

LPA-666-2022 (O&M) and connected matters

6.

LPA-494 of 2023 (O&M)

Commissioner, Municipal Corporation, Amritsar

...Appellant

Vs.

Aman Jaswal and others

...Respondents
7.

LPA-499 of 2023 (O&M)

Commissioner, Municipal Corporation, Amritsar

...Appellant

Vs.

Hitesh Batra and others

...Respondents
8.

LPA-502 of 2023 (O&M)

Commissioner, Municipal Corporation, Amritsar

...Appellant

Vs.

Dheera and others

...Respondents
9.

LPA-504 of 2023 (O&M)

Commissioner, Municipal Corporation, Amritsar

...Appellant

Vs.

Narinder Sharma and others

...Respondents
10.

LPA-506 of 2023 (O&M)

Commissioner, Municipal Corporation, Amritsar

...Appellant

Vs.

Palwinder Singh and others

...Respondents
11.

LPA-509 of 2023 (O&M)

Commissioner, Municipal Corporation, Amritsar

...Appellant

Vs.

LPA-666-2022 (O&M) and connected matters

Heera Singh and others	...Respondents
12. Commissioner, Municipal Corporation, Amritsar	LPA-510 of 2023 (O&M)
	...Appellant
Vs.	
Keshav and others	...Respondents
13. Commissioner, Municipal Corporation, Amritsar	LPA-524 of 2023 (O&M)
	...Appellant
Vs.	
Sukhwinder Singh and others	...Respondents
14. Municipal Corporation, Amritsar	LPA-532 of 2023 (O&M)
	...Appellant
Vs.	
Joginderpal Singh and others	...Respondents
15. Municipal Corporation, Amritsar	LPA-536 of 2023 (O&M)
	...Appellant
Vs.	
Ravinderjit Singh and others	...Respondents
16. Commissioner, Municipal Corporation, Pathankot	LPA-538 of 2023 (O&M)
	...Appellant
Vs.	
Tarlok Chand and others	...Respondents
17. Commissioner, Municipal Corporation, Pathankot	LPA-555 of 2023 (O&M)
	...Appellant

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- Vs.

Run Bhushan and others

...Respondents

18. LPA-556 of 2023 (O&M)

Commissioner, Municipal Corporation, Amritsar

...Appellant

Vs.

Amar Pal and others

...Respondents

19. LPA-758 of 2023 (O&M)

Municipal Corporation, Pathankot through its Commissioner

...Appellant

Vs.

Rano Devi and others

...Respondents

20. LPA-876 of 2023 (O&M)

MC, Fatehgarh Churian

...Appellant

Vs.

Baldev Singh and others

...Respondents

21. LPA-902 of 2023 (O&M)

Nagar Council, Fazilka

...Appellant

Vs.

Sukhdial Chand and others

...Respondents

22. LPA-1150 of 2023 (O&M)

Municipal Corporation, Jalandhar

...Appellant

Vs.

Deepak Jairath and others

...Respondents

23. LPA-1151 of 2023 (O&M)

LPA-666-2022 (O&M) and connected matters

Municipal Committee, Doraha
Vs. ...Appellant

Sukhminder Singh and others
...Respondents

24. LPA-1189 of 2023 (O&M)

Nagar Council, Sunam
Vs. ...Appellant

Major Singh and others
...Respondent

25. LPA-1200 of 2023 (O&M)

Nagar Panchayat/Municipal Committee, Khamanon
Vs. ...Appellant

Harbinder Singh and others
...Respondents

26. LPA-1301 of 2023 (O&M)

The Nagar Council, Sahnewal
Vs. ...Appellant

Balbir Singh and others
...Respondents

27. LPA-668 of 2023 (O&M)

Nagar Panchayat, Sardulgarh
Vs. ...Appellant

Raj Kumar and others
...Respondents

28. LPA-669 of 2023 (O&M)

Nagar Panchayat, Sardulgarh, Mansa
Vs. ...Appellant

for the appellants (in LPAs-666 & 667 of 2022 and 1151, 1301, 1317, 1314 of 2023).

Mr. Ajay Jain, Advocate,
for the appellant (in LPA Nos.1200 and 1189 of 2023).

Mr. SS Chatrath, Advocate,
for the appellant (in LPA No.1557 of 2023).

Mr. DV Sharma, Sr. Advocate,
with Ms. Sunder Kumari, Advocate,
for the appellant (in LPA No.862 of 2023).

Mr. Vikas Singh, Advocate,
and Ms. Anamika Sheoran, Advocate,
for the appellants (in LPA No.818 of 2022).

Mr. Surinder Singh Duhan, Advocate,
for the appellant (in LPA No.1150 of 2023).

Ms. Roja Agnihotri, Advocate,
for the appellant(s) (in LPA-876-2023).

