

CM No. 5444-CWP-2024 in/and
CWP No. 3867 of 2023

2024:PHHC:053241

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102)

CM No. 5444-CWP-2024 in/and
CWP No. 3867 of 2023
Date of Decision : 20.04.2024

Subhash

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.S. Malik, Advocate for the petitioner.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM No. 5444-CWP-2024

Present application has been filed for preponing the date of hearing of the main petition i.e. CWP No. 3867 of 2023, which stands adjourned to 24.07.2024.

Notice of the application to the counsel opposite.

Ms. Vibha Tewari, learned Assistant Advocate General, Haryana, who is present in Court, accepts notice on behalf of respondent-State and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the above, application is allowed and the hearing of the main petition i.e. CWP No. 3867 of 2023 is preponed from 24.07.2024 to today.

CWP-3867-2023

1. The present petition has been filed with a prayer to quash the order dated 06.02.2023 (Annexure P-6) passed by the respondents whereby the claim of the petitioner for the grant of pension under the Old Pension Scheme by taking into consideration part time service rendered by him from 20.09.1988 till 09.07.2012 in light of the principle settled by the Division Bench of this Court in CWP No.2371 of 2010 titled as ***Harbans Lal Vs. State of Punjab and others***, decided on 31.08.2010 and has attained finality upto the Hon'ble Supreme Court of India has been rejected. The grievance of the petitioner is that despite law being settled uptill Hon'ble Supreme Court of India, respondents have rejected the claim of the petitioner, hence, the said action of the respondents is arbitrary and against the settled principle of law.

2. Facts relevant for adjudication of controversy raised in the present matter are as under:

3. The petitioner was appointed on a Group-D post on 22.09.1988 as a part time Class-IV employee. He continued working on same post till his services were terminated on 30.10.1990 by respondents. The petitioner challenged the said termination order under the Industrial Dispute Act, 1947 and vide Award dated 18.07.1994 (Annexure P-2), the

order of termination was held to be bad and the petitioner was directed to be reinstated in service from the date of termination alongwith 10% back wages. Thereafter, petitioner was reinstated in service by the respondents and later on his services were regularized by the respondents on 09.07.2012.

4. After the regularization of his services, the petitioner claimed that he be treated under the Old Pension Scheme from 20.09.1988 to 09.07.2012 and the part time service rendered by him be treated as qualifying service for computing his pensionary benefits and as the said benefit was not being extended, the petitioner approached this Hon'ble Court vide CWP No. 24979 of 2022 and same was disposed of vide order dated 31.10.2022 directing the respondents to pass appropriate order on the legal notice dated 05.09.2022 filed by the petitioner raising the said claim before the concerned authorities after placing reliance upon the judgment of the Division Bench of this Court in *Harbans Lal (supra)*.

5. In compliance of the order dated 31.10.2022, the respondents passed an order on 06.02.2023 (Annexure P-6) rejecting the claim of the petitioner.

6. It shall be imperative to mention that a perusal of order dated 31.10.2022 makes it apparent that no reason for rejecting the claim of the petitioner was accorded nor any Rule, which prohibited the grant of the said benefit was brought further. The said order is under challenge in the present writ petition.

7. Learned counsel for the petitioner submits that once, it is a conceded position that the petitioner is continuously working with the respondents from the date of his initial appointment i.e. 20.09.1988 and his services have been regularized on 09.07.2012, hence, keeping in view the judgment in *Harbans Lal (supra)*, according to which, any employee, who was in service on the date when the New Contributory Fund Scheme was brought into operation, will be governed by the Old Pension Scheme, therefore, respondents were under an obligation to grant the benefit of Old Pension Scheme to the petitioner rather than summarily rejecting his claim by passing the impugned order.

