

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

CWP-14728-2018

Date of decision : 01.02.2023

Babunji Bhagat

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gagneshwar Walia, Advocate
for the petitioner

Mr. Sehajbir S. Aulakh, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed under Article 226/227 of the Constitution of India seeking issuance of writ in the nature of mandamus in the form of direction to respondents to count the service rendered by the petitioner as Daily Wager from 13th of May, 1995 to 15th of October, 2010 as a Class IV Daily Wage Cook towards qualifying service for the purpose of pensionary/retiral benefits. Counsel for the petitioner submits that apart from this the petitioner also cannot be termed as a fresh entrant for the purpose of Contributory Pension Fund Scheme as he was in service prior to 1st of January, 2004 and, thus, his Right to Pension would be governed under the Old Pension Rules and not under the New Pension Scheme. Heavy reliance has been placed upon **Harbans Lal vs. The State of Punjab and others - CWP No.2371 of 2010** .

2. Mr. Aulakh, however, submits that the ratio of law as laid down

in **Harbans Lal's case (supra)** would not be applicable to the present case for the reason the petitioner was not working in the same cadre and was granted fresh appointment on 15th of October, 2010 as Constable.

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

4. It will be apt to peruse Rule 3.17 of Punjab Civil Services Rules which reads as under :

“Rule 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) Period of service in work-charged establishment and .
- (iii) Periods of service paid from contingencies.

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.”

5. A bare perusal of the aforesaid provision shows that the same is explicit and there is no ambiguity. The service is not required to be rendered in the same cadre to be covered under 3.17 Rule. The word used is 'service' and not 'cadre'. Moreover, Division Bench in **Harbans Lal's case (supra)** explained the import of the Rule and held as under :-

“....We come to the conclusion that the petitioners' initiate date of appointment after regularization will be the date on which employee takes charge of the post. 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.”

6. In view of the law laid down in **Harbans Lal's case** this Court finds that the case of the petitioner would be fully covered therein. Consequently, the present writ petition is allowed.

7. Accordingly, the respondents are directed to treat the whole period of daily wage service as qualifying service for pensionary/retiral benefits of the petitioner and his claim to pension will be governed as per old Rules and not under the New Defined Contributory Pension Fund Scheme.

8. Ordered accordingly.

February 01, 2023

Dpr

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No