Mr. T.V.S. Lehal, Advocate,
for the appellant(s) (in LPA-902-2023).

Mr. Amarjit Singh, Advocate,
for the appellant (in LPA-1628-2023).

Mr. Sanjeev Soni, Advocate,
and Mr. Sarthak Soni, Advocate,
for the appellant(s) (in LPAs-469, 483, 494, 499, 502, 504, 506, 509, 510, 524, 532, 536, 538, 555, 556 & 758-2023).

Ms. Deepika Chaudhary, Advocate,
for Mr. Anil Mehta, Advocate,
for respondent No.1 (in LPA-818-2022).

Mr. Gagneshwar Walia, Advocate,
and Mr. Fateh Singh Dhillon, Advocate,
for the respondents (in LPA Nos.666 & 667 of 2022 and 483, 506, 532, 536, 902 of 2023).

Mr. Paras Jain, Advocate,
for respondent No.1 (in LPA-555-2023).

Mr. Puneet Sharma, Advocate,
for respondent Nos.1 to 25 (in LPA-524-2023).

Ms. Alka Chatrath, Advocate,

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and Ms. Divya Sharma, Advocate,
for the respondent(s) (in LPA-876-2023).

Ms. Narender Kaur, Advocate,
for respondent (in LPA No.671 of 2023).

Mr. Sanjeev Kumar Arora, Advocate,
for respondent No.1 (in LPA No.668 and 1189 of 2023).

Mr. RK Arora, Advocate,
and Mr. Jugam Arora, Advocate,
for respondent No.1 (in LPA-862-2023).

Mr. KL Arora, Advocate ,
for the respondents (in LPA No.1200 of 2023)
and for respondent Nos.1 to 6 (in LPA No.1151 of 2023).

Mr. Rajeev D. Sharma, Advocate,
for respondent No.1 (in LPA No.758 of 2023).

Ms. Ameena Upmanyu, Advocate,
for respondent Nos.1 to 47 (in LPA No.1150 of 2023).

Mr. Jasbir Singh Mohri, Advocate,
for respondent No.1 (in LPA-494-2023, 499-2023, 502-2023 &
509-2023).

Mr. Rohit Bansal, Sr. Deputy Advocate General, Punjab.

Ritu Bahri, Acting Chief Justice

CM-1547-LPA-2022

1. For the reasons mentioned in the application, same is allowed
and delay of 40 days in refiling of the appeal is condoned.

LPA-666-2022 (O&M) and connected appeals

2. This judgment shall dispose of LPA-666-2022 and connected
appeals, which are detailed in the heading, together as common questions of
law and facts are involved in all the appeals. For reference, facts are being
taken from LPA-666-2022.

3. The instant appeal (LPA-666-2022), under clause 15 of the Letters Patent Act, is against the order/judgment dated 26.04.2022 passed by the learned Single Judge of this Court, whereby two petitions (CWP-13095-2020 and 23438-2021) filed by petitioners have been allowed and the order dated 14.10.2021, whereby claim of the petitioners for grant of pensionary benefits under the Old Pension Scheme was declined by the appellants, has been set aside. Consequently, the respondents (appellants herein) have been directed to re-calculate the pensionary benefits of the petitioners under the Old Pension Scheme.

4. Brief facts of the case are that the Petitioner-respondent No.1 initially joined as Octroi Clerk on 26.06.1995 in Municipal Council, Qadian on contract basis and continued to work on the said post till 30.07.1997 when his services were terminated. As per award dated 04.03.2004 passed in Reference No.249 of 1999 the order of termination was set aside and the petitioner-respondent No.1 was reinstated with continuity of service and 50% back wages. The said award passed by the Labour Court has attained finality up to Hon'ble the Supreme Court. Thereafter, petitioner-respondent No.1 was allowed to join his duty vide order dated 08.06.2006 (Annexure P-1).

5. On 01.11.2011, a resolution No.119 (Annexure P-2) regarding approval of regularization of services of the petitioner along with other similarly situated employees was passed by the Municipal Council. Pursuant to the said resolution, appointment letter dated 23.12.2011 (Annexure P-3) was issued, in which, it was mentioned that the petitioner-respondent No.1 was appointed as a Clerk in the pay scale of 5910-20200+1900. It was further mentioned that the New Pensionary Rules would be applied in his

case. Ultimately, the petitioner retired/superannuated on 31.03.2020. After retirement, the petitioner was granted the pensionary benefits under the CPF Scheme i.e. New Defined Contributory Pension Scheme, which had come into effect w.e.f. 01.01.2004. The petitioner-respondent No.1 is claiming the retiral benefit under the the Old Pension Scheme.