8. Learned counsel for the respondents, on instructions from Sh. Pawan Kumar, Assistant, CHC Bhainswal Kalan (Sonepat), submits that though the factual averments qua the service rendered by the petitioner are conceded but submits that as the services of the petitioner were regularized in the year 2012 and as per the Haryana Civil Services (Pension) Rules, 2016 (hereinafter referred to as '2016 Rules'), the qualifying service as defined under Rule 14(2) of 2016 Rules and Rule 14(4), no benefit of the earlier service rendered can be given hence, once any benefit of service rendered prior to regularization, cannot be given keeping in view 2016 Rules, the claim of the petitioner to treat him under the Old Pension Scheme has rightly been rejected by the department.

9. Learned counsel for the respondents further submits that as per judgment of the Hon'ble Supreme Court of India in Civil Appeal No.

3155 of 2023 titled as *Uday Pratap Thakur and another Vs. The State of Bihar and others*, decided on 28.04.2023 and other connected matters, only the benefit of work charge service which is shortfall of the service required to qualify for grant the pensionary benefits can be given, hence, the claim of the petitioner has rightly been rejected by the authorities concerned.

10. I have heard learned counsel for the parties and have gone through the record with their able assistance.

11. The first question which arises for adjudication is whether, the petitioner can be treated under the Old Pension Scheme and whether his case is covered under the judgment of the Division Bench of this Court in *Harbans Lal (supra)*, which judgment has attained finality uptill Hon'ble Supreme Court of India.

12. In *Harbans Lal (supra)*, the Punjab Civil Services Rules, which were applicable on the date when the New Pension Scheme was formulated, have been discussed and a finding has been given that as per the Rules governing the service at the relevant time when the New Pension Scheme was made operational, the daily wage service rendered by an employee after being regularized in service, is to be treated as a qualifying service, hence, the employees, who were in service as on the date when the New Contributory Provident Fund Scheme was made applicable, the said employee will be governed by the Old Pension Scheme, even if their services have been regularized after the

Contributory Provident Fund Scheme was operative. The relevant paragraphs 16 and 17 of the said judgment are as under :-

“16. 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 Restructured 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.

17. 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.”

The judgment in ***Harbans Lal (supra)*** has already attained finality as the same has been upheld by the Hon'ble Supreme Court of India.

13. The next question which arises for determination is whether or not, the petitioner, who was in service as on 01.01.2006, when the New Contributory Provident Fund Scheme was made operational in the State of Haryana, is entitled for the benefit of judgment in ***Harbans Lal (supra)***.

14. It is a conceded position that when the New Contributory Provident Fund Scheme was made operational from 01.01.2006, the petitioner was in service and was working with the respondents. As per Rule 3.17(A) of the Punjab Civil Services Rules (as applicable to Haryana), which were in operation on the date when the services of the petitioner were regularized and were taken into consideration in ***Harbans Lal (supra)***, the service rendered by an employee prior to regularization was to be treated as a valid service to be treated as qualifying service for computing the pensionary benefits by keeping in view the interpretation given to the said Rule by the Full Bench of this Court in CWP No. 2864 of 1983 titled as ***Kesar Chand Vs. State of Punjab through The Secretary, P.W.D.B. & R. Chandigarh and others***, decided on 02.06.1988. The judgment in ***Kesar Chand (supra)***, has been considered by the Division Bench of this Court while passing order in ***Harbans Lal (supra)*** so as to hold that the daily wage service rendered by an employee

is to be treated as a valid service for computing the pensionary benefits, hence, any employee who was in service as on the date when New Contributory Provident Fund Scheme was brought into operation, he/she will be governed by the Old Pension Scheme only.

15. By applying the said ratio of the judgment of the Full Bench of this Hon'ble Court in ***Kesar Chand (supra)***, as well as the judgment of the Division Bench of this Hon'ble Court in ***Harbans Lal (supra)*** and the said judgments have already attained finality uptill Hon'ble Supreme Court of India, it cannot be said that the claim of the petitioner for the grant of benefit under the Old Pension Scheme is not covered by the said judgment. No differentiating fact has been brought to the notice of this Court so as to deny him the benefit of ***Kesar Chand (supra)*** and ***Harbans Lal (supra)***.

