

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

Sr. No.110+216

Date of Decision: 23.05.2022

1) CWP-24322-2016 (O&M)

Amarjit Singh

.... Petitioner

Versus

State of Punjab and others

... Respondents

2) CWP-1977-2016

Bhikam Bali

.... Petitioner

Versus

State of Punjab and others

... Respondents

3) CWP-15221-2019

Jagdev Singh and others

.... Petitioners

Versus

State of Punjab and another

... Respondents

4) CWP-14175-2017

Harjit Rani

.... Petitioner

Versus

State of Punjab and others

... Respondents

5) CWP-6553-2019

Makhan Singh

.... Petitioner

Versus

State of Punjab and others

... Respondents

6) CWP-8152-2019

Darshan Singh Brar and others

.... Petitioners

Versus

State of Punjab and another

... Respondents

7) CWP-8186-2019

Joginder Singh and others

Versus

.... Petitioners

State of Punjab and others

... Respondents

8) CWP-10789-2019

Prem Lal and others

Versus

.... Petitioners

State of Punjab and others

... Respondents

9) CWP-12905-2015

Makhan Singh

Versus

.... Petitioner

State of Punjab and others

... Respondents

10) CWP-1735-2017

Nachhatar Singh and others

Versus

.... Petitioners

State of Punjab and others

... Respondents

11) CWP-25724-2018

Reshma

Versus

.... Petitioner

State of Punjab and others

... Respondents

12) CWP-35556-2019

Hardev Kaur

Versus

.... Petitioner

State of Punjab and others

... Respondents

13) CWP-36010-2019

Maya Devi

Versus

.... Petitioner

State of Punjab and others

... Respondents

14) CWP-23391-2019

Satish Kumar and others

Versus

.... Petitioners

State of Punjab and others

... Respondents

15) CWP-37281-2019

Surjit Singh and another

Versus

.... Petitioners

State of Punjab and others

... Respondents

16) CWP-4785-2022 (O&M)

Narinder Kaur

Versus

.... Petitioner

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shashi Kumar Rattan, Advocate
for the petitioner in (CWP-24322-2016).

Ms. Alisha Arora, Advocate for
Ms. Anju Arora, Advocate
for the petitioner (in CWP-1977-2016).

Mr. Surinder Garg, Advocate
for the petitioner (in CWP-15221-2019 & CWP-8152-2019).

Mr. Amit Sharma, Advocate for
Mr. V.K. Shukla, Advocate
for the petitioner (in CWP-14175-2017).

Mr. Sohrab Dhanda, Advocate and
Mr. A.S. Manaise, Advocate
for the petitioner (in CWP-12905-2015).

Mr. B.S. Patwalia, Advocate
for the petitioner (in CWP-6553, 8186 & 10789-2019).

Mr. Saajan Singla, Advocate
for the petitioner (in CWP-25724-2018).

Mr. Gopal Singh Nahel, Advocate
for the petitioner (in CWP-35556-2019 & CWP-36010-2019).

Mr. Vijay Sharma, Advocate
for the petitioner (in CWP-23391-2019).

Mr. Mohit Garg, Advocate
for the petitioner (in CWP-37281-2019).

Mr. Vikas Chatrath, Advocate and
Ms. Niharika Mittal, Advocate
for the petitioner (in CWP-1735-2017).

Mr. Satnam Singh Thakur, Advocate
for the petitioner (CWP-4785-2022).

Mr. K.K.Bheniwala, Addl. A.G.Punjab.

Mr. Vivek Chauhan, Advocate for
Mr. Parminder Singh, Advocate
for respondents No.3 and 4
(in CWP-14175-2017 & CWP-12905-2015).

Ms. Amarpreet Kaur, Advocate for
Mr. Nakul Sharma, Advocate for respondent No.3
(in CWP-35556-2019 & CWP-36010-2019).

HARSIMRAN SINGH SETHI, J. (ORAL)
CM-4881-CWP-2022

Prayer in the instant application is for placing on record Annexure P-12 and also for grant of exemption from filing certified and typed copy of the same.

Application is allowed subject to all just exceptions and Annexure P-12 is taken on record.

CWP-24322-2016 (O&M)

By this common order, the petitions, details of which have been given in the heading, are being disposed of, as all the petitions involve same question of law i.e. whether, keeping in view the settled principles of law, as per Rule 2(k) of the Punjab Panchayat Samiti and Zila Parishad Employees Pension and Provident Fund Rules, 2000 (for brevity, 'the 2000 Rules'), only the service for which the CPF has been deducted has to be taken into

account as a qualifying service for computing the pensionary benefits or total length of service of an employee is to be taken into account, subject to the employee depositing the CPF for the period it was not deducted by the employer, along with interest.

Learned counsel for the petitioner(s) argues that question of law raised in these petitions is no longer *res integra* as the said Rule 2(k) has already been interpreted more than once by this Court and as per the law, the petitioners are entitled for counting total length of service as qualifying service for computing the pensionary benefits subject to their depositing the CPF for the period it was not deducted by the employer, along with interest.

Before advertng to the law on the issue, Rule 2(k) of the 2000 Rules is reproduced hereunder for ready reference:-

“2(k) qualifying service means the service of an employee of a Panchayat Samiti or Zila Parishan, as the case may be, for which he has made contribution towards the Contributory Provident Fund before and after the commencement of these rules”

A bare perusal of the above rule would show that only the service for which the contribution towards CPF has been made, is to be taken into account as qualifying service.

CPF is deducted by the employer once an employee is covered under 2000 Rules. Deduction of the CPF is the duty of the employer for which no role is to be played by the employee concerned. In some cases, it was not deducted by the employer without information to the employee. The net conclusion was that at the time of retirement, the service for which the CPF was not deducted by the employer was not treated as a qualifying

service so as to grant the benefit of pension and other pensionary benefits

for the said service of the employee. In a similar case, the said action of the respondent department of not taking total length of service into consideration for computing the pensionary benefits by applying Rule 2(k) of the 2000 Rules was challenged before this Court in **CWP No.4378 of 2006** titled **Sita Devi versus State of Punjab and others**. This Court, by taking into consideration Rule 2(k) of the 2000 Rules held that total length of service of an employee is to be taken into account as a qualifying service and the compliance of Rule 2(k) of the 2000 Rules can be made even after retirement of the employee concerned by depositing the CPF for the period it was not deducted by the employer, along with interest.

The said rule again came to be interpreted by this Court in **CWP No.9125 of 2011** titled **Satish Rani Sood versus State of Punjab and others** by a Coordinate Bench of this Court and again the Coordinate Bench interpreted Rule 2(k) of the 2000 Rules in the same manner that due to a fault of an employer in not deducting the contribution, the employee can not be penalized so as to take away the service which concededly an employee has rendered before retirement, especially when the employee is ready to deposit the contribution for the period it was not deducted and that too along with interest, which will suffice the purpose of Rule 2(k) and a direction was issued by this Court to the employer to count the total length of service as a qualifying service subject to deposit of share of CPF along with interest by the employee. The said judgment was upheld by Hon'ble Division Bench in LPA No.1683 of 2013 and even the review petition filed was dismissed in July, 2017. Thereafter, the State of Punjab being aggrieved against the said decision, went before Hon'ble Supreme Court of India, which SLP was also dismissed on 18.07.2014. Not being satisfied still, a

review petition was filed in the year 2017, which was also dismissed by the Hon'ble Division Bench of Supreme Court of India.

Though, the question of law was settled by this Court and the same had attained finality upto the Hon'ble Supreme Court of India with regard to the interpretation of Rule 2(k) of the 2000 Rules but still the respondents in the present case, chose not to implement the said rule qua all the similarly situated employees. The benefit was only being extended to the petitioners, in whose case the judgment had attained finality.

Also, as and when, any aggrieved person approached this Court, they were granted benefit of total length of service to be taken as a qualifying service for computing the pensionary benefits, in case the employee concerned undertook to deposit the contribution for the period it was not deducted by the employer, along with interest.

The prayer in the present petition is similar to one as raised in **Satish Rani Sood (supra)** as well as **Sita Devi (supra)** to grant them benefit of total length of service as qualifying service so as to compute the pensionary benefits and the petitioners are ready to deposit the CPF for the period it was not deducted by the employer, along with interest.

Learned counsel for the respondents have raised objections for the grant of prayer as raised in the present petitions. Learned State counsel argues that the present petitions have been filed at a belated stage much after the retirement and therefore, on this ground alone, the prayer of the petitioners is liable to be rejected. The second ground raised by learned State counsel is that the case of petitioners is not akin to **Satish Rani Sood (supra)** and the third ground raised is that a similar order passed in CWP No.21268 of 2015 titled Sukdev Singh versus State of Punjab, has

already been directed to be kept in abeyance by the Hon'ble Division Bench of this Court in LPA No.1125 of 2019.

