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

1. **CWP-12994-2018 (O&M)**
Date of decision : 16.02.2023

Harbinder Singh and others

....Petitioners

Versus

State of Punjab and others

...Respondents

2. **CWP-2858-2019**

Sukhjit Singh and others

....Petitioners

Versus

State of Punjab and others

...Respondents

3. **CWP-6012-2019**

Sukhminder Singh and others

....Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. K.L.Arora , Advocate
for the petitioners.

Mr. Rajesh Mehta, Addl. A.G., Punjab.

Mr. G.S. Sidhu, Advocate
for respondent No.3 in CWP-12994-2018.

Mr. G.S. Attariwala, Sr. Advocate with
Mr. Sawroop Singh, Advocate
for respondent No.3 in CWP-6012-2019.

PANKAJ JAIN, J. (ORAL)

By this common order, the bunch of three writ petitions, details of which have been given in the heading, are being disposed off as all the writ petitions having the same question of law and similar facts.

2. The petitioners in these writ petitions are the employees who came in employment of different Municipal Committees prior to 01.01.2004. The services, however, have been regularised post 01.01.2004. The question involved in all the writ petitions relate to as to whether the petitioners would be governed by old pension rules which were invoked prior to 01.01.2004 or would be governed by New Contributory Pension Fund Scheme promulgated by State which came into being on 01.01.2004 and was made appealable to the fresh entrants after 01.04.2004.

3. Counsel for the petitioners has relied upon Division Bench judgment rendered by this Court in **'Harbans Lal Vs. State of Punjab and others, 2012(3) SCT 362',** and further judmgent passed by Coordinate Bench passed in CWP-9208-2020 titled as **'Jitpal Singh Vs State of Punjab and others'** decided on 04.07.2022, wherein relying upon the **Harbans Lal's** case (supra) the employees who were appointed on daily wages in the year 1993 but were regularised on 21.12.2012, have been held entitled for grant of pensionary benefits under the old pension scheme.

4. Per contra, Mr. Attariwala and Mr. Swaroop Singh, have emphatically opposed the relief claiming that the petitioners were regularised pursuant to order passed by this Court in **CWP-13550-2001**

(Sukhminder Singh Vs. State of Punjab and another), wherein a direction was issued to regularised the services of the petitioners in terms of Resolution dated 28.05.2009. The fact remains that the resolutions to regularize the services of the petitioners in all the cases was passed after 01.01.2004.

5. Having heard learned counsel for the parties and having gone through the record of the case.

6. In the considered opinion of this Court, resolution passed by the Municipal Councils/Corporation cannot take away the import of Rule 3.17 of the Punjab Civil Service Rules and the law as laid down in **Harbans Lal's** case (supra). The fact remains that the petitioners being in service prior to 01.01.2004, cannot be treated as fresh entrants on 01.01.2004.

7. In fact w.e.f. 1st of January, 2004, State of Punjab promulgated Contributory Pension Fund Scheme which was made applicable to all fresh entrants in the government service on or after 1st of January, 2004. Necessary amendment was made in the Punjab Civil Services Rules, Volume-I, Part-I which reads as under :-

> "Government of Punjab
> Department of Finance
> (Finance Personnel Branch-II)
>
> Date Chandigarh the 2nd March, 2004 No.8/1/2004-3FPII/2078
>
> -In exercise of powers conferred by proviso to Article 309 read with Clause (3) of Article 187 of the Constitution of India and all other powers enabling him in this behalf, the Governor of Punjab, after consultation is necessary under the aforesaid provisions is pleased to make the following rules further to amend the Punjab Civil Service Rules, Volume-I,

Part-I, namely:-

(i) These Rules may be called the Punjab Civil Services (First Amendment) Rules, 2004.

(ii) These shall be deemed to have come into force with effect from the 1st day of January, 2004.

2. In the Punjab Civil Services Rules, Volume-I, Part-I, in rule 1, 2, the following proviso shall be added at the end of sub rule (1):-

"Provided that the rules in Part-I-Pensions in Volume-II of these rules called the Punjab Civil Services Rules, Volume-II shall not apply to the Government employees who are appointed to the posts. They shall be covered by new 'Defined Contributory Pension Scheme' to be notified by the State Government in due course".