16. The respondents, though have not taken any objection with regard to the applicability of any Rule while passing the impugned order, but they have tried to supplement the said impugned order by way of certain averments mentioned in the written statement. It is a settled principle of law that no order can be supplemented by fresh reasons by an affidavit keeping in view the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 1297 of 1977 titled as ***Mohinder Singh Gill and another - Appellants Versus The Chief Election Commissioner, New Delhi and others***, decided on 2.12.1977. The relevant paragraph 8 of the said judgment is as under :-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji case :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older.”

17. As, this Court is to decide keeping in view all the objections raised so that, a retired employee, if entitled should get his dues, even the objections taken by the respondents in their reply are being taken into consideration so as to decide the eligibility of the petitioner for the grant of the benefit under Old Pension Scheme.

18. It may be noticed that the respondents have placed reliance upon Rule 14(2) and 14(4) of 2016 Rules to deny the benefit claimed by

the petitioner. It may be noticed that the said pension Rules which have only been formulated in the year 2016, will not take away the right, which accrued to the petitioner on regularization of his services in the year 2012. Concededly, Rule 3.17(A) of the Punjab Civil Services Rules as applicable to Haryana, was in operation in the year 2012, which Rules have already been interpreted by the Full Bench of this Court in ***Kesar Chand (supra)*** to show that services rendered by an employee prior to regularization is a valid service is to be treated as a qualifying service for computing the pensionary benefits. Same Rule has also been taken into consideration in ***Harbans Lal (supra)*** as well to grant the benefit of Old Pension Scheme to the employees, who were in service when New Contributory Provident Fund Scheme was made operational, even if their services were regularized after new scheme had been made operative.

19. Once, the petitioner became a regular employee in the year 2012, the Rules which were applicable at the time of regularization of his services, are to be taken into account and not the rules which subsequently came into operation, hence, applying of 2016 Rules by the respondents for the grant of benefit which accrued in the year 2012, when the services of the petitioner was regularized, is totally arbitrary and illegal.

20. Even otherwise, a bare perusal of the Rule, which is being relied upon by the respondents i.e. Rule 14(2) and 14(4) of 2016 Rules, is totally misplaced. The Rule 14(2) and 14(4) is being relied upon to say

that only the service, which is whole time employment and not part time can be taken into account as a qualifying service for the grant of benefit of pensionary benefits. The same definition also existed in Rule 3.17(A) of the Punjab Civil Services Rules as applicable to Haryana, which was in operation prior to the promulgation of 2016 Rules. The Full Bench of this Court in ***Kesar Chand (supra)*** held that the said Rule 3.17A of Punjab Civil Services Rules denying the benefit of service rendered on daily wage basis or on work-charge basis is bad and the employees are entitled for the benefit of daily wage service towards qualifying service for computing the pensionary benefits despite similar provision as it exist in 2016 Rules.

21. Once, as far back as in 1989, the similar provision as it exist in 2016 Rules was interpreted by a Full Bench of this Hon'ble Court, which judgment still hold the field, again giving the benefit of whole time service only to be treated as qualifying service, is contrary to the settled principle of law in ***Kesar Chand (supra)***. Any Rule, which was parimateria and has already been considered by the Full Bench of this Court and interpreted in a particular manner, the respondents cannot be allowed to deny the petitioner the benefit under the said Rule by giving an interpretation, which already stands rejected by the Full Bench of this Court in ***Kesar Chand (supra)***.

