IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(258) **CWP-34409-2019**
Date of Decision : May 17, 2022

Seema Sharma @ Seema Devi .. Petitioner

Versus

Municipal Council, Gurdaspur and another .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Irvanneet Kaur, Advocate, for
Mr. Anil Mehta, Advocate, for the petitioner.

Mr. Jaspreet Singh, Advocate, for respondent No.1.

Ms. Anju Sharma Kaushik, Deputy Advocate General, Punjab, for respondent No.2.

HARSIMRAN SINGH SETHI J. (ORAL)

Reply on behalf of respondents No. 2 has been filed in the Court today and the same is taken on record. Copy of the same has been furnished to the counsel for the petitioner.

Present petition has been filed for setting aside the order dated 11.10.2018 (Annexure P-8) by which, the claim of the petitioner for the grant of pension under the Old Pension Scheme has been declined.

As per the facts mentioned in the petition, the late husband of the petitioner namely Ashok Kumar was initially appointed as Sewadar on 17.11.1992 on daily wage basis and he continued working on the said post till 23.07.1997 when his services were terminated, which action was challenged by Ashok Kumar before the Labour Court vide reference

No.136/1998. The Labour Court answered the said reference in favour of Ashok Kumar vide Award dated 04.12.2002 and reinstated the said Ashok Kumar along with continuity of service. Thereafter, said Ashok Kumar was allowed to join the service and his services were regularized by the respondents on 28.07.2011. He worked with the respondents upto 03.03.2015, when he unfortunately died while on duty. The prayer of the petitioner was to grant the benefit in respect of the service rendered by Ashok Kumar under the Old Pension Scheme, which was denied by the respondents vide impugned order dated 11.10.2018 (Annexure P-8), which order is under challenge in the present petition.

After notice of motion, the respondents have filed the reply wherein, the respondents have stated that as the services of the late husband of the petitioner were regularized in the year 2011 and at which given point of time, the Contributory Provident Fund Scheme was in vogue and therefore, the petitioner cannot claim the benefit of service under the Old Pension Scheme.

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

It is an undisputed fact that the late husband of the petitioner was initially appointed by the respondents on 17.11.1992 and he continued working till 23.07.1997 when his services were terminated and the said order of termination was held to be bad by the Labour Court and he was reinstated in service with continuity service and thereafter, the services of the late husband of the petitioner were regularized on 30.06.2011. That being so, keeping in view the settled principle of law settled by this Court in ***CWP No.2371 of 2010 titled as Harbans Lal Vs. State of Punjab and***

<u>others, decided on 31.08.2010</u>, any employee who was working as on 01.01.2004 when the Contributory Provident Fund Scheme was brought in operation, will be covered by the Old Pension Scheme even if the services of the employee are regularized even after 01.01.2004. 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*
>
> *13. xxx xxx xxx xxx*
>
> *14. xxx xxx xxx xxx*
>
> *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 judgment in ***Harbans Lal's case (supra)*** has already attained finality as far back as 2010 but the benefits are not being released to the employees without any valid justification.

Learned counsel for the respondents has not been able to point out as to how, the case of the petitioner will not be covered by the judgment of ***Harbans Lal's case (supra),*** especially when the late husband of the petitioner was continuously working from the year 1992 till the date of his death.

Keeping in view the above, the prayer of the petitioner is accepted. The petitioner is entitled for the service benefits in respect of the service rendered by her late husband under the Old Pension Scheme.

The question which remain for consideration is whether, the petitioner is entitled for the grant of interest on the delayed release of benefits or not.

It is a conceded position that on the date when the husband of the petitioner died in the year 2015, the law i.e. ***Harbans Lal's case (supra)*** was settled principle of law and attained finality and the petitioner was entitled for the grant of benefit even in the year 2015 but the petitioner has been made to run from pillar to post for the last seven years to secure relief from the respondents that the petitioner is entitled for the service benefits under the Old Pension Scheme. This shows the attitude of the respondents towards the legal heirs of the deceased employee, who died while serving the respondents-State. Delay of 7 years in release of pensionary benefit is attributable upon respondents and respondents have retained these benefits with them and used the said amount to their benefit.

Further, a Coordinate Bench of this Court in of ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*****,** has held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. 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."*

As the respondents conceded themselves that the case of the petitioner is covered under the judgment of ***Harbans Lal's case (supra)*** and the said law was already settled to be applied upon the petitioner's case in the year 2015 when the husband of the petitioner died, the petitioner will also be entitled for interest on the amount which will be calculated by the respondents under this order @ 6% per annum from the date of death of her husband till the release of the same.

The respondents are directed to calculate the benefits admissible to the petitioner under the Old Pension Scheme in respect of the service rendered by late husband of the petitioner along with interest within a period of three months of the receipt of copy of this order and the amount so calculated for which the petitioner become entitled for under this order be released to her within a period of four weeks thereafter.

The present petition is disposed of in above terms.

May 17, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No