

CWP-24981-2022

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

CWP-24981-2022

Date of decision: 07.02.2023

Sat Pal

...Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Parth Goyal, Advocate,
for the petitioner.

Mr. Rajesh Gaur, Addl. A. G. Haryana.

HARNARESH SINGH GILL, J. (ORAL)

Challenge in the present petition is to the order dated 25.08.2022 (Annexure P-8) issued by the respondent-Department, vide which claim of the petitioner for ante-date regularizing his services w.e.f. 01.04.1999 under regularization policy dated 30.12.1985/25.02.1999, and for granting the benefit of Old Pension Scheme after taking into consideration the services rendered by him, being a Part-time Sweeper, as a qualifying service, and for granting other retiral benefits, has been rejected.

At the outset, learned counsel for the petitioner does not claim for ante-date regularizing the services of the petitioner w.e.f. 01.04.1999 under regularization policy dated 30.12.1985/25.02.1999.

Learned counsel for the petitioner contends that the petitioner had been appointed as a Sweeper on part-time basis, vide order dated 22.03.1993 issued by the Block Education Officer, Pundri, on DC rate wages, as amended from time to time; that vide order dated 03.05.2013 issued by respondent No.3, services of the petitioner had been regularized

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on the post of Peon, and that on attaining the age of 60 years, the petitioner superannuated on 30.11.2014.

Learned counsel for the petitioner submits that the petitioner sent a legal notice to the respondents, to consider his claim, but vide order dated 25.08.2022 passed by respondent No.3, the claim of the petitioner had been rejected on the following ground:

“The petitioner was engaged as Class-IV on part time basis and as per Rule 3.17-A 9 (g) (iii) of the Punjab Civil Services Rules Vol-II, as applicable to the State of Haryana, only whole time service was to be counted and not the part time service; that only whole time daily wages service period is to be reckoned for pension and the old pension rules are applicable to such employees, who were in the regular employment prior to 31.12.2005 and not part time service.”

Learned counsel for the petitioner contends that the aforesaid grounds have already been dealt with by a Division Bench of this Court in CWP-2371-2010, titled as 'Harbans Lal Vs. State of Punjab and others', decided on 31.08.2010, by noticing that in case an employee is appointed prior to the coming of New Pension Scheme, but his services were regularized after coming into force of New Pension Scheme, still he would be governed by the Old Pension Rules. Learned counsel further contends that the services rendered by the petitioner on part-time basis, may be treated as a qualifying service for the pensionary benefits, and that the benefit of Old Pension Scheme may be granted to the petitioner.

On the other hand, learned State counsel, while rebutting the arguments raised by the learned counsel for the petitioner, submits that

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Rule 3.17-A (g) (iii) of the Punjab Civil Services Rules Vol.II (as applicable to the State of Haryana), specifically provides that only whole time daily wages service period is to be reckoned for pensionary benefits and that old pension rules are applicable to the employees, who were in the regular employment prior to 31.12.2005. He further contends that General Provident Fund Scheme is not applicable to those government employees, who joined the service on or after 01.01.2006. He further contends that services of the petitioner were regularized, vide order dated 03.05.2013, i.e. after coming into force of new pension policy.

I have heard the learned counsel for the parties.

Indisputably, the petitioner had been appointed as a Sweeper on part-time basis, vide order dated 22.03.1993. His services had been regularized on the post of Peon, vide order dated 03.05.2013 issued by respondent No.3. The petitioner had continuously worked for about two decades on part-time basis. The said service is to be treated as a long term employment for all intents and purposes. Therefore, the same cannot be termed as engagement only for contingencies and it cannot be ignored while computing the pensionary benefits.

A Coordinate Bench while dealing with CWP-626-2015, titled as 'Zile Singh Vs. State of Haryana and others', decided on 17.03.2015, in somewhat similar circumstances, opined that a part-time sweeper will be entitled to count the said service for computing the pensionary benefits. The State of Haryana preferred LPA No.426-2016 against the said judgment and vide order dated 18.03.2016 passed by a Division Bench of this Court, the said LPA had been dismissed.

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The Division Bench of this Court in Harbans Lal's case (supra), 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. 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.”

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Needless to mention here that the aforesaid observations made by the Division Bench, have attained finality upto the Hon'ble Supreme Court.

A Coordinate Bench while dealing with the similar controversy in CWP-1048-2016, titled as 'Jai Bhgwan Vs. State of Haryana and others', decided on 01.03.2019, rejected the objection raised by the State that the petitioner would be governed by the New Contributory Pension Scheme in view of the fact that his services were regularized in the year 2012.

It is also stated by learned counsel for the petitioner that even though the State has preferred LPA No.1892-2019 against the aforesaid judgment dated 01.03.2019, yet no stay has been granted till date.

The consistent view of the judgments (supra) is that the part-time employment which continued for years together, is to be taken into account for the grant of pensionary benefits.

In view of the above, it is held that the petitioner is entitled to the pensionary benefits under the Old Pension Scheme and further the petitioner is entitled for computing the services rendered by him on part-time basis, as a qualifying service for the grant of pensionary benefits.

The pensionary benefits be computed within a period of three months from the date of receipt of copy of this order and the same be released to the petitioner within a period of two months thereafter.

Disposed of in the aforementioned terms.

07.02.2023

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No