22. Further, this Court also decided the similar issue in CWP No. 10238 of 2017 titled as ***Jeewan Lata Vs. State of Punjab and others,***

decided on 10.05.2019, wherein it has been held that part time service is to be treated as qualifying service for the computation of pensionary benefits. Hence, the part time service rendered by the petitioner for a period of 24 years cannot be treated as a stop gap arrangement, so as to be discarded for the purpose of pensionary benefits. The relevant paragraphs of this judgment are as under :-

“In view of the above, the second objection which has been raised by the respondents that the part time service rendered by the petitioner from 1984 till 25.10.2010 cannot be counted as a qualifying service is liable to be rejected. As the objections raised by the Counsel for the respondents to deny the benefits are contrary to the settled principle of law and have already been rejected, petitioner is held entitled to the grant of the pensionary benefits on total length of her service under Old Pension Scheme.

The Writ Petition is allowed. The respondents are directed to treat the case of the petitioner under the Old Pension Scheme for the grant of pensionary benefits and while considering the case for the grant of pensionary benefits to the petitioner under the Old Pension Scheme, the service rendered by the petitioner from 1984 till 2010 shall also be treated as a qualifying service for computing the pensionary benefits. Let the calculations of the pensionary benefits be done by the respondents within a period of two months from the receipt of the certified copy of this order and whatever amount the petitioner is found entitled for after the calculations shall be released to the petitioner within a period of next two months.”

23. Further, in the reply, the respondents have also detailed Rule 8(36) of Haryana Civil Services (General) Rules, 2016. It may be noticed that the said Rule was also applicable prospectively from 2016 only and could not have been made applicable upon the benefit which accrues to the petitioner upon regularization in the year 2012. The entitlement of an employee for being treated under the Old Pension Scheme is to be seen on the date when the said employee becomes regular in service. The services of the petitioner were regularized in the year 2012 and keeping in view the judgment in ***Harbans Lal (supra)***, which gives certain benefits to the employees, who were in service on the date when New Contributory Provident Fund Scheme had been brought in operation, the said benefit cannot be taken away by the subsequent Rules of 2016.

24. Further, 2016 Rules are prospective in nature and cannot be made applicable qua any right, which had accrued to the petitioner prior to the promulgation of the said Rules. It is a conceded position that the petitioner became regular in the year 2012, Rule 3.17(A) of Punjab Civil Services, as applicable to Haryana, was applicable hence, the claim of the petitioner needs to be considered under the said Rule only with regard to the grant of benefit under the Old Pension Scheme. In ***Harbans Lal (supra)***, same Rule 3.17A of Punjab Civil Services has already stands interpreted that any employee, who was in service even on temporary basis, upon regularization of his/her services even after 01.01.2004,

he/she will be governed by Old Pension Scheme and the said judgment squarely covers the case of the petitioner in his favour.

25. Learned counsel for the respondents submits that the petitioner was given a fresh appointment and his services were not regularized in the year 2012, hence, once a fresh appointment was given in the year 2012, no benefit of earlier service rendered by the petitioner can be given.

26. A bare perusal of the order dated 09.07.2012 regularizing the services of the petitioner, which has been produced before this Court at the time of hearing clearly shows that the services of the petitioner has been regularized under the Regularization Policy dated 03.08.2011, hence, it is a case of regularization and not a fresh appointment. Even otherwise, no such objection has been taken by the respondents either in the reply or in the impugned order that the petitioner was given a fresh appointment in the year 2012 and his services were not regularized under any Regularization Policy.

27. Now, the question which arise is whether, keeping in view the settled principle of law, benefit of ad-hoc service rendered by an employee for treating the same as a qualifying service can be granted or not.

28. The Hon'ble Supreme Court of India in Civil Appeal No. 6798 of 2019 (@ Special Leave Petition (C) No. 4371 of 2011), titled as ***Prem Singh Vs. State of Uttar Pradesh & Others***, decided on

02.09.2019, after taking into consideration the settled principle of law including the judgment of Full Bench of this Court in *Kesar Chand (supra)* has held that the daily wage service rendered by an employee is to be taken into account to be treated as a qualifying service for pensionary benefits. The relevant paragraphs No. 21, 30, 33 and 36 of the said judgment are as under :-

“21. This Court ordered the counting of work-charged service period towards qualifying service on the basis that pari materia provision contained in Rule 3.17(ii) of the Punjab Civil Services Rules has been struck down in Kesar Chand v. State of Punjab & Ors (supra). This Court has also relied upon Punjab State Electricity Board v. Narata Singh & Anr. (supra) to grant the relief.

