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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-4811-2021
Date of Decision: 15.01.2024

Vinod Kumar and others ...Petitioners

Versus

Bhakra Beas Management Board and another ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Malhar Singh Dhami, Advocate for the petitioner
Mr. Sudhanshu Makkar, Advocate for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking directions to respondents to count seasonal/contract service period for the purpose of qualifying service for the pension.
2. There are three petitioners in the instant petition and from 2001 onwards, they were appointed on 89-days basis. The detail of work period of the petitioners is as below:-

Sr. No.	Name of petitioner	Contract Service period	Regular appointment Letter No. and date	Date and place of discharge	Date of birth and total service
1.	Vinod Kumar	04-07-2001 to 30-09-2001, 04-07-2003 to 30-09-2003, 01-07-2004 to 27-09-2004, 07-07-2005 to 03-10-2005, 04-07-2006 to 30-09-2006, 20-07-2007 to 16-10-	Appointment letter no. 650/34/Reg dated 10-07-2009 issued by Director Safety, B.B.M.B., Nangal	S.D.E., Water Regulation, B.B.M.B. Nangal Township, District Ropar. Discharged on 30.09.2020	06/04/1962 Total service 12 years & 9 months.

		2007 & 25-07-2008 to 21-10-2008 as per appointment given by Sr. Personal Officer B.B.M.B. Nangal.	Township		
2.	Netar Ram	01-07-2003 to 27-09-2003, and 07-07-2004 to 27-09-2004 as per appointment given by Sr. Personnel Officer B.B.M.B. Nangal	Appointment letter no.1814/PS/34/reg dated 23-06-2005 issued by Sr. Personnel Officer, B.B.M.B., Nangal Township	S.D.E. Water Regulation Div., B.B.M.B., Sunder Nagar (H.P.) Discharged on 30.09.2020	25/09/1961 Total service 15 years 8 months
3.	Raj Kumar	01-07-2002 to 27-09-2002, 04-02-2003 to 30-04-2003, 01-07-2003 to 27-09-2003, 03-07-2004 to 29-09-2004, and 29-01-2005 to 27-04-2005 as per appointment given by Sr. Personnel Officer B.B.M.B. Nangal.	Appointment letter no.1758/PS/34/WR dated 23-06-2005 issued by Director Safety, B.B.M.B., Nangal Township	S.D.E., Water Regulation Div., B.B.M.B., Sunder Nagar (H.P.) Discharged on 31/03/2020	20/05/1960 Total service 16 years

3. Counsel for the petitioners submits that petitioners came to be appointed prior to 2004 and they have not been extended benefit of pension as is available to employees appointed prior to 01.01.2004. The respondents have denied benefit of pension on the sole ground that they did not work continuously prior to 01.01.2004. He relies upon order dated 11.07.2022 passed by this Court in **Karan Singh and others v. Bhakra Beas Management Board and another, CWP No. 3194 of 2019** as well as judgment dated 31.08.2010 passed by Division Bench of this Court in **Harbans Lal v. State of Punjab and others, CWP No.2371 of 2010**. He further places reliance upon judgment dated 17.04.2023 of Delhi High Court in **Shafiqur Rahman Kidwai Association (SRKA) and another v. Union of India and others, W.P. (C) 2843/2021** wherein it has been held that persons recruited prior to 01.01.2004 cannot be treated as new recruits and they are entitled to benefit of old

pension scheme instead of new pension scheme. He also places reliance upon a Division Bench judgment dated 29.11.2011 of this Court in ***Bhakra Beas Management Board and others v. Hari Chand, LPA No.1589 of 2011***, wherein while interpreting Rule 3.17A of Punjab Civil Service Rules, it has been held that employees may not be entitled to benefit of seniority or promotion on the basis of their service rendered as ‘work charged’ or ‘daily rated’, however, their service as ‘daily rated’ or ‘work charged’ should be counted as qualifying service for the purpose of pensionary benefits.

4. Rule 3.17-A read with Rule 4.23 of Punjab Civil Services Rules (Vol.II) is reproduced as below.

“Rule 3.17-A. (1) *Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:—*

- (i) *Omitted.*
- (ii) *Omitted.*
- (iii) *Casual or daily rated service.*
- (iv) *Suspension adjudged as a specific penalty.*

Note.— *In cases where an officer dies or is permitted to retire while under suspension will not be treated as an interruption.*

- (v) *Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government where service qualifies for pension.*
- (vi) *Joining time for which no allowances are admissible under rules 9.1 and 9.15 of C.S.R., Volume I, Part I.*
- (vii) *If any unauthorised leave of absence occurs in continuation of authorized leave of absence and if the post of the absentee*

has been substantively filled up, the past service of the absentee is forfeited.

