

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

208

CWP-25282-2015

Date of Decision :07.07.2022

**Kamaljit Kaur****..Petitioner**

**Versus**

**State of Punjab and others****...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. H.K. Brinda, Advocate for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

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**Harsimran Singh Sethi, J. (Oral)**

In the present writ petition, the grievance of the petitioner is that the husband of the petitioner namely, Jaswant Singh, who was working with the respondents unfortunately died on 17.02.2011 while in service, is not being paid benefits under the Old Pension Scheme. Prayer of the petitioner is that keeping in view the settled principle of law settled by a Division Bench of this Court in **CWP-2371-2010** tilted as **Harbans Lal vs. State of Punjab and others** decided on 31.08.2010, wherein, it has been held that any employee, who was in service on 01.01.2004 is entitled to be considered under the Old Pension Scheme, even if, his/her services are regularised after 01.01.2004.

Learned counsel for the petitioner argues that the services of the late husband of the petitioner was regularised by the respondents on 1.11.2010 whereas, he was working with the respondents since 1980

onwards, therefore, the claim of the petitioner is squarely covered by the judgment of the Division Bench of this Court in **Harbans Lal's case (Supra)**.

After notice of motion, respondents have filed reply wherein, it has been mentioned that as the services of the late husband of the petitioner were regularised in the year 2010 i.e. after 01.01.2004, the late husband of the petitioner is only entitled to be covered under the CPF Scheme and not under the Old Pension Scheme. Relevant paragraph of the reply is as under:-

“It is pertinent to mention here that the permissible entire retiral benefits has already been paid to the petitioner by the respondents like EPF and leave encashment vide Executive Engineer, Faridkot Canal Division Faridkot Vide office order NO.4960-61 dated 06.08.2015 in the light of government instructions dated (17-7-14). Copy attached as Annexure R-1 and as per government instructions and policy dated 12.12.2006, the case of the petitioner is not covered for the benefit of taking family pension. As per Punjab Govt. FD.No.3/14/2C11-3 FPP3/154 dated 23.02.2013 Annexure -R-2, the workers whose services have been regularised after 1.1.2004 under CPF scheme will not get the pensionary benefits. The services of Jaswant Singh deceased was regularised after 01.01.2004 on 01.11.2010 and the service rendered by the petitioner prior to 01.01.2004 cannot be counted towards pensionary benefits. As such the writ petitioner case is not covered for taking benefit of family pension as per policy framed by Government of Punjab Dated 12.12.2006. Copy of policy is attached as Annexure -R-3.”

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

The undisputed facts are that the late husband of the petitioner

was working with the respondents since 1980 onwards and his services were regularised by the respondents in the year 2010 after the CPF scheme came into operation. It is also conceded position that late husband of the petitioner died while in service. The only question is whether the ground being taken by the respondents that once the services of late husband of the petitioner were regularised on 01.11.2010 i.e. after 01.01.2004, CPF scheme will be applicable or late husband of the petitioner is covered under the Old Pension Scheme. This question is no longer *res integra* and has already attained finality up to the Hon'ble Supreme Court of India. The division Bench of this Court in **Harbans Lal's case Supra** held that once an employee was in service as on 1.1.2004, he will be covered by the Old Pension Scheme even if, his/her services are regularised after 01.01.2004. Relevant para of the judgment is as under:-

“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 casual/daily rated service is also bound to be counted as qualifying service.

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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.

No order as to costs.”

Learned counsel for the respondents does not dispute that keeping in view the facts and circumstances of this case that the late husband of the petitioner was in service on 01.01.2004 and his services were regularised on 01.11.2010, judgment of the Division Bench of this

Court in **Harbans Lal's case (supra)** will be applicable in the present case.

Keeping in view the above, payer of the petitioner is allowed. The petitioner is held entitled for the benefit in respect of the services rendered by her late husband under the Old Pension Scheme in view of the settled principle of law settled by the Division Bench of this Court in **Harbans Lal's case (supra)**.

The further question which arises, as to whether petitioner is entitled for the interest on the payment which will be released to her while granting benefit under the Old Pension Scheme.

The law in **Harbans Lal's case (supra)** attained finality in the year 2010 but, the respondents still declined the claim of the petitioner and the petitioner could not get the said benefit for a period of 11 years despite her entitlement for the same. This shows the attitude of the respondents, especially, when the question involved has already attained finality. Keeping in view the fact that due to the act of the respondents, the petitioner has not been able to get the benefits for a period of 11 years and was forced to approach this Court despite being eligible for the same. Keeping in view the settled principle of law, the petitioner is also held entitled for interest @ 6% per annum on the payments, which will be released to the petitioner under this order from the date the late husband of the petitioner died till the actual payment will be released to her.

The present writ petition stands allowed in above terms.

**July 07, 2022**  
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**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

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