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

(214) **CWP-5223-2018**
Date of Decision : November 29, 2022

Kanta Devi **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

(214-2) **CWP-5357-2018**

Rampal **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

(214-3) **CWP-53-2018**

Raghubir Singh **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep Goyal, Advocate, for the petitioner(s).

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, three writ petitions, the details of which have been given in the heading, are being disposed of, as all the petitions involve the same question of law on similar facts.

In the present writ petitions, the grievance of the petitioner(s) is that the petitioner(s) have not been granted the benefit of pension upon their attaining the age of superannuation on the ground that the petitioner(s) did not had ten years regular service to their credit at the time when they attained the age of superannuation.

For the sake of convenience, the facts are being taken from CWP No.5223 of 2018:-

As per the facts mentioned in the petition, the petitioner was appointed on the post of Sweeper starting from the year 1994. The petitioner continued working on the post of Sweeper when her services were regularized by the respondents on 01.04.2013. The petitioner continued working on regular basis till she attained the age of superannuation on 31.12.2015. After the said date, the petitioner requested for the grant of pensionary benefits but the same have been declined to the petitioner on the ground that the petitioner did not had ten years of regular service for the grant of pensionary benefits keeping in view Rule 6.16 (2) of the Civil Services (Pension) Rules, 2016.

Learned counsel for the petitioner argues that the action of the respondents in declining the pensionary benefits to the petitioner is totally arbitrary and illegal and is liable to be set aside on the ground that firstly the adhoc service rendered by an employee prior to the regularization is to be treated as a valid service for computing the pensionary benefits and further, keeping in view the judgment of the Division Bench of this Court in ***CWP No.2371 of 2010 titled as Harbans Lal Vs. State of Punjab and others,***

decided on 31.08.2010, anyone, who was in service as on 01.01.2006, is entitled to be governed under the Old Pension Scheme and therefore, the respondents were liable to grant the petitioner the benefit of service which the petitioner had rendered from the year 1994 onwards till the date of retirement i.e. 31.12.2015 as a qualifying service for computing the pensionary benefits.

Learned counsel for the respondents though concedes the fact that the petitioner was continuously working with the respondents since February 1994 but submits that only the regular service can be taken into account as a qualifying service for computing the pensionary benefits and as the petitioner did not had ten years of regular service on the date when she attained the age of superannuation, the petitioner cannot be granted the benefits of the earlier service. Learned counsel for the respondents submits that once the services of the petitioner were regularized after 01.01.2006, on which date, there was no pension scheme, hence, the petitioner cannot claim the benefit of pension.

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

Firstly, the respondents are making the 2016 Rules applicable upon the petitioner when she had retired on 31.12.2015 i.e. prior to the promulgation of the said Rules. The petitioner is to be governed by Punjab Civil Services Rules as applicable to Haryana, which were in force at the time when the petitioner was in service and retired. Rule 3.17 (A) of the Punjab Civil Services Rules as applicable to Haryana governs the area for the grant of pensionary benefits and qualifying service, it has been clearly mentioned in the said rules that adhoc service rendered by an employee prior to the regularization is to be treated as a qualifying service for computing the pensionary benefits. The relevant Rule 3.17 (A) of the Punjab Civil Services Rules is as under:-

> "*3.17-A(1) Subject to the provision of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous shall count as qualifying service:-*
>
> *(i) Service rendered in work-charged establishment.*
>
> *(ii) Service paid from contingencies:*
>
> *Provided that after the 1st January, 1973 half of the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions:-*
>
> *(a) Service paid from contingencies should have been in a job involving whole time employment (and not part time or for a portion of the day).*
>
> *(b) Service paid from contingencies should have in a type of work or job for which regular post could have been sanctioned e.g. Malis, Chowkidars, Khalasis, etc.*
>
> *(c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being perform by staff in regular establishment.*
>
> *(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.*
>
> *(iii) Casual or daily rated service.*
>
> *(iv) Suspension adjusting as a specific penalty.*
>
> *Keeping in view the submissions made above, the part*

> *time service cannot be counted towards pensionary benefits, it is respectfully submitted that the present writ petition may kindly be dismissed being infructuous."*

The said Rule had come up for interpretation before the Full Bench of this Court as to whether the adhoc service rendered prior to the regularization is to be treated as qualifying service or not. In ***'Kesar Chand Vs. State of Punjab and others', AIR 1988 Punjab 265,*** a Full Bench of this Court held that the adhoc/temporary/casual service rendered prior to the regularization is liable to be taken into account as a qualifying service for computing the pensionary benefits. Therefore, keeping in view the rules governing the service, the petitioner is entitled for the grant of the benefit of service starting from February 1994 onwards as a qualifying service for computing the pensionary benefits.

