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

**(274)** **CM-3503-C-2022 and**
**CM-3504-C-2022 in/and**
**RSA-1095-2022**
**Date of Decision : February 20, 2023**

**The Punjab State Transmission Corp. Ltd. and others**
**.. Appellants**

**Versus**

**Kulwant Kaur and others** **.. Respondents**

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

Present: Mr. Mukesh Berry, Advocate, for the applicants-appellants.

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

**CM-3503-C-2022**

Present application has been filed for condonation of delay of 104 days in filing the appeal.

Keeping in view the facts mentioned in the application, the same is allowed and delay of 104 days in filing the appeal is condoned.

**RSA-1095-2022**

Present appeal has been filed challenging the judgment of the lower Appellate Court dated 05.10.2021 by which, the appeal preferred by the respondents-plaintiffs against the judgment and decree of the trial Court dated 28.01.2016, has been accepted and the respondents-plaintiffs have been held entitled for the benefit of daily wage service which her late husband namely Harchand Singh had rendered while in service.

Certain facts need to be mentioned herein for the correct appreciation of the controversy.

Harchand Singh was serving as a T-mate since 07.03.1979. He was promoted as a Lineman on 18.08.1992. Ultimately, on attaining the age of superannuation on 31.12.2010, Harchand Singh retired. Before the Department could grant him the pensionary benefit, within a period of 7 days of retirement, Harchand Singh unfortunately died on 07.01.2011.

After the death, the pensionary benefits for which Harchand Singh was entitled for, were computed and no benefit of pension and family pension was granted to his legal heirs after his death on the ground that though Harchand Singh was appointed as a T-mate on 07.03.1979 but his services were only regularized on 04.01.2005, on which date, only contributory provident fund scheme was in operation, hence, Harchand Singh was not entitled for the benefits under the Old Pension Scheme.

The non-grant of the pensionary benefits under the Old Pension Scheme was challenged by filing a civil suit, which civil suit was dismissed by the trial Court vide judgment and decree dated 28.01.2016, which judgment was challenged before the lower Appellate Court by the respondents-plaintiffs.

The lower Appellate Court allowed the benefit of pension by also counting the adhoc service rendered by late Harchand Singh and directed that the pensionary benefits be extended to the legal heirs of Harchand Singh in respect of the service rendered by him along with pension to Harchand Singh from 01.01.2011 till 07.01.2011 and thereafter family pension to the claimants along with interest.

The said judgment of the lower Appellate Court is under challenge in the present case.

Though, the claim of the respondents-plaintiffs has been allowed by the lower Appellate Court on the ground that the temporary service rendered by an employee needs to be taken into account for computing the pensionary benefits but the actual controversy was whether an employee, whose service were regularized after 01.01.2004 i.e. after coming into the operation of new contributory provident fund scheme, are entitled to the grant of pensionary benefits under the Old Pension Scheme or not. The said principle of law is no longer res integra 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,*** which judgment has already attained finality upto the Hon'ble Supreme Court of India.

As per the judgment in ***Harbans Lal's case (supra)***, an employee who was already working with the Department on 01.01.2004 and whose services might have been regularized after 01.01.2004, but he will be entitled for the pensionary benefits under 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*

*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."*

In the present case, as per the evidence, which has come on record, Harchand Singh was working with the Department since 1979 though, his services were regularised by the Department on 04.01.2005. Once, on 01.01.2004 Harchand Singh was in service, he is entitled for the benefit of the judgment in **Harbans Lal's case (supra)** to be considered under the Old Pension Scheme for the grant of pensionary benefits and that too by taking into account the daily wage service which he had rendered from 1979 till 2005.

Learned counsel for the appellants has not been able to dispute the settled principle of law in ***Harbans Lal's case (supra)***.

That being so, allowing of the benefit to the respondents-plaintiffs of pension under the Old Pension Scheme in respect of the service rendered by late Harchand Singh cannot be faulted with though, the reasons being given by the lower Appellate Court and the reasons being given by this Court are different.

Keeping in view the above, no ground is made out to interfere with the judgment of the lower Appellate Court. Respondents-plaintiffs are entitled for the benefit of pension/family pension under the Old Pension Scheme in respect of the service rendered by Harchand Singh from the date he retired till the actual disbursement along with interest as granted by the lower Appellate Court.

Accordingly, the present Regular Second Appeal is dismissed.

**CM-3504-C-2022**

As the main appeal has been dismissed, present application also stands dismissed.

**February 20, 2023** **(HARSIMRAN SINGH SETHI)**
*harsha* **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No