(viii) Transfer to a non-qualifying service in an establishment not under Government control or if such transfer is not made by the competent authority and transfer to service in a grant-in-aid school.

(A Government employee, who voluntarily resigns qualifying service, cannot claim the benefit under this clause.)

(ix) Removal from public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of the past service.

(x) Service rendered beyond the date of retirement on superannuation in terms of rule 3.26 of Punjab Civil Services Rules, Volume I, Part I.

(2) An interruption in the service of a Government employee caused by wilful absence from duty or unauthorised absence without leave, shall entail forfeiture of the past service.

(3) Wilful abstinence from performing duties by a Government employee by resort to pen down strike shall be deemed to be wilful absence from duty and shall also entail forfeiture of the past service.

Note.— *In the case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, the pensionary benefits admissible for service under Central Government would be that admissible under the Government of India rules and the liability for such benefits shall be allocated in accordance with the prevalent orders.*

Clarification (1).—*Even after the introduction of rule 3.17(A) and deletion of rule 4.21 the following cases do not entail forfeiture of past service:—*

(a) authorised leave of absence;

(b) abolition of post or loss of appointment owing to reduction in establishment.

(“Post” or “appointment” means a post or appointment service in which qualifies for pension).

(2) While counting such qualifying service for working out aggregate service, the period of break in service shall be omitted.”

“Rule 4.23 *In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered under the State Government shall be treated as automatically condoned, and the pre-interruption service shall be treated as qualifying service for pension purposes, except where the interruption has been caused by resignation, dismissal or removal from service or due to participation in a strike, but the period of interruption itself shall, under no circumstances, be reckoned as qualifying service for pension purposes.”*

5. *Per contra*, learned counsel for respondents submits that judgments of this Court in ***Harbans Lal (supra)*** as well as ***Karan Singh (supra)*** are not applicable to case in hand because petitioners were appointed prior to 2004 on contract basis and their period of contract was very short. It is not a case where petitioners continuously worked prior to 2004. The petitioners were appointed on regular basis after 2004 and they were not regularized in 2004. It is a case of fresh appointment after 2004, thus, period of work prior to 2004 cannot be counted for the purpose of pensionary benefits. The petitioners were appointed by Centralized Staff Selection Committee after 2004, thus, they were governed by New Pension Scheme and were not entitled to old pension scheme as available to employees appointed prior to 01.01.2004.

6. I have heard the arguments of learned counsels for both the parties and perused the record with their able assistance.

7. In view of judgment of Division Bench of this Court in ***Harbans Lal (supra)*** as well as ***Hari Chand (supra)***, the service of an employee as ‘daily rated’ or ‘work charged’ or ‘ad-hoc basis’ needs to be counted for the purpose of pensionary benefits if the said employee has been subsequently regularized. From these judgments, it is evident that if an employee is subsequently regularized, the

service rendered prior to regularization needs to be counted for the purpose of pensionary benefits.

8. In the case in hand, the petitioners prior to 2004 worked for few days each year and their services were not regularized after 2004 whereas they were issued appointment letters on the basis of recommendation of the Centralized Staff Selection Committee. For example, Vinod Kumar (petitioner No.1) was appointed on regular basis vide appointment letter dated 10.07.2009 and from 2001 to 2008, he worked each year, however, for few days as noted in the earlier part of this order. The petitioners did not work on 'daily charged' or 'work charged' basis during substantial part of the year whereas they worked for few days prior to their regular appointment. They were appointed on regular basis much after 2004. The Courts have held that period of 'ad hoc service' or 'daily charged' service should be counted for pensionary benefits on the ground that the employee was regularly working with the organization and he was regularized after 01.01.2004. As the petitioners, every year prior to 2004, were working for quite few days, their service before their regular appointment cannot be counted for the purpose of pension and it cannot be held that they were working prior to 01.01.2004 and they are entitled to old pension scheme. In their appointment letters, it has been clearly mentioned that they would be governed by BBMB Class-III & IV Employees (Recruitments & Conditions of Service) Regulations, 1994 and Punjab CSR for the purpose of pension/family pension, thus, they are entitled to benefit of pension/family pension as admissible to employees appointed after 01.01.2004 and according to BBMB Regulations as well as Punjab CSR.

9. In the wake of above discussions and findings, this Court is of the considered opinion that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

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10. Learned counsel for the petitioner at last submits that identically placed employees have been regularized instead of granting fresh appointment after 2004. There is no evidence on record, nevertheless, the petitioners are at liberty to point out this aspect to the respondent-Board and if any such case is found, the respondent-Board would accordingly consider case of the petitioners.

(JAGMOHAN BANSAL)
JUDGE

15.01.2024
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>