

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 20.02.2023

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CWP-26858-2017

Heera Singh		Petitioner
	Versus	
State of Punjab and others		Respondents

CWP-14953-2016 (O&M)

Joginderpal Singh and others		Petitioners
	Versus	
State of Punjab and others		Respondents

CWP-16542-2018

Run Bhushan		Petitioner
	Versus	
State of Punjab and others		Respondents

CWP-10231-2017

Sukhwinder Singh and others		Petitioners
	Versus	
State of Punjab and others		Respondents

CWP-15093-2017

Palwinder Singh and others		Petitioners
	Versus	
State of Punjab and others		Respondents

CWP-15131-2017

Rajbir Singh and another		Petitioners
	Versus	
State of Punjab and others		Respondents

CWP-11060-2017

Sheesh Ram and others	Petitioners
Versus	
State of Punjab and others	Respondents

CWP-26823-2017

Hitesh Batra	Petitioner
Versus	
State of Punjab and others	Respondents

CWP-26879-2017

Aman Jaswal	Petitioner
Versus	
State of Punjab and others	Respondents

CWP-26880-2017

Dheera	Petitioner
Versus	
State of Punjab and others	Respondents

CWP-26881-2017

Keshav	Petitioner
Versus	
State of Punjab and others	Respondents

CWP-26882-2017

Narinder Sharma	Petitioner
Versus	
State of Punjab and others	Respondents

CWP-27130-2017

Aman Pal	Petitioner
Versus	
State of Punjab and others	Respondents

**CWP No.26858 of 2017 and connected cases and
CWP-18922-2017**

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CWP-27327-2017

Lakhwinder Singh and others	Petitioners
Versus	
State of Punjab and others	Respondents

CWP-28156-2017

Sunil Kumar	Petitioner
Versus	
State of Punjab and others	Respondents

CWP-29187-2017

Tarlok Chand	Petitioner
Versus	
State of Punjab and others	Respondents

CWP-15447-2016

Ravinderjit Singh and others	Petitioners
Versus	
State of Punjab and others	Respondents

CWP-24505-2019

Deepak Jairath and others	Petitioners
Versus	
State of Punjab and others	Respondents

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CWP-18922-2017

Sukhdial Chand and others	Petitioners
Versus	
State of Punjab and others	Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gagneshwar Walia, Advocate and
Mr. Bikramjit S. Randhawa, Advocate
for the petitioner(s) in CWP Nos.14953 & 15447 of 2016,
CWP Nos.15093, 15131, 11060 and 27327 of 2017.

Mr. Jatinderpal Singh, Advocate
for the petitioner(s) in CWP Nos.26858, 26823, 26879,
26880, 26881, 26882, 27130, 28156, 29187 of 2017 and
CWP No.16542 of 2018.

Ms. Ameena Upmanyu, Advocate for
Mr. Sandeep Kumar, Advocate
for petitioner in CWP-24505-2019.

Mr. Puneet Sharma, Advocate
for the petitioner(s) in CWP-10231-2017.

Mr. Himanshu Garg, Advocate for
Mr. Sandeep Kumar, Advocate
for the petitioner(s).

Mr. S.S. Gill, Advocate for Mr. M.S. Batth, Advocate
for respondent No.3 in CWP-27327-2017.

Mr. H.K. Aurora, Advocate
for the respondent-M.C. Jalandhar in CWP-24505-2019.

Mr. H.S. Jalal, Advocate for respondent No.4
in CWP-18922-2017.

PANKAJ JAIN, J.

By way of this common order, I intend to dispose off the
afore-mentioned 19 writ petitions.

2. Written statement filed on behalf of respondent No.3 (in
CWP-27327-2017), is taken on record.

3. All the petitioners in the aforesaid writ petitions are

employees of Municipal Corporations who were working prior to 2004 on contract basis. Their services have been ordered to be regularized later on after 1st of January, 2004. The issue involved in all of these cases is : *whether the petitioners who are in municipal services 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. For convenience the facts are being culled out from CWP No.26858 of 2017.

5. Petitioner was recruited as Fitter after following due procedure in the year 1997 on contract basis. The petitioner continued to work so. In terms of judgment rendered by the Apex Court in **Secretary, State of Karnataka and others vs. Uma Devi and others, (2006) 4 SCC 1** Punjab Government took a Policy decision dated 15th of December, 2006 for regularizing services of Daily Wage/Work Charge employees. The same was followed by Policy dated 18th of March, 2011. The Policy by State of Punjab was adopted by the respondent-Corporation vide Resolution bearing No.JC-3 dated 8th of December, 2011. Following the same, the services of contractual employees including that of petitioner were regularized. Resolution dated 18th of December, 2021 has been placed on record at Annexure

P-1. Offer of Regular Appointment to the petitioner dated 4th of April,
2012 reads as under :-

“Municipal Corporation, Amritsar

To

Sh. Heera Singh

S/o Sh. Karam Singh

VPO Johal Raju Singh

Teh. & Distt. Tarn Taran

No.Addl. C(T)/435

Dated : 4/4/12

Sub : Appointment as Fitter in Operation & Maintenance Cell
Department, Municipal Corporation, Amritsar

Resolution No. JC-3

Dated : 08/12/2011

MEMORANDUM

You are hereby offered the post of Fitter as Rs.4900-10680+1300 plus usual allowances as per rules, on probation for 2 years.