Not only this, the Hon'ble Supreme Court of India in ***Civil Appeal No.3348 of 2015 titled as Secretary, Minor Irrigation Deptt and R.E.S. vs. Narendera Kumar Tripathi decided on 07.04.2015,*** held that the adhoc appointment cannot be ignored while computing the qualifying service.

In the recent judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.6798 of 2019 titled as Prem Singh vs. State of Uttar Pradesh and others, decided on 02.09.2019***, the Hon'ble Supreme Court of India has clearly held that the work charge service rendered prior to regularization is to be treated as qualifying service for computing the pensionary benefits. The relevant paragraph 33 and 35 is as under:-

> *"33. As it would be unjust, illegal and impermissible to*

make aforesaid classification to make the Rule 3(8) valid and non discriminatory, we have to read down the provisions of Rule 3(8) and hold that services rendered even prior to regularisation in the capacity of work-charged employees, contingency paid fund employees or non- pensionable establishment shall also be counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment.

34. XXX XXX XXX XXX

35. There are some of the employees who have not been regularized in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularized under the Government instructions and even as per the decision of this Court in Secretary, State of Karnataka & Ors. v. Uma Devi 2006 (4) SCC 1. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one time measure, the services be regularized of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularized. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension."

Keeping in view the above, ignoring the service which the petitioner had rendered starting from February 1994 onwards till the regularization of her services is totally arbitrary and illegal. Once the petitioner was allowed to work for a period of 19 years before regularizing her services, it cannot be said that the work of the petitioner was of a stop gap nature. Once an employee has worked in a department for two decades, it can be safely presumed that there exist the work for the said employee in the Department, which the employee had rendered also.

Further, though w.e.f. 01.01.2006, there was no pension available within the State of Haryana but, an employee, who was already in service as on 01.01.2006, will be entitled for the benefit under the Old Pension Scheme keeping in view the judgment of the Division Bench of this Court in ***Harbans Lal's case (supra)***. In the said judgment, it has been held that even if an employee is working on adhoc basis or a stop gap arrangement, the cut of date and his/her services were regularized after the cut of date, the employee will be governed by the Old Pension Scheme. The relevant paragraph of the said judgment is as under:-

> *" xxx xxx xxx xxx*
>
> 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 causal/daily rated service is also bound to be counted as qualifying service.

11. xxx xxx xxx xxx

12. xxx xxx xxx xxx

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15. xxx xxx xxx xxx

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."

The law cited hereinbefore has already attained finality upto the Hon'ble Supreme Court of India. That being so, even if the services of petitioner have been regularized w.e.f. 01.01.2006, the petitioner will be governed by the settled principle of law settled in ***Harbans Lal's case (supra)***.

Keeping in view the above, the claim of the petitioner for the grant of pensionary benefits under the Old Pension Scheme also deserves to be allowed being meritorious.

Learned counsel for the petitioner argues that as the petitioner retired about five year ago and the petitioner has been deprived of the benefits for which she is entitled for, hence, the petitioner is also entitled for the grant of interest.

Learned counsel for the respondents submits that there was no intentional denial of the benefits but as per the respondents, the petitioner was not found entitled for the benefits under the Rules governing the service hence, the claim of interest may kindly be declined.

The prayer of the petitioner has been allowed on the basis of rules existing which were in operation at the time when the petitioner retired. Law laid down in ***Harbans Lal's case (supra)*** was also available for application upon the petitioner when the petitioner retired. The respondents, did not consider the claim of the petitioner in correct perspective so as to only decline the benefits. Even the judgment of the Full Bench in ***Kesar Chand's case (supra)*** as well as the judgment of the Hon'ble Supreme Court of India in ***Narendera Kumar Tripathi's case (supra)*** were also available with the respondents for their consideration so as to grant the benefit to the petitioner.

Apart from this, a Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

> *"The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."*

Keeping in view the above, the petitioner is also entitled for the grant of interest @ 6% per annum from the date of entitlement after retirement till the actual payment of the same. Let this order be complied with within a period of two months from the receipt of copy of this order.

All the writ petitions are allowed in above terms.

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

November 29, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes