

CWP-14160-2018-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(220)CWP-14160-2018
Date of decision:- 30.01.2023

Mohinder Singh and others...Petitioners

Versus

State of Haryana and others...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. R.K.Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

SUVIR SEHGAL, J. (Oral)

Instant writ petition has been filed seeking issuance of a writ in the nature of mandamus directing the respondents to consider the claim of the petitioners for grant of pension under the Old Pension Scheme (OPS) applicable to employees appointed prior to 01.01.2006 and for grant of all consequential benefits.

Heard counsel for the parties.

Shorn of details suffice it to notice that petitioners have been working as drivers with Haryana Roadways on contract basis as per the dates depicted in the chart reproduced in the written statement, which is as under:-

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Sr. No	Plaintiff (sic petitioner) Name, Post and Father's Name	Plaintiff (sic petitioner) No.	First Appointment date (on contract basis)	Service regularization date	At present employee working depot and other details

1.	<i>Mohinder Singh, Driver No.201, S/o Sh. Mohru Ram</i>	1	<i>18.02.2002 (on contract basis)</i>	<i>04.03.2006 Driver Grade 11 Pay band 5200-20200+1900 Grade Pay 09.03.2008 Driver Grade-1 Pay Band 5200-20200+2400 GP</i>	<i>Fatehabad (retired 31-12-2016)</i>
2.	<i>Jagdish Chander, Driver No.152, S/o Sh. Ram Chander</i>	2	<i>18.02.2002 (on contract basis)</i>	<i>04.03.2006- Grade-II 09.03.2008- Grade-I</i>	<i>Hissar</i>
3.	<i>Satpal, Driver No.198, S/o Sh. Banwari Lal</i>	3	<i>18.02.2002 (on contract basis)</i>	<i>03.03.2006- Grade-II 17.03.2008- Grade-I</i>	<i>Fatehabad</i>
4.	<i>Jairnail Singh, Driver No.200</i>	4	<i>18.02.2002 (on contract basis)</i>	<i>02.03.2006- Grade-II 02.03.2008- Grade-I</i>	<i>Fatehabad</i>
5.	<i>Krishan Kumar, Driver No.202, S/o Sh. Amar Singh</i>	5	<i>18.02.2002 (on contract basis)</i>	<i>16.03.2006- Grade-II 19.03.2008- Grade-I</i>	<i>Fatehabad</i>
6.	<i>Jaswinder Singh, Driver No.173/68, S/o Sh. Bhajan Singh</i>	6	<i>18.02.2002 (on contract basis)</i>	<i>12.03.2006- Grade-II 18.10.2008- Grade-I</i>	<i>Fatehabad</i>
7.	<i>Ram Kishan, Driver No.163, S/o Sh. Bhagi Rath</i>	7	<i>18.02.2002 (on contract basis)</i>	<i>21.06.2006- Grade-II 21.06.2008- Grade-I</i>	<i>Fatehabad</i>
8.	<i>Satpal Singh, Driver No. 163, S/o Sh. Baldev Singh</i>	8	<i>03.12.1998 (on contract basis)</i>	<i>20.04.2003- Grade-II 24.05.2005- Grade-I</i>	<i>Fatehabad</i>
9.	<i>Gurnam Singh, Driver No. 202</i>	9	<i>03.12.1998 (on contract basis)</i>	<i>08.12.2002- Grade-II 14.12.2004- Grade-I</i>	<i>Fatehabad</i>

10	Balvinder Singh, Driver No.161, S/o Sh. Mahender Singh	10	20.04.1999 (on contract basis)	04.02.2003- Grade-II 05.02.2005- Grade-I	Fatehabad”
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Some of the petitioners have retired during the pendency of the petition.

Admitted position is that services of petitioners Nos. 1 to 7 were regularized after 01.01.2006, whereas petitioners No.8 to 10 were regularized before the said date. By virtue of notification dated 04.12.2008, Annexure P-6, Government of Haryana introduced Haryana New Pension Scheme (NPS), 2008 (for short “the NPS”) with effect from 01.01.2006. The short question for determination is as to whether the services rendered by the petitioners prior to regularization are to be counted towards payment of pensionary benefits and in case the petitioners have been regularized after 01.01.2006, the benefit of continuous service rendered can be given to them.

Matter stands settled in various judgments passed by the Court. Hon’ble Supreme Court in ***Prem Singh Versus State of Uttar Pradesh and others (2019) 10 SCC 516***, has held that the services rendered prior to regularization in the capacity of work charged employees, contingency paid employees or on non-pensionable establishment shall count towards qualifying service, even if such service is not preceded by temporary or regular employment in the pensionable establishment.

A Full Bench of this Court in ***Kesar Chand Versus State of Punjab 1988 (2) PLR 223***, while striking down Sub-rule (2) of Rule 3.17-A

of Punjab Civil Service Rules Vol. II held that once the services of a work charged employee, have been regularized, there appears to be hardly any logic to deprive him of pensionary benefits. It has been further held that even temporary or officiating service under the Government has to be reckoned for determining the qualifying service.

A Division Bench of this Court in ***Harbans Lal Versus State of Punjab and others 2012 (3) SCT 362*** has concluded as follows:-

“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 Restructured 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.”

SLPs challenging this judgment as well as the review applications filed by the State of Punjab, have been dismissed by the Apex Court.

In view of the above settled position, petitioners are held entitled to count the entire service rendered by them on contract basis for the purposes of grant of pensionary benefits.

Petition is disposed of with a direction to the respondents to pass appropriate orders after treating the service rendered by the petitioners on contract basis prior to regularization as qualifying service for the purposes of pension. As some of the petitioner(s) have retired, it is directed

that arrears of pension payable to them, shall be confined to a period of three years prior to the date of this order and the amount due be paid to them within a period of four months from the date of this order.

30.01.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No