2. You are directed to report yourself for duty after furnishing the following documents :-

- (1) Affidavit in prescribed form.
- (2) A certificate from Senior Superintending of Police of District in which you have been residing for the last three years, verifying your antecedents.
- (3) Age Certificate.
- (4) Certificate of Medical fitness.
- (5) Declaration of your property.
- (6) Service Book.
- (7) In case you are married, you should furnish an affidavit duly attested by a Magistrate that you do not have more than one spouse living.
- (8) In case, you belong to Scheduled Caste, a certificate should be furnished.
- (9) Details marks certificate showing having passed

Punjabi upto Matric standard.

3. You should also state, if you previously served Military Department and are in receipt of any pension.

4. Contributory Pension Scheme will be applicable as amended by Govt. from time to time.

Sd/- Additional Commissioner (Tech)

For Commissioner

Municipal Corporation Amritsar

xxxx”

6. In fact w.e.f. 1st of January, 2004, State of Punjab promulgated Contributory Pension Fund Scheme which was made applicable to all fresh entrants in the government service on or after 1st of January, 2004. Necessary amendment was made in the Punjab Civil Services Rules, Volume-I, Part-I which reads as under :-

“Government of Punjab
Department of Finance
(Finance Personnel Branch-II)

Date Chandigarh the 2nd March, 2004 No.8/1/2004-3FP/II/2078

-In exercise of powers conferred by proviso to Article 309 read with Clause (3) of Article 187 of the Constitution of India and all other powers enabling him in this behalf, the Governor of Punjab, after consultation is necessary under the aforesaid provisions is pleased to make the following rules further to amend the Punjab Civil Service Rules, Volume-I, Part-I, namely:-

- (i) These Rules may be called the Punjab Civil Services (First Amendment) Rules, 2004.
- (ii) These shall be deemed to have come into force with effect from the 1st day of January, 2004.

2. In the Punjab Civil Services Rules, Volume-I, Part-I, in rule 1, 2, the following proviso shall be added at the end of sub rule (1):-

“Provided that the rules in Part-I-Pensions in Volume-II of these rules called the Punjab Civil Services Rules, Volume-II shall not apply to the Government employees who are appointed to the posts. They shall be covered by new 'Defined Contributory Pension Scheme' to be notified by the State Government in due course”.

B.R. Bajaj
Principal Secretary to Government of Punjab
Department of Finance

No.8/1/2004-3FP/2078
Dated, Chandigarh the 2nd March 2004”

7. The consequence of the aforesaid amendment is that all the fresh appointees on the government posts after 1st of January, 2004 are kept out of the Pension Rules as contained in Punjab Civil Services Rules whereas the employees who entered the service prior to 1st of January, 2004 continued to be governed by Pension Rules contained in Volume-I, Part-I of Punjab Civil Services Rules.

8. The petitioner has impugned the condition contained in the regular appointment order which makes him member of a New Contributory Pension Fund Scheme and claims that he being in continuous service w.e.f. 1997 cannot be governed by the scheme framed for appointees to post after 1st of January, 2004.

9. Counsel for the petitioner has heavily relied upon the judgment rendered by Division Bench of this Court in the case of **Harbans Lal vs The State of Punjab and others, 2012(3) SCT 362.**

He further submits that the judgment in **Harbans Lal's** case (supra) was challenged by the State before the Apex Court by way of **SLP No.23578 of 2012** which stands dismissed vide order dated 4th of November, 2015. Further reliance has been placed upon another Division Bench judgment passed in **CWP No.13458 of 2012** dated 17th of January, 2013 titled as **Sultan Ram and others vs. State of Punjab and others** wherein the Division Bench specifically dealt with issue involved in the present case and held that “it is also made clear that the old GPF scheme shall be applicable to all those employees who were the employees prior to 2004 but have been regularized thereafter”. He submits that the said matter was also taken by the State of Punjab before Apex Court and the Special Leave to Appeal (Civil) bearing No.CC/18189 of 2013 stands dismissed vide order dated 17th of October, 2013. Ld. Counsel further submits that as per the Communication dated 23rd of February, 2017 issued by Finance Department, Govt. of Punjab the date of 1st of January, 2004 as contemplated under the New Defined Contributory Pension Fund Scheme now stands altered from 1st of January, 2004 to 9th of July, 2012 and it has been specifically resolved that the policy shall be applicable to any appointment/regularization of employees on 9th of July, 2012 or thereafter. It has been thus contended that the petitioners who were in service since 1997 and were admittedly

regularized prior to 9th of July, 2012 would not be governed by the New Contributory Pension Fund Scheme.

10. Per contra, counsel appearing for the State and Municipal Corporation(s) have submitted that the petitioners being beneficiaries under the Regularization Policy 2011, there being a specific covenant contained in the policy and their appointment letter to the effect that they will be governed by New Contributory Pension Fund Scheme cannot now turn back and say that their claim to pension shall not be governed by New Contributory Pension Fund Scheme but as per Old Pension Rules.

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

12. All the petitioners are in services of Municipal 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.

(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 re-fixation 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.....”.

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 by 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.

23. Pending application, if any, also stands disposed off.

24. A copy of this order be kept on the files of other connected cases.

February 20, 2023

Dpr

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No