

CWP-17014-2020

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

CWP-17014-2020

Date of decision: 19.04.2023

Joginder Singh and others

...Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. S.K.Bhardwaj, Advocate for
Mr. Amit Kumar Jain, Advocate,
for the petitioners.

Mr. Zorawar Singh Chauhan, DAG, Haryana.

Mr. A.P.S.Sekhon, Advocate,
for respondent No.4.

HARNARESH SINGH GILL, J. (ORAL)

Challenge in the present petition is to the action of the respondent-authorities in not granting the arrears of pay w.e.f. 01.04.2011 to the date of actual regularization, to the petitioners, in pursuance of the order dated 20.02.2019 (Annexure P-2), and to grant other benefits, including the opening of GPF accounts.

Learned counsel for the petitioners contends that the petitioners, who are/were Class-IV employees, had completed over 10 years of service and, therefore, their services were regularized w.e.f. 01.04.2011 as per the letter dated 21.05.2012 (Annexure P-1). Learned counsel relies upon the judgment passed in CWP-1048-2016, titled as 'Jai Bhagwan Vs. State of Haryana and others', decided on 01.03.2019

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(Annexure P-3), to contend that the petitioners are entitled to the benefit of Old Pension Scheme and to the regular pay scale w.e.f. 1999.

Learned counsel for the petitioners contends that the aforesaid grounds have already been dealt with by a Division Bench of this Court in CWP-2371-2010, titled as 'Harbans Lal Vs. State of Punjab and others', decided on 31.08.2010, by noticing that in case an employee is appointed prior to the coming of New Pension Scheme, but his services were regularized after coming into force of New Pension Scheme, still he would be governed by the Old Pension Scheme. Learned counsel further contends that the services rendered by the petitioners on part-time basis, may be treated as a qualifying service for the pensionary benefits, and that the benefit of Old Pension Scheme may be granted to the petitioner.

On the other hand, learned State counsel, while rebutting the arguments raised by the learned counsel for the petitioner, submits that Rule 3.17-A (g) (iii) of the Punjab Civil Services Rules Vol.II (as applicable to the State of Haryana), specifically provides that only whole time daily wages service period is to be reckoned for pensionary benefits and that old pension Rules are applicable to the employees, who were in the regular employment prior to 31.12.2005. He further contends that the services of the petitioners were regularized in 2011, i.e. after coming into force of new pension policy.

Learned counsel for respondent No.4 submits that the relief claimed by the petitioners comes under the domain of pension sanctioning authority and no action can be taken by respondent No.4.

I have heard the learned counsel for the parties.

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Indisputably, the petitioners had been appointed on part-time basis. Their services were regularized on the posts of Class-IV in 2011. The petitioners had continuously worked for about two decades on part-time basis. The said service is to be treated as a long term employment for all intents and purposes. Therefore, the same cannot be termed as 'engaged only for contingencies' and it cannot be ignored while computing the pensionary benefits.

A Coordinate Bench while dealing with CWP-626-2015, titled as 'Zile Singh Vs. State of Haryana and others', decided on 17.03.2015, in somewhat similar circumstances, opined that a part-time sweeper will be entitled to count the said service for computing the pensionary benefits. The State of Haryana preferred LPA No.426-2016 against the said judgment and vide order dated 18.03.2016 passed by a Division Bench of this Court, the said LPA had been dismissed.

The Division Bench of this Court in Harbans Lal's case (supra), held 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 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).

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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.

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.”

Needless to mention here that the aforesaid decisions made by the Division Bench, have attained finality upto the Hon'ble Supreme Court.

A Coordinate Bench while dealing with the similar controversy in CWP-1048-2016, titled as 'Jai Bhgwan Vs. State of Haryana and others', decided on 01.03.2019, rejected the objection raised by the State that the petitioner would be governed by the New Contributory Pension Scheme in view of the fact that his services were regularized in the year 2012.

It is also stated by learned counsel for the petitioners that even though the State has preferred LPA No.1892-2019 against the aforesaid judgment dated 01.03.2019, yet no stay has been granted till date.

The consistent view in the aforesaid judgments is that the part-time employment which continued for years together, is to be taken into

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account for the grant of pensionary benefits.

In view of the above, it is held that the petitioners are entitled to get computed the services rendered by them on part-time basis, as a qualifying service for the grant of pensionary benefits.

In view of the above settled position in law, the present writ petition is allowed. The respondents are directed to consider the case of the petitioners under the Old Pension Scheme from the date they had initially joined the Department, at the earliest.

19.04.2023

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No