22.	xxx	xxx	xxx	xxx
23.	xxx	xxx	xxx	xxx
24.	xxx	xxx	xxx	xxx
25.	xxx	xxx	xxx	xxx
26.	xxx	xxx	xxx	xxx
27.	xxx	xxx	xxx	xxx
28.	xxx	xxx	xxx	xxx
29.	xxx	xxx	xxx	xxx

30. In the aforesaid facts and circumstances, it was unfair on the part of the State Government and its officials to take work from the employees on the work-charged basis. They ought to have resorted to an appointment on regular basis. The taking of work on the work- charged basis for long amounts to adopting the exploitative device. Later on, though their services have been regularized. However, the period spent by them in the work-charged establishment has not been counted towards the qualifying service. Thus, they have not only been deprived of their

due emoluments during the period they served on less salary in work charged establishment but have also been deprived of counting of the period for pensionary benefits as if no services had been rendered by them. The State has been benefitted by the services rendered by them in the heydays of their life on less salary in work- charged establishment.

31. xxx xxx xxx xxx
32. xxx xxx xxx xxx

33. As it would be unjust, illegal and impermissible to make aforesaid classification to make the Rule 3(8) valid and non discriminatory, we have to read down the provisions of Rule 3(8) and hold that services rendered even prior to regularisation in the capacity of work-charged employees, contingency paid fund employees or non- pensionable establishment shall also be counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment.

34. xxx xxx xxx xxx
35. xxx xxx xxx xxx

36. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed.”

29. A bare perusal of the above said judgment would show that it has already been held by the Hon’ble Supreme Court of India that the work-charge daily wage service even paid from the contingent fund, is to

be taken into account as a qualifying service for the pensionary benefits and in the present case, the service rendered by the petitioner from the year 1988 till 2012 is to be treated under the said Category and is fully covered by the judgment in ***Prem Singh (supra)***. Learned State counsel has not been able to distinguish the case of the petitioner so as to deny him the benefit of service rendered by him prior to regularization by treating it as qualifying service for the grant of pensionary benefits.

30. Apart from this, recently the Division Bench of this Court, after considering the relevant proposition of law in ***Harbans Lal (supra)*** and the judgments on the said issue including the judgment of the Full Bench of this Court in ***Kesar Chand (supra)***, while deciding LPA No. 666 of 2022 titled as ***Municipal Council, Qadian Vs. Musthaq Masih and others***, decided on 21.12.2023 and other bunch of cases, has held that the daily wage service rendered by an employee will be taken into account as a qualifying service and any employee, who was in service on the day when the New Contributory Provident Fund Scheme was brought in operation, will be governed by the Old Pension Scheme, even if the services of the employee concerned were regularized after New Pension Scheme was made operative.

31. Learned counsel for the respondents has not been able to rebut the said fact but submits that after considering the judgment in ***Prem Singh (supra)***, the Hon'ble Supreme Court of India in ***Uday Pratap Thakur (supra)***, has come to the conclusion that the total service

rendered on work charge basis cannot be taken into account as a qualifying service and only the service, which falls short so as to grant the pensionary benefits can be taken into account, hence, as the petitioner in the present case has 10 years of service to his credit, no benefit of daily wage service can be given.

32. The said argument has been raised without going through the actual judgment in ***Uday Pratap Thakur (supra)***. In the said judgment, the rule governing the service has been interpreted. The question of law, which was under consideration has been mentioned in paragraph 5 of this judgment, which is as under :-

“5. The short question, which is posed for consideration of this Court is:

“Whether the entire service rendered as work charged under the work charged establishment shall have to be counted and/or considered for the determination of the amount of pension after the work charged employees are regularized under the Rules, 2013?”