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

The question of law whether only the service of an employee, in respect of which CPF was deducted by the employer, is to be taken into account as qualifying service or the total length of service is to be taken into account, i.e. the period of service for which CPF was not deducted by the employer, has already been crystallized by the judgments rendered in **Satish Rani Sood (supra)** as well as **Sita Devi (supra)**, which judgments have already attained finality. Once it has been settled by the competent Court of law while interpreting the same Rule 2(k) of the 2000 Rules that the total length of service is to be taken into account for computing the pensionary benefits, the respondents are under obligation to do so, subject to the condition imposed therein that the employee will deposit the contribution for the period it was not deducted by the employer, along with interest. In the present case, all the petitioners are ready to deposit contribution for the period it was not deducted by the employer, along with interest.

Relevant paragraph of the judgment in **Satish Rani Sood (supra)** is as under :-

*“On considering the submissions made by the counsel for the parties, I am of the considered view that the claim of the petitioner is covered in her favour by the judgment passed by this Court in **Charanjit Singh's case (Supra)** where in a similar set of facts and circumstances where the regulations under which the CPF Scheme was made applicable, was para materia with the language of Rule 2(k) of the 2000 Rules. On considering the same, this Court had proceeded to pass the*

following order:-

“[8] It may be appropriate at this stage to refer Regulation 6 of the PEPSU Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations, 1992, relied upon by the Corporation to count the 'qualifying service' from the date an employee starts contributing towards the Contributory Provident Fund and the same reads as follows:-

“6. Qualifying Service:

- (1) The qualifying service will be taken into account with effect from the date of an existing employee started contributing towards the Contributory Provident Fund.*
- (2) The service of an employee shall not qualify for retirement benefits under the said regulations unless:*
 - (i) he attains the age of eighteen years;*
 - (ii) he takes charge of the post to which he is first appointed except for which it is otherwise provident by special rules or contract; and*
- (3) The leave admissible under the Corporation regulations and under the instructions issued by the Corporation from time to time, shall qualify for pension but leave without pay and period of suspension, overstay of leave not subsequently regularized under the above said regulations and the period of break in service shall not be reckoned as qualifying service.*
- (4) In a case where the total qualifying service is less than 10 years no pension benefit shall be admissible.”*

[9] Somewhat similar worded Rule, namely, Rule-6 of the Punjab Privately Managed Recognized Aided Schools Retirement Benefits Scheme, 1992, was

considered by a Division Bench of this Court in Ram Lubhaya Khanna and others versus State of Punjab and another 2007 (3) SCT 780 and following the earlier decisions including Kasturi Lal Khurana's case (supra), it was held that "the ratio of the above mentioned judgment would apply to the facts of the instant case, inasmuch as, the provision made in clause 6(6) of the 1992 Scheme has to be read down to mean that qualifying service would commence from the date of continuous appointment or from an earlier date if the employee had started contributing to the Contributory Provident Fund. Therefore, the petitioners would be entitled to counting of their service with effect from the date of their appointment."

[10] The issue was re-agitated before this Court at the instance of the respondent-Corporation in CWP No.19292 of 2010 (Pritam Singh versus Pepsu Road Transport Corporation and others) decided on 23.2.2012 also but its plea was turned down, observing that "the service rendered by the petitioner w.e.f. 6.2.1971 to 1.1.1972 was with the respondent-Corporation only. There appears to be no justification to exclude the said service from 'qualifying service' for the grant of pensionary benefits, though the petitioner shall be required to deposit the arrears of CPF drawn for the said period alongwith interest that may be determined by the Corporation."

[11] Following the above cited precedents, there can be no other conclusion but to allow the present writ petition subject to the same terms and conditions and the time schedule as has been prescribed in operative part of the order dated 23.2.2012 passed in Pritam Singh's case (supra)."

In view of the above, present writ petition is allowed.

Direction is issued to respondent No.3 to consider the claim of the petitioner in the light of the fact that she has already deposited the CPF along with interest with a matching grant with the share deposited by respondent No.6 and on taking this complete period of service which the petitioner had rendered with respondent No.6 as qualifying service, shall grant the benefit to the petitioner. This exercise be completed within a period of two months from the date of receipt of certified copy of the order.

