

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

**CWP No.12345 of 2019 (O&M)
Date of decision : 01.02.2023**

Om Parkash

..... Petitioner

versus

State of Punjab & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Ms. Kavita Arora, Advocate for
Mr. S.C.Pathela , Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Petitioner is aggrieved of the order dated 14.02.2019 (Annexure P-17) passed by respondent No.2 whereby period for which the petitioner served with Fish Farmers Development Agency, Jalandhar for the period from 13.05.1985 to 01.06.1998 ordered to have been wrongly counted for the purpose of his terminal benefits.

Petitioner is stated to have been appointed as Junior Engineer in the pay scale of Rs.700-1200 + usual allowances as admissible to the Punjab Government employees after his name was sponsored by Employment Exchange. He was posted in Fish Farmers Development Agency, Jalandhar on a post sanctioned by State Government. The services of the petitioner were recommended to be regularized by the agency in its meeting dated 30.12.1986 and the petitioner was made regular employee w.e.f. 13.05.1985. Petitioner and other employees of the agency were later on absorbed in the Department of

23.12.1996 (Annexure P-7) and they were ordered to be appointed as such on 27.05.1998. Vide Annexure P-11 dated 15.12.1998 petitioner was granted benefit of having served agency from 13.05.1985 to 31.05.1998. The pay of the petitioner was accordingly fixed. The petitioner retired on 30.04.2013. Admittedly his pension was fixed considering his service period from 13.05.1985 to 30.04.2013 i.e. by considering the period of service with the agency as well. However, on 14.02.2019 vide Annexure P-17 the whole of the service period of the petitioner was given a fresh churn that too to his peril. It has been ordered that the services rendered by the petitioner with the agency from 13.05.1985 to 30.04.2013 ought not have been considered while granting him terminal benefits. It is in these circumstances that the petitioner approached this Court.

Learned counsel for the petitioner has *inter-alia* relied upon Annexure P-18 passed in ***Tarsem Lal Vs. State of Punjab & another*** bearing CWP No.25640 of 2016 decided on 26.10.2017 whereby similarly situated employee was granted relief by this Court holding as under :-

“The uncontroverted factual position is that the petitioner was appointed on daily wage basis as a peon on 03.10.1994 under the Fish Farmers Development Agency, Department of Fisheries, State of Punjab. His services were regularized w.e.f. 30.03.2007.

A New Pension Scheme was initiated by the Punjab Government w.e.f. 01.01.2004 and in terms of which the benefit of General Provident Fund was to be given to such employees, who were recruited in Punjab Government service w.e.f. 01.01.2004 or subsequently and no pension which was applicable to such employees, who were recruited in service after 01.01.2004.

*The issue came to be decided before a Division Bench of this Court in ***Harbans Lal Vs. State of Punjab & others (CWP No.2371 of 2010)*** decided on 31.08.2010 (Annexure P-3) with regard to counting of daily wage service towards qualifying service for pensionary benefits and by virtue of doing so, the petitioner therein, be permitted to continue with the GPF Scheme and entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Government service prior to 01.01.2004. Such claim was*

allowed in **Harbans Lal's case (supra)**.

The instant petition raises a prayer for issuance of a writ of mandamus to direct the respondents to give the benefit of Old Pension Scheme which was applicable to the employees recruited prior to 01.01.2004 and accordingly, the GPF number be allotted to them. In other words, the petitioner seeks counting of his daily wage service prior to regularization and thereby to be treated as recruited prior to 01.01.2004.

*In the considered view of this Court, the claim raised in the instant petition is squarely covered by the Division Bench judgment in **Harbans Lal's case (supra)**.*

Writ petition is allowed in terms of judgment dated 31.08.2010 passed in CWP No.2371 of 2010 (Annexure P-3)."

Apart from that learned counsel for the petitioner has relied upon **Mani Ram Vs. State of Haryana (1995) 3 SCT 49** to submit that once the service of the petitioner rendered with the agency was counted for fixing his pay and granting increments the petitioner ought not have been denied the said period for terminal benefits.

Per contra, learned State counsel has relied upon a Division Bench judgment of this Court rendered in **Chaman Lal Vs. State of Punjab, CWP No.1501 of 2001** decided on 03.02.2003 wherein this Court held that Fish Farmers Development Agency, **Amritsar** being a society and an autonomous body the employee cannot be treated as employee of State and further **Civil Appeal No.2272 of 2011, titled as Chaman Lal Vs. State of Punjab & ors.** decided on 16.05.2014 wherein the Apex Court held that the Fish Farmers Development Agency was neither a Government Agency nor the department and thus the employees thereof cannot claim parity with the employees of the State.

I have heard learned counsel for the parties and have gone through the records of the case.

In the considered opinion of this Court law laid down by the Apex Court in ***Chaman Lal Vs. State of Punjab & ors., passed in Civil Appeal No.2272 of 2011*** does not have any bearing on the issue involved in the present case especially in the background of the fact that the State in its own wisdom opted to absorb the employees of the agency vide Annexure P-7 and further had decided to grant benefit of service rendered with the agency for purpose of pay and annual increments.

In view of the aforesaid fact it would be too late for the State to submit that the service tenure though having been counted for the purpose of pay will not be counted for granting terminal benefits. The issue has been well dealt by the Division Bench in ***Mani Ram's case supra*** wherein Division Bench held as under :-

“8. In our view, the stand taken by the respondent - State is not sustainable. Once, the petitioner had been granted the benefit of earlier service rendered by him in the Animal Husbandry Department, towards his pay, he cannot be denied the benefit of the same towards pension and retiral benefits especially when the petitioner was an employee of the State of Haryana as both the departments were of the same Government. No rule or precedent has been produced before the petitioner was not entitled to the benefit of the service rendered by him in the earlier department. Under the circumstances, the period of service rendered by the petitioner in the Animal Husbandry Department has to be counted towards his pensionary benefits especially when the continuity of service was given to the petitioner towards pay and increments. Once this period of two years 9 months is counted towards service, then the petitioner would complete more than 20 years of service in the State of Haryana and even if the non-qualifying service of 6 months and 5 days is deducted from the qualifying service, his total service rendered would come to more than 20 years.”

In view of the aforesaid facts and the settled proposition of law order dated 14.02.2019 (Annexure P-17) cannot be sustained.

Consequently, the present writ petition is allowed. Impugned order dated 14.02.2019 (Annexure P-17) is ordered to be quashed. Petitioner is held entitled to get period of his service with Fish Farmers Development Agency counted towards his terminal benefits.

(PANKAJ JAIN)
JUDGE

01.02.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No