B.R. Bajaj
Principal Secretary to Government of Punjab
Department of Finance

No.8/1/2004-3FPII/2078
Dated, Chandigarh the 2nd March 2004"

8. The consequence of the aforesaid amendment is that all the fresh appointees on the government posts after 1st of January, 2004 are kept out of the Pension Rules as contained in Punjab Civil Services Rules whereas the employees who entered the service prior to 1st of January, 2004 continued to be governed by Pension Rules contained in Volume-I, Part-I of Punjab Civil Services Rules.

9. All the petitioners are in services of Municipal Corporations. Punjab Government vide Notification dated 28th of July, 1994 notified Punjab Municipal Corporation E.P.F. Rules, 1994 in exercise of the powers conferred by Section 71 read with Section 397 of the Punjab Municipal Corporation Act, 1976. Rule 2(k) and 2(l), Rule 8 and Rule

13 read as under :-

(k) “qualifying service” means the service rendered under a Corporation for which an employee is paid from the Corporation fund and shall include any service rendered under the Government of Punjab, any Improvement Trust, a Committee or any other Public Sector Undertaking immediately before joining the Service;

(l) “Service” means the service rendered under the control of a Corporation;

8. General Provisions relating to grant of pension. - (1) For the purpose of grant of pension to the employees, the rules relating to pension as contained in the Punjab Civil Services Rules, Volume II, shall apply mutatis mutandis to the employees of the Corporations also and for that purpose the terms and expressions not otherwise defined in these rules, shall have the same meaning as assigned to them in the Punjab Civil Services Rules, Volume I, [Part I :

Provided that the provisions contained in Chapter XI of the Punjab Civil Services Rules, Volume II, shall not apply to the said employees.]

(2) After completion of the pension papers of the retiring employees in the form and manner specified in the Punjab Civil Services Rules, Volume II as amended from time to time, the Executive Officer of the Corporation shall send the same to the Examiner, for verification of qualifying service and emoluments for the purpose of grant of pension.

(3) The Examiner, after necessary verification shall send the pension papers to the concerned sanctioning authority as shown in Appendix ‘A’ for sanction of pension.

(4) While sanctioning pension, the sanctioning authority shall ensure that the contribution of the employees for the period reckoned for pension, has been duly credited to the Fund.

> **13. Punjab Civil Services Rules also to apply. -** Any matter relating to pension and General Provident Fund, which is not specifically covered under these rules, shall be governed and regulated by the provisions of the Punjab Civil Services Rules or any other corresponding rules on the subject."

(emphasis supplied)

10. On conjoint reading of Rule 2(k) and (l) of 1994 Rules, I have no doubt in holding that the service rendered by the petitioners prior to the date of their regularization with the Corporation falls within the ambit of qualifying service under the relevant Pension Rules. Further any subject not covered under the Municipal Corporation Rules shall be governed by the Punjab Civil Services Rules.

11. In Harbans Lal's case, the petitioner approached writ Court seeking writ in the nature of mandamus for refixation of his regular appointment by counting Daily Wage Service towards qualifying service for pension and claimed that he be allowed to continue with the GPF scheme and the pension as applicable to the employees recruited in the Punjab Government prior to 1st of January, 2004. Petitioner was appointed as Daily Wage Employee on 1st of August, 1988 and his services were regularized by the Department on 28th of March, 2005. The question involved therein was also the same as framed in Para No.3 hereinabove. The specific stand of the State as noticed in the judgment rendered in Harbans Lal's case reads as under :-

> "Written statement has been filed by the respondents. It has been mentioned in the short affidavit dated 29.3.2010 by Executive Engineer, Water Supply and Sanitation Division, Rajpura that salary up to the month of January,

> 2010 has been given after deducting the amount which was to be deposited with the treasury under the new Contributory Pension Scheme. This payment has been made as per Annexure R-1. The payment of salary has been accepted by the petitioner vide receipt dated 23.02.2010 (Annexure R1/2). The respondents in their reply dated 07.08.2010, have relied upon the Finance Department's instructions dated 19.5.2008 wherein it has been directed that the daily wagers, who were in Government service before 01.01.2004 and whose services have been regularized on or after 01.01.2004, a new "Defined Contributory Pension Scheme" shall be applicable to them. This view of the Finance Department was reiterated vide their I.D. letter dated 22.1.2010...."

