

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102)

CM Nos.8057-CWP to 8059-CWP in/and
RA-CW No.165 of 2023 (O&M) in
CWP No.13067 of 2021
Date of Decision : 09.08.2023

Ramesh Chander

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.D. Sharma, Deputy Advocate General, Haryana
for the review applicants-respondents.

Harsimran Singh Sethi J. (Oral)

The present review petition has been filed for review of the order dated 26.05.2022 by which, the writ petition was disposed of in terms of the Division Bench judgment in CWP No.2371 of 2010 decided on 31.08.2010 titled as **Harbans Lal Vs. State of Punjab and others**, which judgment of the Division Bench already attained finality upto the Hon'ble Supreme Court of India.

The grievance which was raised by the petitioner in the writ petition was that the petitioner was appointed on daily wage basis with the respondent-department on 08.09.2004 and his services were regularized by the department on 19.09.2013 and he continued working upto 31.07.2020, on which date he got retired on attaining the age of superannuation hence, the Old Pension Rules will be applicable upon him keeping in view the judgment of the Division Bench in **Harbans Lal's case(supra)** and not the Contributory Provident Fund scheme which came into operation w.e.f. 01.01.2006.

On 26.05.2022, the said petition was disposed of in terms of **Harbans Lal's case (supra)** as learned counsel appearing for the respective parties agreed to the fact that the present petition is covered by the judgment in **Harbans Lal's case(supra)**.

Now, the present review application has been filed for recalling the said order dated 26.05.2022 on the ground that the claim of the petitioner is not covered by **Harbans Lal's case(supra)**.

On 12.05.2023, the following order was passed:

“Learned counsel for the applicant-State seeks some time to file an affidavit of Secretary Finance that up to the date of filing the present review petition as to whether or not any benefit has been granted to any employee on the basis of the judgment of this Court in CWP-2371-2010 titled as Harbans Lal Vs. State of Punjab and others decided on 31.08.2010 either on their own or upon any order passed by the competent Court of Law, if yes, give the details of the cases. Let the said affidavit be filed positively by the next date of hearing.
Adjourned to 30.05.2023.”

Thereafter, on 30.05.2023, the State counsel sought some more time to file appropriate affidavit. On the last date of hearing, the following order was passed:

“Last opportunity is granted to the applicant-State to comply with the order dated 12.05.2023.

Adjourned to 09.08.2023.

It is made clear that in case the order dated 12.05.2023 is not complied with by the adjourned date, respondent No.1 shall remain present in the Court.”

Despite getting three adjournments, no affidavit has come on record so far in terms of the order dated 12.05.2023.

Learned counsel for the review petitioner argues that the statement was wrongly given by learned counsel for the State that the writ petition is covered by the judgment in **Harbans Lal's case(supra)**, hence, the order dated 26.05.2022 needs to be reviewed.

Learned counsel for the petitioner submits that in the present case, the contributory fund was not deposited by the petitioner for the service rendered, prior to the regularization of the services of the petitioner and, hence the benefit of judgment in **Harbans Lal's case(supra)** could not be given to the petitioner.

On being asked to provide the data as to whether or not, an employee who is working on daily wage basis, his Contributory Provident Fund is to be deducted, learned State counsel conceded the fact that no such contribution is deducted. That being so merely that the contribution was not deducted for the period when the petitioner was working on daily wage basis, the same cannot be a ground to deny the benefit of the judgment in **Harbans Lal's case(supra)** especially when as per the judgment in **Harbans Lal(supra)**, it has been held that where an employee, who has been working on daily wage basis prior to the date when the New Pension Scheme was notified, he/she will be entitled for the benefit under the Old Pension Scheme even if the said employee has been

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JYOTI
2023.08.09 19:11
I attest to the accuracy and
integrity of this
order/judgmentt

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."

A bare perusal of the above reproduction of the judgment in Harbans Lal(supra) would show that the reason given for the grant of the benefit by the Division Bench is that the daily wage service rendered by an employee is to be treated as a qualifying service for pensionary benefits as per the Rules governing the service. Even if, the provident fund is not deducted during the period when the employee is discharging daily wage service, the same will be of no consequence so as to deny the benefits of the said service for computing the pensionary benefits. Once the period of qualifying service of an employee starts from a date prior to 01.01.2006, the employee concerned is to be considered under Old Pension Scheme even if the services of the said employee were regularized by the State after 01.01.2006.

Keeping in view the above settled principle of law, the claim of the petitioner is squarely covered by the judgment in **Harbans Lal's case (supra)** as the petitioner was in service prior to 01.01.2006 though, his services were regularized in September, 2013.

Keeping in view the above, no ground is made out for review of the order dated 26.05.2022. The review petition is accordingly dismissed.

August 09, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No