents were availing their legal remedies, will not defeat the right of the petitioners to be governed under the Old Pension Scheme.

As far as the ground of delay, which is being invoked in the present petition, the same has already been taken care of by the judgment of Delhi High Court as recorded hereinbefore and wherein findings have been recorded keeping in view the settled principle of law that where pension is

being claimed, the ground of delay is not available with the employer and once the reasons have already been enumerated in the judgment of the Delhi High Court, which has been reproduced hereinbefore, the same are not being reiterated and said ground of delay and latches taken by the respondent-State is rejected on the same basis.

Learned counsel for the respondents submits that vide notification dated 28.10.2005, rules governing the service were amended, therefore anyone who is appointed after 01.01.2006 will be governed by the Punjab Civil Service Rules so as to claim the benefit under the Old Pension Scheme, hence in the absence of challenge to the said notification, no claim can be made.

The said argument is fallacious in the facts and circumstances of this Case. It is a conceded position that a time bound direction was issued by the competent Court of law to the respondents prior to 28.10.2005 to appoint the petitioners by a date which was prior to 01.01.2006 and once the order was passed by the competent Court of law granting the benefit of appointment to the petitioners, it was the duty of the respondents to comply with the said order, which had already come into existence, it was only the respondent-State, who delayed the appointment as it was exploring its legal remedies qua the said order. Once, a right has been created with the petitioners for appointment even prior to issuance of the notification dated 28.10.2005, the said right cannot be taken away or modified by the Government through its notification. Hence, the petitioners are not required to challenge the notification dated 28.10.2005 keeping in view the facts and circumstances of the present case.

Further, it will be unjust to bifurcate posts filled up through

single recruitment process giving two different benefits to the selectees and appointees of the same selection. The posts are required to be filled up on the same terms and conditions which should be made applicable to all the selectees of the same selection. Merely, because a candidate, keeping in view the facts and circumstances, is not appointed along with other selected candidates and the same merit is made operational for all qua other service benefits, the grant of different pension scheme merely on the basis of different appointment date, done in pursuance to same selection process will amount to discrimination, especially when there is no attribution upon the candidate concerned for delay in appointment. Therefore, once the candidates from the same selection appointed prior to 01.01.2006, have been given benefit of Old Pension Scheme, the petitioners being the selectees of the same recruitment process duly selected prior to 01.01.2006 and advertised posts being also available to accommodate them prior to 01.01.2006, they cannot be declined the benefit to be considered under Old Pension Scheme as process of their appointment was delayed by the respondent-State hence, the ground being taken by the respondents that the candidates from the same selection process can be treated differently, is liable to be rejected and is accordingly rejected.

Last but not the least, it may be noticed here that not only in the State of Haryana but, Old Pension Scheme was also scrapped by the Government of India. In the State of Haryana, New Defined Contributory Pension Scheme came into being on 01.01.2006 and the Government of India had brought the same scheme into operation for its employees on 01.01.2004.

Similar dispute also arose qua Central Government employees

and in order to address those issues, Government of India felt it necessary to issue guidelines so as to consider the claim of its employees where an employee will be governed by Old Pension Scheme or New Defined Contributory Pension Scheme. Notification dated 17.02.2020 issued by the Government of India is very clear on certain aspects. As per the said notification, where post in pursuance to which an employee has been recruited, was advertised prior to 01.01.2004 and selection was also finalized prior to 01.01.2004 but offer of appointment was made after 01.01.2004, which resulted in joining of an employee after the said date, the benefit under the Old Pension Scheme will be admissible on the ground that the selection process had already been completed prior to the date when the New Defined Contributory Pension Scheme came into being.

Another circumstance envisaged under the policy dated 17.02.2020 where an employee who had joined after 01.01.2004 but has been made entitled for the grant of benefit under the Old Pension Scheme is where some of candidates selected through a common selection process were appointed on 01.01.2004 but the appointment to the other selected candidates was only given after 01.01.2004 due to administrative reasons but still, candidates appointed in pursuance to a common selection process were made to be governed by the Old Pension Scheme irrespective of their date of joining. Another circumstance envisaged under the policy dated 17.02.2020 is, where result of a recruitment was declared prior to 01.01.2004 but the candidates might have been declared ineligible due to any circumstance, but on review the said candidate became eligible because of which even if, the said candidate has been appointed on the date when the New Defined Contributory Pension Scheme came into being, the candidate

was made entitled to be governed under the Old Pension Scheme. Clause 3 of the Instructions dated 17.02.2020 is as under:-

“3. From the representations of the Government employees and the references received from Ministries/ Departments, it has been observed that in many of the cases referred to this Department, selection process (Including written examination, interview and declaration of result) for recruitment had been completed before 01.01.2004 but the employee joined the Government service on or after 01.01.2004. A few illustrations where the selection was finalized before 01.01.2004 but actual joining took place on or after 01.01.2004 are as under:

(i) The result for recruitment was declared before 01.01.2004 but the offer of appointment and actual joining of the Government servant was delayed on account of police verification/medical examination etc.

(ii) Some of the candidates selected through a common selection process were issued offers of appointment and were also appointed before 01.01.2004 whereas the offers of appointment to other selected candidates were issued on or after 1.1.2004 due to administrative reasons/constraints including pending Court/CAT cases.

(iii) Candidates selected before 01.01.2004 through a common competitive examination were allocated to different Departments/organization. While recruitment process was completed by some Department(s)/organizations on or before 31.12.2003 in respect of one or more candidates, the offers of appointment to the candidates allocated to the other Departments/organization were issued on or after 01.01.2004.

(iv) Offers of appointment to selected candidates were made before 01.01.2004 with a direction to join on or after 01.01.2004.

(v) Offers of appointment were issued to selected candidates before 01.01.2004, and many/most candidates joined service before 01.01.2004. However, some candidate(s) were allowed extension of joining time and they joined service on or after 01.01.2004. However, their seniority was either unaffected or was depressed in the same batch or to a subsequent batch, the result for which subsequent batch was declared before -0.101.2004.

(vi) The result for recruitment was declared before 01.01.2004 but one or more candidates were declared disqualified on the grounds of medical fitness or verification of character and antecedents, castes or income certificates. Subsequently, on review, they were found fit for appointment and were issued offers of appointment or or after 01.01.2004.

In all the above illustrative cases, since the result for recruitment was declared before 01.01.2004, denial of

the benefit of pension under CCS (Pension) Rules, 1972 to the affected Government servants is not considered justified.”

A bare perusal of the said instructions would show that if the said instructions are made applicable upon the petitioners, the petitioners will be entitled for the grant of benefit under the Old Pension Scheme.

Keeping in view the above, the writ petitions are allowed. Petitioners are held entitled for the benefit under the Old Pension Scheme especially, in view of the settled principle of law noticed hereinbefore, which have attained finality up to the Hon'ble Supreme Court of India as well as factual aspects of the present case, where the petitioners not only competed in pursuance to the advertised posts prior to 01.01.2006 but also got selected prior to the said date and had also got order from the competent Court of law much prior to the date when New Defined Contributory Pensionary Scheme had come into being directing the State to appoint them.

Let the present order be complied with within a period of two months from the date of receipt of copy of this order.

A photocopy of this order be placed on the files of connected cases.

November 18, 2022

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No