As regards the claim of the petitioner in CWP No.5131 of 2010, it has been pointed out by the counsel for the petitioner that the petitioner had already offered the deposit of the share of the CPF along with interest to respondent No.7-Block Samiti, Block Ludhiana-II, Zila Parishad Office, Ludhiana, which offer has also been accepted by the said respondent but in the light of the fact that respondent No.3 has already rejected the claim of the petitioner, the amount could not be forwarded to the said respondent.

Counsel for respondent No.7 accepts the liability to deposit the share of CPF of the said respondent after deposit of the CPF share by the petitioner and forward the same to the competent Authority for consideration and disbursal of the pensionary claim of the petitioner.”

Keeping in view the above cited principle of law, there is no difference between petitioner(s) in **Satish Rani Sood (supra)** and **Sita Devi (supra)** and the petitioner(s) in the present petition, with regard to the claim being made. Once, the same claim has been allowed in favour of the similarly situated employee by this Court and the question of said law has already been settled upto Supreme Court of India, the same needs to be applied in the case of the petitioner(s).

Keeping in view the objections, which have been raised by the respondents that the petitioners retired since long and hence, can not approach to this Court now seeking the said benefit of revised pension, which benefit has been extended to similarly situated employee by a competent Court of law, the questions which need to be considered and answered are :-

- (i) whether denial of a pension for the service which an employee has rendered, will be treated as a recurring cause of action or not.
- (ii) whether the delay in approaching the Court would completely oust the petitioner from claiming the relief sought.

The law on the issue No.(i) whether the claim for the pensionary benefits is a continuing wrong, which will give recurring cause every month to the pensioner concerned and the claim of pension as per entitlement, is not barred by limitation or not, has been answered by a Coordinate Bench of this Court in **RSA No.1906 of 1999** decided on 25.07.2013 titled **Ex. Constable Gurdev Singh versus Union of India and others**. In the said case, this Court has held that the claim for pension even after 20 years, can not be rejected on the ground of limitation. The said finding has been recorded by placing reliance on the settled principles of law in the judgment of Hon'ble Supreme Court of India reported as **Shiv Dass versus Union of India and others, 2007 (2) SCT 72** and **Union of India and others versus Tarsem Singh, 2008(4) SCT**. The relevant paragraphs of the **Ex. Contable Gurdev Singh (supra)** are reproduced hereunder:-

“7. *Before this Court, the appellant has claimed the following substantial questions of law:*

- (i) *Whether the claim for pensionary and other monetary benefits is a continuing wrong which gives rise to recurring cause of action every month and is therefore, not barred by limitation?*
- (ii) *Whether the suit of the plaintiff is liable to be decreed especially when all the other issues were decided in his favour except Issue No.4 regarding limitation?*
8. *However, after hearing learned counsel for the parties, I find that the following substantial question of law also arises for consideration:*
- (iii) *Whether the opinion of the Release Medical Board that the disease was neither attributable or aggravated by service can be interfered with by the Civil Court?*
9. *Learned counsel for the appellant in support of his argument that the claim for pension and other monetary benefits is a recurring cause of action relies upon the judgments of Hon'ble Supreme Court reported as **Shiv Dass v. Union of India & others, 2007(2) S.C.T.72: (2007) 9 SCC 274** and **Union of India & others v.Tarsem Singh, 2008(4) S.C.T. 19: 2008(5) (R.A.J.) 203: (2008) 8 SCC 648.***
10. *Shiv Dass's case (supra) is a case pertaining to invocation of writ jurisdiction of the High Court, which was dismissed by for the reason of delay and laches, but the Hon'ble Supreme Court observed that unexplained delay coupled with the creation of third party rights is an important factor, which also weighs with the High Court in deciding whether or not to exercise such jurisdiction. It was held that in the case of pension, the cause of action actually continues from month to month and still that can not be a ground to overlook delay in filing*

the petition. The Court observed as under:-

“In the case of pension the cause of action actually continues from month to month. That, however, can not be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits, it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

11. *In Tarsem Singh's case (supra) again the Hon'ble Supreme Court was examining an order passed in exercise of the jurisdiction under Article 226 of the Constitution of India, but it was observed that one of the exceptions to the rule of delay is the cases relating to continuing wrong. The Court held that there is exception to the said exception as well. It was observed that if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. It was observed as under:-*

"5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date

on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

12. *In terms of the aforesaid judgments, I find that the claim of the appellant cannot be summarily rejected on the ground that he has filed the suit claiming disability pension after more than 20 years. Therefore, the suit could not be dismissed on the ground of limitation alone. The first question of law is answered accordingly in favour of the appellant."*

