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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.22972 of 2011

Santosh Devi

….Petitioner

Versus

State of Haryana and Ors

….Respondents

And

2. CWP No.30410 of 2018

Subhash Chander and Anr

….Petitioner

Versus

State of Haryana and Ors

….Respondents

Date of decision : 28.08.2023

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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Present :- Dr. Surya Parkash, Advocate with
Mr. Jaskirat Singh, Advocate,
Mr. Vikram Amarnath Garg, Advocate,
Ms. Sukhvir Kaur Gill, Advocate and
for the petitioner in CWP No.22972 of 2011.

Mr. S.K Malik, Advocate for the petitioner in
CWP No.30410 of 2018.

Mr. Pankaj Midha, Addl. A.G. Haryana.

Mr. Ashwani Talwar, Advocate
for respondent No.6.

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HARSIMRAN SINGH SETHI, J. (ORAL)

This common order shall dispose of aforesaid two writ petitions involving identical questions of law.

The present petition has been filed raising several claims including the regularization of services of the petitioner with effect from the date, respondent No.6 was granted the said relief and that the petitioner be treated under the Old Pension Scheme for grant of pensionary benefits keeping in view the facts and circumstances of the present case which are covered by the judgment of the Division Bench of this Court in **CWP No.2371 of 2010, titled as Harbans Lal Vs. State of Punjab and Ors, decided on 31.08.2010.**

Certain facts giving rise to the issue are that the petitioner is a widow of an Ex-serviceman. The husband of the petitioner joined Indian Army on 27.07.1976. While serving Indian Army, the husband of the petitioner suffered severe injuries on 31.08.1989 and ultimately, he died on 15.03.1992. The petitioner applied for a job and she was appointed on the post of Kahar/Waterman on part time basis on 07.03.1995 with the respondent-Education Department. The petitioner continued working as such till 18.03.2006, when her services were regularized by the respondents. Ultimately, on attaining the age of superannuation, the petitioner retired from service on 31.05.2021.

After the retirement, no benefit of the service which the petitioner had rendered prior to her regularization of services including the pensionary benefits were extended on the ground that as the services of the petitioner have been regularized on 18.03.2006 and as the Old Pension Scheme had already been abolished w.e.f 01.01.2006, hence, the petitioner will only be entitled for the benefit under the New Contributory Provident Funds Scheme which is applicable w.e.f 01.01.2006. The said act of the respondents is under challenge in the present petition.

Learned counsel appearing on behalf of the petitioner argues that once the petitioner is continuing in service of the respondents starting from the year 1995 and her services had already been regularized on 18.03.2006, keeping in view settled principle of law settled by the Division Bench of this Court in **CWP No.2371 of 2010 decided on 31.08.2010 titled as Harbans Lal Vs. State of Punjab**, an employee who is already in service when the New Contributory

Provident Funds Scheme was brought in force i.e 01.01.2006 the said employee will be considered under the Old Pension Scheme even if, the services of the said employee have been regularized after promulgation of the New Contributory Provident Fund Scheme, hence, the respondents are under obligation to grant the petitioner the benefit under the Old Pension Scheme by allotting GPF Number and extending the consequential benefits.

Learned counsel for the respondents submits that the petitioner was a part time employee, hence his part time service cannot be taken into account as qualifying service, as services of the petitioner were regularized on 18.03.2006 when the New Contributory Pension Scheme was applicable and the benefit under New Contributory Provident Fund Scheme has already been given to the petitioner.

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

It is conceded position that the petitioner was working with the respondents since 07.03.1995. Though, the petitioner was working on part time basis but keeping in view the fact that petitioner had worked for a period of more than one decade before her services were regularized on 18.03.2006, it cannot be said that the services of the petitioner were on part time basis.

The issue that once an employee has rendered services for more than a decade on part time basis, the said service cannot be treated as a part time as per the decision of this Court in **CWP No.10238 of 2017 titled 'Jiwan Lata Vs. State of Punjab' decided on 10.05.2019** wherein it has already been held that the continued service by an employee for more than one decade, even on part time basis is not to be treated as stop gap arrangement and the said service is to be treated as a valid qualifying service for pensionary benefit hence, the service which the petitioner has rendered from 07.03.1995 till 18.03.2006 cannot be ignored by terming the same as a stop gap arrangement but it is to be treated as valid qualifying service for computing the Pensionary benefits.