33. In paragraph 6 of the judgment in ***Uday Pratap Thakur (supra)***, Rule 5(v) of Rules 2013 has been interpreted. The paragraph 6 is as under :-

6. It is required to be noted that the respective appellants were working as work charged under the work charged establishment in the State. Their services have been regularized under the Rules, 2013 and the follow up notification of the Finance Department vide Circular No.

10710 dated 17.10.2013. Rule 5(v) of the Circular reads as under:-

“5(v) Old pension rules shall be applied on these employees. The benefit pension & gratuity shall be counted by giving one year advantage against the five years services as work-charged employee. Even then if the minimum requirement of 10 years of service for pension is not met under the old rules, then minimum service shall be added to give advantage thereof.”

6.1 Rule 5(v) of the Rules, 2013 as such can be said to be beneficial to such work charged employees, whose services have been regularized subsequently. As per Rule 5(v), even if the minimum requirement of 10 years of service (qualifying service) for pension is not met, in that case also, the service rendered as a work charged to be added for qualifying service for pension. Therefore, the efforts have been made by the State Government to see that after rendering services for number of years as work charged, and thereafter, their services have been regularized, they may not be denied the pension on the ground that they have not completed the qualifying service for pension. It also further provides that the benefits like pension & gratuity shall be counted by giving one year advantage against the five years services as work-charged employee. Therefore, Rule 5(v) as observed hereinabove, is beneficial also in favour of such work charged employees, whose services have been regularized subsequently, and they may not be deprived of the pension on the ground that they have

not completed the qualifying service for pension. The denying of pension after rendering service as work charged for number of years on the ground that they have not completed the qualifying service can be said to be unfair and illegal and can be said to be exploitation. Therefore, to make such work charged employees eligible for pension, Rule 5(v) provides that if any work charged employee, whose services have been regularized under the Rules, 2013, is short of qualifying service, to the extent of such shortage of qualifying service, the services rendered as work charged to be counted for the purpose of qualifying service for pension. Under the circumstances, the Larger Bench of the High Court has rightly observed and held that for the purpose of pension, only such period from the work charged tenure would be added for making the service of an employee, who has been regularized to qualify him for pension.”

34. From the bare perusal of the above, it is clear that it is only after interpreting the Rule 5(v) of 2013 Rules, the judgment has been given. It is not a general principle, which has been laid down by the Hon'ble Supreme Court of India to the effect that total service rendered by an employee is not to be taken into account as qualifying service. Rather in the present case Rule 3.17A of Punjab Civil Services Rules, as applicable to Haryana, gives benefit of total service as interpreted in ***Kesar Chand (supra)***.

35. Learned counsel for the respondents concedes that no such Rule, which is akin to Rule 5(v) of Rules 2013 exists either under the Punjab Civil Services Rules, which were applicable at the time when the services of the petitioner were regularized in the year 2012 or even under the 2016 Rules, which have been framed thereafter.

36. Without looking into the factual aspects including the Rules governing the service, the arguments are being raised by the learned counsel for respondents and the judgments are being cited so as to be made applicable, which is unsustainable. In the present case, it is a conceded position that there is no such Rule 5(v), which exists in ***Uday Pratap Thakur (supra)*** so as to say that the temporary service rendered equivalent to the service which is short for the grant of the pensionary benefits will be taken into consideration and not total service rendered prior to regularization, hence, the judgment in ***Uday Pratap Thakur (supra)*** has no applicability in the facts and circumstances of this case.