12. The Division Bench after considering Rule 3.17-A of the Punjab Civil Services Rules which provides for 'qualifying service' concluded as under :-

> "We come to the conclusion that the petitioners' initial date of appointment after regularization will be the date on which employee takes charge of the post. <u>Once the entire service of a daily wager is to be counted as qualifying service then his date of appointment will relegate back to his initial date of appointment i.e. 1988 and he cannot be ousted from pension scheme by applying the date of regularization i.e. 28.3.2005 which is evidently after the new scheme or new restructured defined Contribution Pension Scheme came into force w.e.f. 1.1.2004.</u>"

(emphasis supplied)

13. While commenting upon the interplay between instructions issued by State and the Pension Rules, the Division Bench 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). 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.....

14. In the case of municipal employees the issue of the 'qualifying service' as contemplated under the Municipal Pension Rules cropped up before Division Bench of this Court in the case of **Harjinder Singh vs. State of Punjab, 2004(3) SCT 1**. The same was dealt as under :-

> "The above instructions issued by the Director Local Government purporting to interpret the Pension Rules are in fact contrary to the same. Besides, the said instructions cannot substitute or supplant the substantive provisions of the Pension Rules. However, as already notice above, there is nothing in the Pension rules which requires the 'qualifying service' to be computed from the date of the employee makes contribution towards C.P.Fund or from the date of his confirmation. Rather the position is that the 'qualifying

> service' is to be counted in terms of Rule 2(j) for the period of service rendered by the employee for which he is paid from the Municipal Funds which is the fund constituted under Section 51 of the Punjab Municipal Act. The emphasis on the words "appointed on regular basis" in the above memo on the basis of Rule 1 (3) (ii) of the Pension Rules is also misplaced. Rule 1(3)(ii) of the Pension Rules, in fact provides that the Pension Rules shall apply to the employees of the Committee who are appointed on or after the first day of April, 1990 on whole time regular basis and opt for the said rules…..".
>
> The Bench, thereafter, concluded as follows:-
>
> "17. Keeping in view the above facts and circumstances, it is evident that the stand of the respondents that the 'qualifying service' of the petitioner is to be counted from the date he started making contributions to the C.P. Fund is absolutely misconceived and baseless. The same is not supported by the Pension Rules applicable in respect of the petitioner. The petitioner, therefore, has been unnecessarily denied the benefit of pension, which as per the settled law, is not a bounty or a matter of grace nor an ex gratia payment payable at the sweet will and pleasure of the Municipal Council (respondent No.4). It is a payment for the past service rendered and is a social welfare measure to those who in the hey day of their life rendered service on an assurance that in their old age they would not be left in the lurch. The payment of pension is governed by the Pension Rules governing the grant of pension to the employees of the Municipal Council. It is the liability undertaken b the Municipal Council under the Pension Rules and whenever it becomes due and payable it is to be paid."

15. The respondents cannot deny that the service rendered by the petitioners before the date of their regularization was under the control of the Corporation. The same well falls within the definition of qualifying service as defined under Section 2(k) of 1994 Rules and the petitioners for the purpose of pension cannot be termed as fresh entrants on or after

1st of January, 2004. Even though the date of regularization of the petitioners remains from the date they were made regular however, the date of their entry into service/appointment remains the date of their initial appointment. Thus, they are not the appointees as on or after 1st of January, 2004 i.e. the day from which the Contributory Pension Fund Scheme became effective. Resultantly, the Contributory Pension Fund Scheme which admittedly is applicable to the fresh appointees on or after 1st of January, 2004 would not be applicable in the case of the petitioners.

16. Resultantly, all the petitions are allowed to the extent that the petitioners shall be entitled for pensionary benefits in terms of old pension rules invoked prior to 01.01.2004.

17. In case the petitioners are found to be entitled for the benefit, the same shall entail interest @6% per annum for the time period commencing from the date of filing of the writ petition till the date of actual realization.

18. Photocopy of this order be placed on the files of other connected cases.

16.02.2023 **(PANKAJ JAIN)**
ps-I **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No