6. The learned Single Judge, after going through the contents of the writ petition(s), came to a conclusion that the petitioner was in service for the last more than 10 years and keeping in view this fact, proposal for regularization of his services was approved by the Government. As per resolution dated 01.11.2011, the appointment letter 23.12.2011 (Annexure P-3) was issued. The resolution dated 01.11.2011 (Annexure P-2) was regarding regularization of the service of the petitioner, who was in service since 1995 and was deemed to continue uninterruptedly.

7. In this backdrop, reference has been made to the judgments passed in **Harbans Lal vs. State of Punjab and others**, CWP-2371-2010 (decided on 31.08.2010) and **Sultan Ram and others vs. State of Punjab and others**, CWP-13458-2012, whereby it was held that the petitioners are entitled to get the benefit of past services rendered by them on daily wages or contract basis and they would be governed by the Old Pension Scheme.

8. Learned counsel for the appellant(s) has argued that although, the services of petitioner-respondent No.1 were regularized by way of resolution dated 01.11.2011, yet on the date when the services were regularized, the New Defined Contributory Pension Scheme had come into effect from 01.01.2004. Even if, the petitioner was working for the last 10 years, he cannot be given the benefit of Old Pension Scheme, as the same

had come to an end on 01.01.2004. He has referred to the judgment passed in **State of Haryana and others vs. Nathu Singh**, 2018 (3) SCT 596. In that case, a specific conditions were laid down in the appointment letter regarding appointment being afresh, at the beginning of scale and the employee was to be placed at the bottom of seniority with no benefit of past service. It was held that the employee could not be permitted to turn around and claim his past service to be counted for the purpose of pensionary benefits. Further, reference has been made to the judgment passed by Hon'ble the Supreme Court in **The State of Gujarat vs. PWD and Forest Employees Union & others**, 2019 (2) SCT 146, wherein, after regularization, benefit of GPF was denied to the employees on the ground that w.e.f. 01.04.2005, CPF Scheme had been introduced. Earlier pension scheme continued to annued to benefit of those who entered in service before 01.04.2005. It was held that the benefit of GPF was to be given to those daily wagers, who became entitled to get status of regular employees before 01.04.2005.

9. Learned counsel for the appellants states that in the facts of the present case, as per resolution dated 01.11.2011 (Annexure P-2), the petitioner-respondent No.1 was regularized w.e.f. 2011 and the Old Pension Scheme had come to an end on 01.01.2004 i.e. much before the date when his services were regularized. On the date of regularization of the services of petitioner-respondent No.1, the Old Pension Scheme was not being implemented and the benefit of this scheme cannot be given to the employees, who were regularized in the year 2011. Learned counsel for the appellants has referred to another judgment passed by Hon'ble the Supreme Court in **Union of India and others vs. Ilmo Devi and another**, 2022 (1)

Apex Court Judgments (SC) 751 on the proposition that part time employees, who are working for four to five hours a day, cannot claim parity with other Group 'D' employees with respect to minimum basic pay. In that case, the High Court had granted minimum basic pay of Group 'D' posts to the part time daily wagers. On appeal, Hon'ble the Supreme Court set aside the said directions given by the High Court.

10. Heard, learned counsel for the parties.

11. First of all, a perusal of resolution dated 01.11.2011 (Annexure P-2) shows that the Director, Local Government, Punjab, had taken a decision that services of employees working in various Municipal Councils, who had rendered more than 10 years of service on contract basis, would be regularized. In Nagar Council, Qadian, two clerks/4 Safai Sewaks were working on contract basis for the last 10 years and their case for regularization was presented for approval. As per letter dated 23.12.2011 (Annexure P-3), Mushtaq Masih-petitioner (respondent No.1) was given appointment on the post of Clerk in the regular pay scale of 5910-20200+1900. He was to be on probation for a period of two years. His services were to be governed under the New Pension Rules. Prior to his appointment on regular basis, his last 10 years' service had been taken into account and made basis for giving regular appointment.

12. This very issue had come up for consideration in **Harbans Lal's** case (supra), wherein this Court had made reference to Rule 3.17A of Punjab Civil Services Rules, Vol. II, which reads as under:-

“3.17A (I) subject to all the provisions 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 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 been 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 performed 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.”

13. As per the above rules, after 01.01.1973, half of the service paid from contingencies was also to be allowed to count towards pension at the time of absorption in regular employment, but in any case casual or daily rated service, amongst others cannot be counted towards qualifying service for pension. In that case, reference was made to a Full Bench judgment passed in Kesar Chand vs. State of Punjab, 1998 (2) PLR 223, wherein it