The second question which arise for determination in the present petition is that once the services of the petitioner are continuing since 07.03.1995 and her services have been regularized by the respondents on 18.03.2006, the day when the New Pension Scheme was brought in force on 01.01.2006, the petitioner was very much in service, hence as per the judgment of the Division Bench in **Harbans Lal's case (supra), the case of the petitioner** will be covered to be treated under Old Pension Scheme. A bare perusal of the judgment of the Division Bench in **Harbans Singh's case (supra)**, the relevant paragraph of which is being reproduced hereinafter would show that in case an employee was already in service on the day when the New Contributory Pension Scheme was enforced, he/she is to be treated under the Old Pension Scheme even his/her services were regularized after 01.01.2006. Relevant para of the same is as under:-

> *"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 wef 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*
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> *In view of the above, the writ petition is allowed. Accordingly respondents are directed to treat the whole pe riod 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."*

Learned counsel appearing on behalf of the respondents have not been able to dispute the fact that as on 01.01.2006 when New Contributory Provident Funds Scheme was enforced, the petitioner was very much in service and her services were regularized within a period of two months of the promulgation of the New Pension Scheme. Nothing has come on record in differentiating the facts between the one pleaded in the case of petitioner and the facts raised in *Harbans Lal's case (supra)* so as to claim that the judgment in *Harbans Lal's case (supra)* is not applicable in the facts and circumstances of the present case.

Keeping in view the above noted settled principles of law, once the petitioner was in service as on 01.01.2006, she will be covered under the Old Pension Scheme which was prevailing prior to 01.01.2006, for the grant of pensionary benefit, even if her services have been regularized on 18.03.2006.

Claim of the petitioner is allowed for grant of pensionary benefit under the Old Pension Scheme and the respondents are directed to compute the pensionary benefit for which the petitioner is entitled for rendering more than 27 years of service with the respondents department under the Old Pension Scheme which was applicable prior to 01.01.2006. It is held that the petitioner will also been held entitled for arrears of the pension along with the further consequential pensionary benefits.

At this stage, learned counsel for the petitioner submits that the petitioner is also entitled for the grant of interest on the arrears for which the petitioner is found entitled for.

The learned counsel for the respondents contest the said claim on the ground that once the entitlement of the petitioner is being decided today, no benefit of arrears should be allowed in favour of the petitioner.

The question as to whether an employee will be entitled for interest on the arrears for which he/she is held entitled for is covered by the judgment of the co-ordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana, 2014 (13) RCR (Civil) 355** wherein it has been 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 this judgment reads 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."*

Keeping in view the ratio of law in **J.S. Cheema's case (supra)**, the petitioner becomes entitled for grant of interest. Petitioner shall be entitled for the payment of interest @ 6% per annum on the arrears of pensionary benefits from the date, the pensionary benefits became due till the actual disbursement of the amount. Respondents are directed to calculate arrears as well interest for which the petitioner became entitled for under the order and release the same within a period of two months from the receipt of certified copy of this order.

Allowed in above terms.

CWP No.30410 of 2018

The only difference between the relief sought in the present writ petition and the one prayed for in CWP No.22972 of 2011 titled Santosh Devi vs. State of Haryana and Ors, is that in the present case, the respondents after filing of the present writ petition have declined the relief qua grant of benefit of pension under the Old Pension Scheme vide order dated 29.04.2019 (R.1).

As the said order has been passed during the pendency of the present petition, learned counsel for the petitioner submits that keeping in view the settled principle of law, the claim of the petitioner needs to be re-considered by the respondents by passing fresh order as to whether as per the decision of Division Bench judgment of this Court in **CWP No.2371 of 2010, decided on 31.08.2010 titled as Harbans Lal Vs. State of Punjab and Ors.**, the petitioner, who was already in service on 01.01.2006 is entitled for grant of pension under the Old Pension Scheme.

Learned State counsel submits that in view of order passed today in **CWP No.22972 of 2011 titled Santosh Devi vs. State of Haryana and Ors**, the claim of the petitioner will be re-considered as to whether the said claim is covered by **Harbans Lal's case (supra)** as interpreted by this Court and fresh appropriate order will be passed within a period of eight weeks from the receipt of certified copy of this order and in case after passing the order, the petitioner is found entitled for any benefit, the same will be extended to him within a period of further four weeks.

Keeping in view the statement made by learned State counsel, learned counsel for the petitioner submits that the present petition may be disposed of as having been not pressed any further.

Ordered accordingly.

August 28, 2023 **(HARSIMRAN SINGH SETHI)**
manoj **JUDGE**

Whether speaking/reasoned: Yes
Whether Reportable : Yes