IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-28888-2018 (O&M)
Date of Decision: 24.01.2023

SUNIL KUMAR AND ORS

... Petitioners

Versus

STATE OF HARYANA AND ANR

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Dharmender Singh Rawat, Advocate
for the petitioners.

Mr. Rohit Arya, DAG, Haryana.

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HARNARESH SINGH GILL, J.(Oral)

Through this petition, the petitioner seeks issuance of a writ in the nature of Mandamus directing the respondents to count the period of service, spent by them, on contract basis, as qualifying service for grant of pension under Old Pension Scheme (OPS).

Learned counsel for the petitioners submits that the petitioners were appointed as Junior Programmers on 03.09.2003, 27.02.2004 and 08.12.2004, on contract basis through Haryana State Electronics Development Corporation Limited (HARTRON); that the petitioners continued to work as such, on contract, till 14.08.2014 and that vide order dated 14.08.2014, their services were regularized as Clerks w.e.f. 28.05.2014 in the grade pay of 5200-20200 + 1900 GP plus allowances, as per the policy issued by the Government of Haryana, with a condition that the petitioners shall be covered under the New Pension Scheme of the Haryana Government.

Learned counsel for the petitioners further submits that once the services of the petitioners were regularized and they have been working in the same Department since 2003-04 without any break, the condition i.e. them being governed by the New Pension Scheme is bad in the eyes of law. Still further, it is submitted that the New Pension Scheme came into existence on 18.08.2008, which was made applicable w.e.f. 01.01.2006 and that the regularization of the services of the petitioners, is a continuous process of the services rendered by them in the past and thus, they are entitled to the grant of benefits under the Old Pension Scheme. Yet further, it is submitted that the petitioners had issued a legal notice dated 16.08.2018 to the respondents, but to no avail.

In support of his contentions, learned counsel for the petitioners relies upon the judgments dated 25.01.2006 rendered by the Hon'ble Division Bench of this Court in LPA-674-1995 titled as Narata Singh and another vs Punjab State Electricity Board and another and dated 31.08.2010 in CWP-2371-2010 titled as Harbans Lal vs The State of Punjab and others.

Learned counsel for the petitioners further submits that against the judgment dated 25.01.2006 passed in the case of Narata Singh (supra), the State filed an appeal bearing Civil Appeal No.2384 of 2007 titled as Punjab State Electricity Board and another vs Narata Singh and another before the Hon'ble Apex Court, which was dismissed on 23.02.2010 (2010 (3) SLR 202).

On the other hand, learned State counsel has submitted that there are specific Clauses i.e. No.11 and 20 in the order dated 14.08.2014, which reads as under:-

> *'11. He/she shall be covered under the New Pension Scheme, 2005 of the Haryana Government.*
>
> *12 to 19 xxxxxxxx*
>
> *20. The official mentioned at Serial No.1 to 12 have submitted an affidavit whereby they have given their consent to regularize their services on the post of Clerk, therefore they will not be eligible to claim the benefit of any other post against which they were working'.*

He submits that the petitioners accepted the said condition and gave their consent in the form of affidavit(s) and thus, at this stage, they cannot turn around and challenge the same. He further submits that the petitioners were initially working as Junior Programmers and that too on contract basis and that their services were regularized, in the year 2014, and they were designated as Clerks and thus, there being a cadre change, the petitioners are not entitled to the relief, prayed for.

I have heard the learned counsel for the parties.

Indisputably, the petitioners were appointed as Junior Programers on 03.09.2003, 27.02.2004 and 08.12.2004 and since then, they have been working in the same Department. Vide order dated 14.08.2014, the services of the petitioners were regularized w.e.f. 28.05.2014 and they were promoted as Clerks but they were ordered to be covered under the New Pension Scheme. There is no denial to the fact that the services rendered by the petitioners as Junior Programmers, have not been counted towards their service benefits. The change of cadre from Junior Programmer to Clerk, cannot be a ground for the Department to withhold the pensionary benefits of service rendered in past, especially when it is an admitted fact that the petitioners continued working without any break till the regularization of their services.

As per the New Pension Scheme Policy dated 18.08.2008 issued by Finance Department, Government of Haryana, the New Pension Scheme shall work on defined contribution basis and shall have Two-Tiers viz. Tier-I and II. Contribution to Tier-I is mandatory for all Government servants joining Government Service on or after *01st January, 2006*. Thus, it is clear that the said policy was made applicable qua the employees joining the service on or after 01.01.2006.

The Hon'ble Apex Court in Civil Appeal No.2384-2007 titled as Punjab State Electricity Board and another vs Narata Singh and another (supra) has held as under:-

> *'13. The learned counsel for the appellants pointed out the finding recorded by the Division Bench in the impugned judgment to the effect that "we are, therefore, clearly of the opinion that the work charged service of the appellant with the Board must be counted for determining qualifying service for the purpose of pension" and argued that the judgment of the High Court should not be construed to mean as giving direction to the appellant to include previous*

service rendered by the respondent No.1 as work charged employee of the State Government for pension purposes. So far as this argument is concerned, it is true that the Division Bench of the High Court has expressed the above opinion in the impugned judgment. However, the reference to Rule 3.17(ii) of the Punjab Civil Services Rules as well as the Full Bench decision of the Punjab and Haryana High Court in Kesar Chand vs. State of Punjab & Ors. [1988 (5) SLR 27] and speaking order dated November 16, 2005 passed by the Board rejecting the claim of respondent No.1 makes it abundantly clear that the High Court has directed the appellants to count the period of service rendered by the respondent No.1 in work charged capacity with the State Government for determining qualifying service for the purpose of pension. Further, the respondent No.1 has been directed to deposit the amount of Employee's Contributory Fund which he had received from the appellants along with interest as per the directions of the Board before the pension is released to him. <u>All these directions indicate that the High Court had come to the conclusion that the period of service rendered by the respondent No.1 in work charged capacity under the State Government should be taken into consideration for determining qualifying service for the purpose of pension</u>. Non-mention of such direction in the impugned judgment is merely a slip and the appellants cannot derive any advantage from this.

14. The net result of the above discussion is that this Court does not find substance in any of the arguments advanced on behalf of the appellants. The *appeal lacks merit and, therefore, deserves to be dismissed. Therefore, the appeal fails and is dismissed. There shall be no order as to costs.*

15. The appellants are directed to implement the directions given by the High Court in the mpugned judgment as early as possible and not later than three months from the date of receipt of the writ of this Court'.

In Harbans Lal's case (supra), the Hon'ble Division Bench of this Court has held as under:-

'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. <u>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</u>. 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.*

No order as to costs'.

In view of the above settled position in law, the present writ petition is allowed. The respondents are directed to consider the case of the petitioners under the Old Pension Scheme from the date they had initially joined the Department, at the earliest.

24.01.2023 **(HARNARESH SINGH GILL)**

Aman Jain **JUDGE**

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