233 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.14314 of 2018 (O&M)
Date of decision : 10.01.2023

Major Singh ...... Petitioner

versus

State of Punjab & ors. ...... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :- Mr. S.K.Arora, Advocate
for the petitioner.

Mr. Sehajbir S.Aulakh, Asstt. A.G., Punjab.

Ms. Kavita Arora, Advocate
for respondent No.4.

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PANKAJ JAIN, J. (ORAL)

Petitioner has invoked writ jurisdiction of this Court by way of present petition filed under Article 226 of the Constitution of India impugning the order dated 21.04.2017 (Annexure P-9) and that dated 07.12.2017 (Annexure P-15) whereby the claim of the petitioner to be governed by the old pension Scheme instead of the New Contributory Provident Fund Scheme promulgated vide notification dated 01.01.2004 stands rejected.

Shorn of details the brief facts that need to be culled out for the necessary adjudication of the present petition are that the petitioner was appointed as a Clerk with Nagar Panchayat Moonak, District Sangrur on contractual basis through employment exchange vide order dated 04.09.1995. The appointment of the petitioner was later on confirmed by the Deputy Commissioner, Sangrur, exercising the powers under Section 232 of the Punjab Municipal Act, 1911 vide order dated 08.11.1995 and the petitioner continued to work on contractual basis. Services of the petitioner were regularized vide order dated 04.08.2011 vide Annexure P-3. State of Punjab vide notification dated 01.01.2004, notified Contributory Pension Fund Scheme, which was made applicable to all the fresh entrants to the government services on or after 01.01.2004. In the present writ petition the issue is whether the petitioner will be governed by old Pension scheme or by the New pension scheme dated 01.01.2004 (supra).

Learned counsel for the petitioner in order to hammer forth his contention relied upon a Division Bench judgment of this Court rendered in ***Harbans Lal Vs. The State of Punjab & others*** passed in CWP No.2371 of 2010 decided on 31.08.2010. He submits that the case of the petitioner is fully covered by the ratio of law laid down by the Division Bench judgment in ***Harbans Lal 's case (supra).***

Per contra learned counsels representing the respondents have emphatically opposed the prayer made by the counsel for the petitioner. The precise contention raised is that the services of the petitioner were regularized under policy decision taken by State of Punjab dated 18.03.2011 which was sought to be a one time measure after the practice of regularizing the services was deprecated by the Apex Court in judgment of ***Secretary, State of Karnataka & ors. Vs. Umadevi & ors. (2006) 4 SCC 1.*** Counsels submit that as per the policy decision taken by the State following conditions were specifically carved out :-

> *"a) The regular appointment shall be treated to be effective from the date of issuance of the order of regularization and the employees who are made regular shall not be given any benefit (Notional or otherwise) of their*

> *earlier service, but if in any department, some employees are appointed by following the proper procedure on the same date, in those cases these employees shall be treated as Junior in seniority to those employees.*
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> *b) At the time of appointment they shall be given the basic scale in the concerned cadre.*
>
> *c) The compliance of reservation policy be made in letter and spirit.*
>
> *d) The new contributory pension scheme shall be applicable to these regularly appointed employees.*
>
> *e) The decision of the Hon'ble Supreme Court of India delivered in Uma Devi Case be complied in letter and spirit."*

As per the same any incumbent regularized under the policy of 2011 has to be governed by New contributory pension scheme. It has been asserted that unless challenge is made to such policy decision, no relief can be granted to the petitioner.

I have heard learned counsel for the parties and have gone through the records of the case.

Facts are not much in dispute. Admittedly, the petitioner had been working since he was appointed vide order dated 04.09.1995. It is also not disputed that the service conditions of the petitioner apart from the issues governed by Municipal Rules the provisions of Punjab Civil Services Rules are applicable on other issues *mutatis mutandi*. Thus the question arises is :-

Whether the petitioner can be termed to be a fresh entrant in service to make him governed by the provisions of 2004 pension scheme? Rule 3.17 of the Punjab Civil Services Rules, Vol. II needs to be perused which reads as under :-

> *"3.17. If an employee was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of :–*

(i) periods of temporary or officiating service in non-pensionable establishment;

(ii) Omitted.

(iii) Omitted.

Note 1.–In case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, under rule 1.1 (b) of these rules, the term "continuous temporary/officiating service" shall include such service rendered under Central Government.