Recently, the Hon'ble Supreme Court of India in **Civil Appeal No.4100 of 2022** titled **Shri M.L.Patil (Dead) through LRs versus State of Goa and another**, decided on 20.05.2022, held that non grant of pension as

per the eligibility of an employee is a continuing wrong and there is no

justification for denying the arrears in case, the continuing wrong is established. The relevant paragraph No.3 of the said judgment reads as under:-

“Having heard Shri Rahul Gupta, learned counsel appearing on behalf of the appellant and Shri Ravindra Lokhande, learned counsel appearing on behalf of the respondent-State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void, we are of the view that the High Court has erred in observing that the appellant will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1st January, 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1st January, 2020. Under the circumstances, the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent.”

Keeping in view the principles of law cited hereinbefore, the objection being raised by learned counsel for the respondents that on the ground of limitation/delay and laches, the present petition be dismissed, can not be accepted and is accordingly, rejected.

Once the claim of the pensioner can not be dismissed on the ground of limitation then the question (ii) as framed hereinbefore, needs to

be decided as to how equities are to be balanced in case petitioners are held entitled for the prayed relief.

As per **Ex. Constable Gurdev Singh (supra)**, in case, there is a delay in approach by a litigant seeking pensionary benefits, the said delay can be compensated by way of not awarding 100% arrears in case, the said pensioner succeeds in getting the relief. The arrears can be restricted to a limited period so that the pinch of payment of arrears for a long period is not felt by the respondents, though as per **Shri M.L.Patel (supra)**, in case of pension, arrears can not be denied once entitlement of higher pension is established.

Learned State counsel has further argued that the judgment in **Satish Rani Sood (supra)** is being misinterpreted by the petitioner to be covered in their favour for the reason that in **Satish Rani Sood (supra)**, the benefit of service for which CPF was not deducted was granted for the reasons that Satish Rani Sood was declared ineligible for the grant of pension keeping in view the length of service by applying Rule 2(k) of 2000 Rules, whereas the petitioner(s) in the present cases, are already getting the pension for a specified period but want the remaining period of service rendered by them, for which the CPF was not deducted, to be included as a qualifying service for computing the pensionary benefits, hence, petitioner can not claim parity with **Satish Rani Sood (supra)**.

This difference which is being raised by learned counsel for the respondents, though seems attractive but will create anomaly in case, the same is accepted. The example which is being given by the Court, will show that in case, the said argument of the State is accepted, it will not only create anomaly, but will create discrimination between the similarly situated

employees for the grant of pensionary benefits.

For example, Employee 'A' and Employee 'B' are appointed on the same date and has same length of service i.e.15 years upto the date of superannuation but in respect of Employee 'A', the department has only deducted the CPF for a period of 09 years whereas for Employee 'B', the respondents have deducted CPF for a period of 11 years out of the total length of service of 15 years. Employee 'A' becomes ineligible for the grant of pension having less than 10 years of qualifying service whereas the Employee 'B' will be entitled for pension for a period of 11 years, though, both of them actually rendered 15 years' of service upto the date of their superannuation. In case, the argument of learned State counsel is accepted, while applying Satish Rani Sood (supra) in case of Employee 'A', Employee 'A' will get pensionary benefits for 15 years of service by giving the benefit of service for which CPF was not deducted whereas Employee 'B' though also have 15 years of service to his credit, will only be getting the pension for a service period of 11 years and will be getting lesser pensionary benefits including pension. This example shows that similarly situated employees will be treated differently in case, the argument of learned State counsel is accepted that Satish Rani Sood (supra) is to be only implemented where an employee has not been found eligible for the grant of pension only, hence, the said argument is rejected.

Further, the length of service is not only to be computed for the pension but the same is also to be computed for the grant of gratuity and leave encashment. The total length of service is to be taken into account for the grant of gratuity also which has no correlation with the deduction of CPF. That being so, in case, the argument of learned State counsel is

accepted that for pension, the service for which the CPF has been deducted, should be taken into account, then while computing the other pensionary benefits of an employee, total length of service is to be taken into account there will be two different qualifying services for the grant of pensionary benefits. One for computing the pension and another for computing the gratuity, which is not permissible. For gratuity, the total length of service is to be taken into account keeping in view the Payment of Gratuity Act, 1972 as well as service Rules.