liable to be counted as qualifying service for the purpose of pension. In **Harbans Lal's** case (supra), further reference was made to the judgment passed in **Smt. Ramesh Tuli vs. State of Punjab and others**, 2007 (3) SCT, 791, wherein a Division Bench of this Court had examined the proposition, as to what would be the qualifying service for pension as per Clause 6 (6) of the 1992 Pension Scheme, applicable to the Punjab Privately Management Recognized Schools Employees. It was held that the entire service would be counted as qualifying service for the purpose of pension. However, the Contributory Provident Fund was required to be adjusted and deducted from the arrears of pension. It was further held that the petitioners' initial date of appointment, after regularization, would be the date on which employee took charge of the post. Once the entire service of a daily wager was to be counted as qualifying service, then his date of appointment would relegate back to his initial date of appointment i.e. 1988 and he could not be ousted from pension scheme by applying the date of regularization i.e. 28.03.2005, which was evidently after the new scheme or new restructured defined Contribution Pension Scheme. Reference was made to another judgment passed by Division Bench of this Court in **Hans Raj vs. State of Punjab and others**, 2005 (3) RSJ 262. In that case, the Division Bench had examined the Punjab Municipal Employees Pension and General Provident Fund Rules, 1994. The State of Punjab, vide instructions dated 08.01.1999, had provided that since the Pension Rules had been made applicable in lieu of CPF, the period to be considered as qualifying for pension had to be restricted to the period for which the employee was contributing to his CPF. Those instructions were held contrary to the Pension Rules and the petitioner was held entitled

to count his entire service as qualifying service for the purpose of pension. The condition that qualifying service would commence from the date of contribution to the CPF, had been rejected by the Division Bench. Finally, the Division Bench, while referring to the case of **Hans Raj** (supra), held that the New Defined Contributory Pension Scheme came into effect w.e.f. 01.01.2004. However, since the petitioner was working from 1988, he would be deemed to be in service prior to 01.01.2004. He would be continued to be governed by the GPF Scheme and was entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Government Services prior to 01.01.2004. The clarification/instructions dated 30.05.2008 could not deny the benefit of past service to the employees.

14. The ratio of the judgment passed in **Harbans Lal's** case (supra) is applicable to the facts of the present case, as the New Defined Contributory Pension Scheme came into effect w.e.f. 01.01.2004. Rule 3.17A of Punjab Civil Services Rules, Vol. II, which deals with counting of past service towards pension has been elaborately examined in the said judgment. This rule has also been interpreted in **Kesar Chand's** case (supra), wherein it has been held that the work charged service rendered before regularization, is liable to be counted as qualifying service for the purpose of pension. The decision given in **Harbans Lal's** case (supra) was, thereafter, followed in **Sultan Ram and others vs. State of Punjab and others**, CWP-13458-2012 (decided on 17.01.2013), which was later on, clarified vide order dated 31.01.2013 passed in CM-1606-2013 to the effect that Old GPF Scheme will be applicable to all those employees, who were the employees

prior to 2004, but had been regularized thereafter. The said judgment has attained finality upto Hon'ble the Supreme Court.

15. On the other hand, judgment referred to by learned counsel for the appellants in **The State of Gujarat vs. PWD and Forest Employees Union & Others**, 2019 (2) SCT 146, is not applicable to the facts of the present case, as in that case, the Government had passed a resolution dated 17.10.1988, whereby certain benefits were to be given to the daily wage workers, who had been working for number of years. Another resolution dated 24.03.2006 was also passed in respect to Road and Building Department for determining pensionable service in cases of daily wagers having attained permanency on account of application of GR dated 17.10.1988. Hon'ble the Supreme Court held that the benefit of GPF Scheme was to be granted to the employees, who had been regularized prior to 01.04.2005. 01.04.2005 would be the cut off date. All those persons, who would be entitled to regularization/permanent status prior to April 01, 2005 would be given the benefit of GPF. In that case, Hon'ble the Supreme Court was not examining Rule 3.17A of Punjab Civil Services Rules, Vol. II, wherein it has been categorically stated that half of the service rendered from contingencies will be allowed to count towards pension. Therefore, the judgment referred to by learned counsel for the appellants in the case of **PWD and Forest Employees Union & Others** (supra) will not be of any use for the appellants. Further, the judgments passed in **Nathu Singh** and **Ilmo Devi's** cases (supra), which have been referred to by learned counsel for the appellants, are also not applicable to the facts of the present case. In the present case, the benefit has been granted to the petitioner-respondent No.1

in view of the judgment passed in **Harbans Lal's** case (supra), wherein Rule 3.17A of Punjab Civil Services Rules, Vol. II has been elaborately examined by the Division Bench of this Court.

16. Thus, after going through the contents of appeals as well as the impugned judgment(s), this Court is of the view that the benefit of Old Pension Scheme has rightly been granted to the petitioner(s). Hence, no ground is made out to interfere in the well reasoned judgment(s) passed by the learned Single Judge.

17. Resultantly, finding no merits, all the aforesaid appeal(s) stand dismissed. Since, the main appeal(s) have been dismissed, all the pending misc. applications stand disposed of.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

21.12.2023

ajp

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No