

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

Date of decision : 03.03.2023

1. CWP-15905-2018

Raj Kumar and others

..... Petitioners

versus

State of Punjab and others

..... Respondents

2. CWP-7414-2022

Bhoj Kumar and others

..... Petitioners

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sanjeev Kumar Arora, Advocate
for the petitioners in CWP-15905-2018.

Ms. Narender Kaur, Advocate
for the petitioners in CWP-7414-2022.

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

Mr. Maninder Arora, Advocate for
Mr. V.P. Arora, Advocate
for respondent No.3 in CWP-7414-2022.

Mr. Sarthak Gupta, Advocate
for respondent No.4 in CWP-15905-2018.

PANKAJ JAIN, J. (Oral)

By way of present judgment, I intend to dispose off above said
two writ petitions as common question of law and facts are involved therein.

2. Present writ petitions have been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of certiorari directing the respondents to cover the petitioners under Old Pension Scheme and to continue the petitioners with their GPF number in accordance with law.

3. Counsel for the petitioners submits the initially petitioners were employed as Clerk/Peon/Fireman/Driver on contract basis and they were appointed prior to 01.01.2004, thus their right to pension would be governed under the Old Pension Rules and not under the New Pension Scheme. He further submits that the case of the petitioners are fully covered by the ratio of law laid down by this Court in ***CWP No.2371 of 2010, titled as 'Harbans Lal Vs. The State of Punjab & others.'***

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. Learned State counsel is not in a position to dispute the aforesaid fact.
7. Resultantly, the present petitions are allowed in terms of ratio of law laid down in **Harbans Lal’s case (supra)**. Respondents are directed to treat the whole period of daily wage service/contract basis as qualifying service for pensionary/retiral benefits of the petitioners and their claim to pension will be governed as per old Rules and not under the New Defined Contributory Pension Fund Scheme.
8. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

03.03.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No