Therefore, the differentiation, which is being created by the respondents that in **Satish Rani Sood (supra)**, the benefit of total length of service was granted only because she was ineligible to get the pension and the same can not be applied in the case of the petitioner(s), who are already getting pension, is erroneous and the said argument can not be accepted. Further in **CWP No.4378 of 2006** titled **Sita Devi versus State of Punjab and others**, the employee concerned was already getting pension but was still granted the benefit of total length of service. **Sita Devi (supra)** is a case of similarly situated employee as the petitioner(s) herein and the benefit of total length of service has already been extended in the case of **Sita Devi (supra)** by the respondents themselves without raising any such objection.

The same is the case in **CWP No.20081 of 2014** titled **Khazan Singh versus State of Punjab and others**, wherein also the employee was eligible to get the pension and was getting pension but not for total length of service but still was granted the benefits of total length of service on the conditions prescribed keeping in view the law settled in **Satish Rani Sood (supra)** and **Sita Devi (supra)**.

Further, a Full Bench of this Court in the case of **Kesar Chand versus State of Punjab, AIR 1988 Punjab and Haryana 265: 1988 (5) SLR 27 (P&H)** held that daily wage service which an employee has rendered prior to the regularization, is to be taken into account as a qualifying service for the grant of pensionary benefits. The said judgment has already attained finality. Once, a daily wage service is to be taken into account as a qualifying service for computing the pensionary benefits, the regular service rendered by the petitioners can not be taken away merely because the employer failed to perform its duties so as to deduct the CPF for a particular period of time.

Hon'ble Supreme Court of India in **Civil Appeal No.6798 of 2019** titled **Prem Singh versus State of Uttar Pradesh and others**, decided on 02.09.2019, has held that total length of service of an employee is taken into account for computing the pensionary benefits and no part of it can be taken out. Even the daily wage service for which no CPF is deducted, has been ordered to be taken into account for computing the pensionary benefits. The relevant paragraphs of the said judgment read as under:-

“30. In the aforesaid facts and circumstances, it was unfair on the part of the State Government and its officials to take work from the employees on the work-charged basis. They ought to have resorted to an appointment on regular basis. The taking of work on the work- charged basis for long amounts to adopting the exploitative device. Later on, though their services have been regularized. However, the period spent by them in the work-charged establishment has not been counted towards the qualifying service. Thus, they have not only been deprived of their due emoluments during the period they served on less salary in work charged establishment

but have also been deprived of counting of the period for pensionary benefits as if no services had been rendered by them. The State has been benefitted by the services rendered by them in the heydays of their life on less salary in work- charged establishment.

31. *In view of the note appended to Rule 3(8) of the 1961 Rules, there is a provision to count service spent on work charged, contingencies or non pensionable service, in case, a person has rendered such service in a given between period of two temporary appointments in the pensionable establishment or has rendered such service in the interregnum two periods of temporary and permanent employment. The work-charged service can be counted as qualifying service for pension in the aforesaid exigencies.”*

Once the daily wage service has been ordered to be taken into account as a qualifying service, the regular service of the petitioners can not be taken out and denied the benefit of the same merely because the employer failed to deduct the CPF for a particular period of time.

Keeping in view the above, the prayer of the petitioner(s) for the grant of benefit of the total length of service which they have rendered as a qualifying service for computing the pensionary benefits is allowed subject to the deposit of the CPF, for the period it was not deducted by the employer, along with interest.

At this stage, learned counsel for the petitioner(s) submits that the respondents can calculate the amount which needs to be deposited by the petitioner(s) for the period the CPF was not deducted, along with interest and the said amount be deducted from the arrears, if any, to be paid to the petitioner(s) after revising their pensionary benefits keeping in view this order.

Learned counsel for the respondents raises no objection to the said proposal of the petitioners(s).

Keeping in view the above, the claim of the petitioner(s) as raised in these petitions, is allowed. The total length of service, which the petitioner(s) have rendered, be taken into account as qualifying service for computing the pensionary benefits subject to the deposit of contribution by the petitioner(s) for the period it was not deposited, along with interest. Keeping in view the undertaking of the petitioner(s) recorded hereinbefore, let the pensionary benefits of the petitioner(s) be revised. It is made clear that the arrears, if any, will only be admissible to the petitioner(s) for a period of 3 years and 2 months from the date of filing of the writ petition and not prior to that.

Let this order be complied with within 3 months from the receipt of a copy of the same.

Civil Miscellaneous Application bearing CM No.4882-CWP-2022 stands disposed of since main cases are disposed of.

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

(HARSIMRAN SINGH SETHI)
JUDGE

23.05.2022
Maninder

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