Note 2.–In case of a purely temporary Central Government employee who is permanently transferred to Punjab Government and becomes subject to these rules, the term "continuous temporary service" includes the temporary service under the Central Government. The pensionary liability in respect of such cases shall be allocated on the length of service.

Note 3.–The entire service rendered by an employee as work-charged as also the service paid from contingencies, shall count as qualifying service:

Provided that–

(i) such service is followed by regular employment;

(ii) there is no interruption in the two or more spells of service, or the interruptions are condonable under rule 4.23; and

(iii) such service must be a full-time job.

Note 4. The entire adhoc service rendered by a Government employee may be counted as qualifying service:

Provided that–

(i) such service is followed by regular employment;

(ii) there is no interruption in the two or more spells of adhoc service, and adhoc and regular service, or the interruptions are condonable under rule 4.23;

(iii) such service must be a full-time job;

(iv) recruitment to such service should have been made through the Employment Exchange or by open advertisement;

(v) the service rendered as adhoc employee must have been against a regular post or vacancy; and

(vi) the conditions for eligibility, like academic qualifications, experience and age, at the time of adhoc appointment, should have been fulfilled."

Thus it is evident that as per the Rules applicable the period of temporary or officiating service in the non-pensionary establishment has to be counted in full as qualifying service while considering the claim for pension. Considering the aforesaid provision of law Division Bench in ***Harbans Lal's case supra*** answered the question framed hereinabove as under :-

> *"Reliance has been placed by the respondents on a Single Bench judgment in case of **Ramesh Singh and others Vs. State of Punjab** (CWP No.5092 of 2010 decided on 22.3.2010). No benefit can be derived by the State on behalf of the judgment because Rule 3.17 of the Punjab Civil Service Rules Vol.II has not been discussed in the judgment. A request for extension of pension scheme has been repelled in the judgment on the ground that petitioners who were working in the Board on work charge basis were regularized by the Board. Since, there was no scheme of pension in the Board, their claim of pension was rejected. On the other hand, the employees who had come from the department of Health on deputation to the Board, and who on repatriation to the parent department were held entitled to a pension by virtue of pension scheme applicable in the parent department. This judgment is not applicable on the facts in the present case.*
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> *The next question for consideration is whether the clarification issued by the State of Punjab, vide instructions dated 30.5.2008 (Annexure P3) which runs against amendment made vide Annexure P-2. A similar issue has come up before the Hon'ble Division Bench of this Court in case of **Harjinder Singh Vs. State of Punjab 2004(3) SCT 1**. The Division Bench while interpreting the executive instructions vis-à-vis statutory rules namely, pension rules held as follow:-*
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> > *"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.....".*
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> *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."*

This view has been followed by a Division Bench of this Court in case of ***Hans Raj Vs. State of Punjab and others,*** *2005(3) RSJ, 262. In this case the Division Bench examined the Punjab Municipal Employees Pension and General Provident Fund Rules, 1994. Vide instructions dated 8.1.1999, the State of Punjab had provided that since the Pension Rules has been made applicable in lieu of CPF, the period to be considered as qualifying for pension has to be restricted to the period for which the employee was contributing to his CPF. These instructions were held contrary to the Pension Rules by the Division Bench. The Division Bench held that the said instructions cannot substitute or supplant the substantive provisions of the Pension Rules. The petitioner was held entitled to count his entire service from 1962 to 1998 as qualifying service for the purpose of pension. The condition that qualifying service would commence from the date of contribution to the CPF, has been rejected by the Division Bench.*

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. 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."

Thus there is no doubt that the case of the petitioner is fully covered by the ratio of law laid down by Division Bench of this Court in ***Harbans Lal 's case (supra).*** So far as the contention raised by the learned counsel for the respondents with respect to the policy decision dated 18.03.2011 is concerned, the same cannot have an effect of overriding the statutory rules. Consequently, the same would not cut any ice so far as the resistance at the hands of respondents is concerned.

Resultantly, the present writ petition is allowed. Petitioners are held to be entitled to pension under the old rules in vogue prior to 01.01.2004.

(PANKAJ JAIN)
JUDGE

10.01.2023
Pooja sharma-I

Whether speaking/reasoned Yes
Whether Reportable : No