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

Date of decision : 19th of April, 2023

CWP No.19502 of 2018

Baldev Singh and others ....Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Nishant Maini, Advocate
for the petitioners.

Mr. Inderpreet S. Kang, Asstt. Advocate General, Punjab.

Mr. Tarun Vir S. Lehal, Advocate
for respondent No.4.

PANKAJ JAIN, J.

By way of present writ petition, petitioners pray for issuance of a writ in the nature of certiorari seeking quashing of order dated 2nd of August, 2017 (Annexure P-23) rejecting the claim of the petitioners to be covered under the Old Pension Scheme instead of New Defined Contributory Pension Scheme. Further issuance of a writ in the nature mandamus is prayed for seeking direction to the respondents to count the service rendered by the petitioners as adhoc/ daily-wager towards qualifying service for the purpose of pay fixation, seniority etc. as per Old Pension Scheme and not under New Defined

Contributory Pension Fund Scheme.

2. The petitioners herein are the employees who came in employment of different Municipal Councils prior to 1st of January, 2004. Their services, however, have been regularised post 1st of January, 2004. Counsel for the petitioners relies upon the judgment rendered by Division Bench of this Court in **CWP No.2371 of 2010** titled as **Harbans Lal vs. State of Punjab** and others (Annexure P-4) as upheld by Apex Court in SLP No.1150 of 2012 vide order dated 30th of July, 2012 and further order passed by Apex Court dated 4th of November, 2015 on review petition preferred by the State which was dismissed observing as under :-

> "ORDER
>
> REVIEW PETITION (C) No.2038 of 2013
>
> IN SPECIAL LEAVE PETITION (C) NO.23578 OF 2012
>
> After hearing Shri V.K. Bali, learned senior counsel appearing for the petitioner (s) , we are of the opinion that no case for review of order dated 30.07.2012 is made out.
>
> The Review Petition is dismissed accordingly.
>
> IN ALL THE SPECIAL LEAVE
>
> Delay condoned, if any.
>
> Heard Shri V.K. Bali and Shri P.P. Rao, learned senior counsel appearing for the petitioner (s).
>
> We are of the opinion that the High Court has not committed any error which would call for our interference in exercise of our jurisdiction under Article 136 of the Constitution of India.
>
> Accordingly, all the Special Leave Petitions dismissed.
>
> **We direct the State of Punjab not to file any more special leave petitions against the similar issues as considered**

> **by the High Court in the impugned judgment (s) and Order (s).**"

3. The issue thus involved in the writ petition is : '*whether the petitioners who were in service prior to 1st of January, 2004 but regularized thereafter would be governed by New Contributory Pension Fund Scheme which became applicable after 1st of January, 2004 or they would be governed by Pension Rules in vogue prior to 1st of January, 2004?*'.

4. The similar issue has already been dealt with by this Court in detail in **CWP No.26858 of 2017** titled as **Heera Singh vs. State of Punjab and others & other connected writ petitions**, wherein this Court held as under :-

> "12. All the petitioners are in services of f 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.
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> (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)

13. 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. It is in the background of these facts and circumstances that this Court proceeds to analyze :

(i) Whether the case of the petitioners would be squarely covered by ratio of law laid down in **Harbans**

Lal's case (supra) ; and

(ii) Can the covenant contained in their letter of regularization regarding their pension rights to be governed by New Contributory Pension Fund Scheme be sustained ?

Ratio in the case of Harbans's Lal

14. 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...."

15. 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. 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."
>
> (emphasis supplied)

16. 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.....

17. 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…..".
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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."

18. 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.

19. Still further the petitioners have relied upon instructions issued by Finance Department, Government of Punjab dated 23rd of February, 2017, which reads as under :-

"Government of Punjab
Finance Department
(Finance Pension Policy and Coordination Branch)

To

All the Head of the Departments,
Registrar, Punjab & Haryana High Court
All the Divisional Commissioners,
District & Sessions Judges and
All the Deputy Commissioners in the State of Punjab

Sub: With regard to implementation of new defined Contributory pension scheme in local bodies/ self Independent bodies/ Boards of Punjab Govt.

Sir,

With regard to subject mentioned above, I have been directed to draw your attention to instructions No.5/ 44/ 2012/ 758 dated 09.07.2012 in Para No.1 and to inform and direct you that for the implementation of the said instructions w.e.f. 1.1.2004 some public bodies/ self independent bodies are facing major problems. Therefore, keeping in view the difficulties being faced by the said public bodies the Finance Department has reconsidered the matter again and has taken a decision that Punjab Govt. various Public/ Local Bodies and self governing bodies who have made Any appointment/ regularization of employees on 9.7.2012 or thereafter would be covered under the purview of New Defined contributory Pension Scheme.

2. Therefor, in instruction No.5/ 44/ 2012-5VPPT/ 758 dated 9.7.2012 the earlier fixed date of 1.1.2004 be read as 9.7.2012.

3. That the instructions be complied meticulously.

Sd/- Under Secretary Finance

Copy of above is sent to all the Financial Commissioners/ Addl. Chief Secy./ Principal Secy. And Administrative Secy. Punjab for information and further n/a pl.

23.2.2017

Sd/-Under Secretary Finance"

20. Though the State claims that the same was superseded by further circulars, this Court finds that State itself is in the state of confusion as to whether they want to implement the law laid down by this Court in **Harbans Lal's** case (supra) *qua* other similarly situated employees or not. Once, the State has taken a conscious decision on 23rd of February, 2017, State of Punjab ought not have discriminated against other similarly situated employees.

21. Be that as it may, keeping in view that this Court has already come to the conclusion that the petitioners are entitled to be governed by Old Pension Rules and the Contributory Pension Fund Scheme will not be applicable to them, there is no necessity to go into the aforesaid issue. Resultantly, the present writ petitions are allowed.

22. Questions framed hereinabove in Para 3 and Para 14 are answered in favour of the petitioners. It is held that the covenant contained in the offer of regular appointment to the petitioners cannot take away the rights vested in them under 1994 Rules read with Punjab Civil Services Rules and they shall be governed by the Old Pension Rules as in terms of amendment carried out in PCS Rules, Rule 1 Volume 1 Part 1 dated 2nd of March, 2004 the pension rules contained therein shall not apply to employees appointed to posts after 1st of January, 2004. The petitioners being appointees under Corporation prior to 1st of January, 2004 remain unaffected. Their rights shall be governed by 1994 Rules."

5. Consequently, the present writ petition is allowed in terms of **CWP No.26858 of 2017** titled as **Heera Singh vs. State of Punjab and others** (supra). Order dated 2nd of August, 2017 (Annexure P-23) is hereby quashed.

April 19, 2023 **(PANKAJ JAIN)**
Dpr **JUDGE**

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