37. Another judgment of the Hon'ble Supreme Court of India in Civil Appeal Nos. 3900-3901 of 2022 titled as ***State of Bihar & Others Vs. Rajmati Devi and another***, has been cited that Old Pension Scheme cannot be made applicable in case, the employee's services are regularized after the New Pension Scheme was made operated. The reliance upon the judgment in ***Rajmati Devi (supra)*** is also incorrect as the same has been done without going through the facts of the said case. In the said case, the husband of Rajmati Devi was working in an

Autonomous Society as a Peon. The said Society was taken over by the Bihar Research Society (Taking Over) Act, 2007. By the time, the said Society was taken over, the Old Pension Scheme had already been abolished on 31.05.2005. The services of the husband of Rajmati Devi were only regularized after the same was taken over by the Government. Under these circumstances, the Hon'ble Supreme Court of India held that once, even prior to 31.08.2005 when, the husband of Rajmati Devi was working with the Autonomous Society, there was no pension scheme, the same cannot be granted after the same was taken over by the Government in 2007 when there was no pension scheme on the date when Institution was taken over by the Government.

38. In the present case, when the petitioner was working on daily wage basis from the year 1988, the post in question was a pensionable post, hence, the judgment in ***Rajmati Devi (supra)*** cannot be made applicable in the facts and circumstances of the present case.

39. The last judgment, which has been cited to contest the claim of the petitioner by the respondents is the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 542 of 2023 titled as ***National Institute of Rural Development Vs. Shyam Sunder Prasad Sharma and others***, decided on 28.02.2023. The said judgment is also being made applicable without going through the actual facts of the case. In the said case, the respondent-Shyam Sunder Prasad Sharma was appointed on contract basis as an Associate Professor. As per his contract,

which was made in the year 2002, the same was for a period of three years, which was extendable to five years and as per the contract respondent-Shyam Sunder Prasad Sharma himself opted for the Contributory Provident Fund Scheme despite the fact that there was a pension scheme available at that time. After the expiry of the contract, in the year 2007 again the contract of respondent-Shyam Sunder Prasad Sharma was extended in the year 2007 and he was again given only the benefit under the Contributory Provident Fund Scheme, which was accepted by him without there being any objection. But, after his services were regularized in February, 2009, a claim was raised for the grant of benefit under the Old Pension Scheme by placing reliance upon the Rule 6 of Regularization Rules. The Hon'ble Supreme Court of India held that once, even on the date when respondent-Shyam Sunder Prasad Sharma was appointed in the year 2002 when the Old Pension Scheme was applicable, he had opted for the Contributory Provident Fund Scheme and even while renewing his contract, the Contributory Provident Fund Scheme was made applicable, which was accepted by him, the same cannot change after regularization of his services.

40. At this stage, learned counsel for the respondents submits that as per the Regularization Policy dated 29.07.2011, the benefit of New Pension Scheme was to be given to the employees. It may be noticed that prior to the Notification dated 29.07.2011, the judgment in ***Harbans Lal (supra)***, had already settled the law that the employees, who were

appointed prior to the promulgation of the New Contributory Provident Fund Scheme, will be governed by the Old Pension Scheme, hence, any condition which has been made applicable in the Regularization Policy, which is contrary to the settled principle of law, no benefit of the same can be extended to the respondents.

41. At this stage, learned counsel for the respondents submits that petitioner has never contributed towards the Old Pension Scheme, hence, no benefit of the Old Pension Scheme can be granted.

42. Learned counsel for the petitioner submits that the petitioner was never allowed the benefit under the Old Pension Scheme and once this Court is allowing the petitioner the benefit under the Old Pension Scheme, petitioner will deposit all the arrears required for keeping in view the rules governing the said aspect along with statutory interest available. That being so, the respondents cannot deny the petitioner the claim, which is admissible to him under the Old Pension Scheme.

43. Keeping in view the above, the present writ petition is allowed. The order dated 06.02.2023 (Annexure P-6) is set-aside. The respondents are directed to treat the petitioner under the Old Pension Scheme for the grant of pensionary benefits. However, the same will be subject to the deposit of the required dues by the petitioner, which will be calculated by the respondents and be informed to the petitioner within a period of eight weeks from the date of receipt of copy of this order, which

dues will be deposited by the petitioner within a further period of eight weeks.

44. Petition is allowed in above terms.

April 20th, 2024
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No