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# IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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**CWP-27232-2016**
**Date of Decision: 24.03.2022**

Prem Chand

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Dheeraj Mahajan, Advocate, for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

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**HARSIMRAN SINGH SETHI J. (ORAL)**

The present petition has been filed with a prayer that the petitioner was entitled for the grant of pensionary benefits under the old Pension Scheme and that too from the date of his initial appointment, by taking into account the *ad-hoc* services rendered by him, prior to regularization of his services on 21.10.2004.

The brief facts of the case are that the petitioner was initially appointed with the respondent-Department on daily wage basis on 11.09.1987 but his services were terminated by the respondents in May, 1989, which action was challenged by the petitioner before the Labour Court. The Labour Court vide award dated 19.05.2003 (Annexure P-1) found that termination of the services of the petitioner was bad in law and the petitioner was ordered to be reinstated in service with 20% of the back wages. Thereafter, the petitioner was reinstated in service, w.e.f. 10.11.2003, and ultimately his services were regularized by the respondent vide order dated 21.10.2004 and while working on the regular basis, he retired on 31.05.2016. After his retirement, the respondents did not pay the pensionary benefits to him under the old Pension Scheme on the ground that the services of the petitioner were regularised on 21.10.2004 and the old Pension Scheme is not available w.e.f. 01.01.2004, therefore, the petitioner will be governed by the new Contributory Provident Fund Scheme only. The said action of the respondents is under challenge in the present petition.

Learned State counsel submits that once the petitioner's services were regularised only in October, 2004, hence he will be governed under the new Contributory Provident Fund Scheme, which came into being w.e.f. 01.01.2004 and the benefits for which the petitioner was found entitled for have already been released in his favour.

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

In the present case, the action of the respondents is deplorable as once a law has already been settled by a Division Bench in its judgment passed in **CWP-2371-2010** titled as ***"Harbans Lal Vs. State of Punjab and others"***, decided on 31.08.2010, pronouncing that where an employee was already working on a temporary basis or an *ad-hoc* basis as on 01.01.2004, though his/her services were regularized after 01.01.2004, i.e. after the commencement of the new Contributory Provident Fund, still the said employee will be governed by the old Pension Scheme only, still when the petitioner retired in May, 2016, Contributory Provident Fund Scheme was made applicable upon him despite the fact that it was incumbent upon the respondents to apply the judgment passed in **Harbans Lal's case** (supra) upon the petitioner as well. What to expect of applying the said judgment so as to grant the necessary relief, the petitioner was rather forced to approach this Court for redressal of his grievances.

Keeping in view the facts and circumstances of the case, coupled with the judgment passed by the Division Bench in **Harbans Lal's case** (supra), learned counsel for the respondents has not been able to dispute the fact that the petitioner's case is covered by the aforesaid judgment, so as to grant him the pensionary benefit as per the old Pension Scheme, hence it is held that the claim of the petitioner for the grant of pensionary benefits be considered under the old Pension Scheme.

Further grievance of the petitioner is that his daily wage service, which he had rendered from September, 1987 till October, 2004, has not been taken into consideration for the grant of any pensionary benefit.

It is a settled principle of law that when a daily wage service is regularised by the Department, the same is to be treated as a qualifying service for computing the pensionary benefits of the employee concerned. The judgment of the Full Bench passed in the case of ***"Kesar Chand Vs. State of Punjab and others", AIR 1988 Punjab 265*** is fully applicable and supportive to the aforesaid prayer made by the petitioner. That being so, the total length of service of the petitioner is to be taken into consideration as a qualifying service which will include the daily wage service rendered by him from 11.09.1987 till 21.10.2004.

Keeping in view the above, the present petition is allowed and the petitioner is held entitled for the grant of pensionary benefits under the old Pension Scheme and the total length of service rendered by him, including the daily wage service, is ordered to be taken into consideration as a qualifying service for computing the pensionary benefits of the petitioner.

Now, the question which arises for consideration before this Court is that whether the delay which has occurred in releasing the pensionary benefits to the petitioner is attributable to the respondents or not, so as to make the petitioner entitled for the grant of interest on the said delayed release of payments.

Once when the petitioner retired in May, 2016, before which date the judgment passed in **Harbans Lal's case** (supra) had attained finality and the judgment passed in **Kesar Chand's case** (supra) had also became final, keeping in view the principle of law settled by the Division Bench in its judgment passed in **CWP-4382-2002,** titled as ***"Satbir Singh Vs. State of Haryana***", decided on 21.03.2002, according to which, once a principle of law is settled, the same is to be made applicable upon every similarly situated employees and the employees should not be forced to approach the Court time and again to claim the same relief, the non-grant of the benefits and the resultant delay in the benefits, for which the petitioner was entitled for as on 31.05.2016, is attributable upon the respondents only.

At this stage, learned State counsel submits that the petitioner even otherwise could not have been released the pensionary benefits of leave encashment and gratuity keeping in view the fact that the petitioner was involved in a criminal case and was facing a trial in the same at the time of his retirement, which trial came to an end in January, 2022, and therefore, the question of release of the said pensionary benefits, even if those would have been computed in the year 2016, could not have been released to him and hence, the grant of interest on the leave encashment or the gratuity may not be granted to the petitioner.

There is a force in the argument made by learned State counsel in respect of gratuity and leave encashment. Had the pensionary benefits been calculated by the respondents under the old Pension Scheme, the petitioner would have been entitled for the grant of full pension and other benefits, except gratuity and leave encashment, which benefits have been denied to him despite entitlement, and therefore, the petitioner is held entitled for the grant of interest on the pension and the arrears of pension, which will be calculated by the respondents under this order at the rate of 6% per annum from the date the pension of the petitioner became due till the release of the same to him to be paid within a period of two months from the date of receipt of the copy of this order.

Allowed in the above terms.

**24.03.2022** **(HARSIMRAN SINGH SETHI)**
*Apurva* **JUDGE**

1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes