



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

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CWP-11375-2023

Date of decision: 10.12.2024

Phool Pati

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Shubham Kashyap, Advocate for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

AMAN CHAUDHARY, J. (ORAL)

1. The petitioner seeks a direction in this petition for the respondents to consider her previous daily wage service, before her regularization, as a qualifying period for pension and retirement benefits.

2. Learned counsel submits that the petitioner was initially engaged as daily wager on 01.02.1980, whereafter on termination of her services 21.09.1995, she raised an industrial dispute, which led an award by Labour Court dated 05.11.2008, directing her reinstatement with continuity of service but without granting back wages. Thereafter, she filed a Civil suit no.25/1 of 2011 seeking regularization w.e.f. 01.10.2003, that was decreed on 22.05.2012, consequently, her services were regularized vide order dated 31.08.2018 w.e.f. 01.10.2003 in the pay scale of Rs.2550-3200/- plus allowances, Annexure P-3 and thereafter she superannuated on 28.02.2022.



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Despite this Court having settled the matter in **Harbans Lal vs. State of Punjab & Ors**, CWP No. 2371 of 2010, decided on 31-08-2010, against which SLP was also dismissed, the service rendered by her prior to regularization has not been taken into account for the purpose of pension , relevant paras whereof read thus :-

“9. Mr. Shalender Mohan, Advocate for the petitioner has further argued that this issue has been considered in a number of judgments while interpreting Rule 3.17 A of the CSR Vol.2. Reference can be made to the judgments of this Court in case of Kashmir Chand v. Punjab State Electricity Board and others, 2005(4) S.C.T 298 : 2005(4) RSJ 581 and Ram Dia and others v. Uttar Haryana Bijli Vitran Nigam Ltd. and another, 2005(4) RSJ 689, Hari Chand v. Bhakra Beas Management Board and others, 2005(2) S.C.T. 95 : 2005(2) RSJ 373 and Balbir Singh v. State of Haryana and others, 2004(3) S.C.T. 698 : 2004(4) RSJ 71. Full Bench while dealing with a similar controversy in the case of Kesar Chand v. State of Punjab, 1988(2) PLR 223 has held as under :-

"Once the services of a work-charged employee have been regularized, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged established before his regularisation has not been taken into consideration for determining the qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work-charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work charged employee have been regularized, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness and for these reasons the provisions of sub rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."

9. The aforesaid view was further reiterated by this Court in the cases of Joginder Singh, Hazura Singh and Nasib



Singh (supra). A conjoint reading of the rules, quoted above and the observations of the Full Bench would reveal that it is by now well established that period of service rendered on daily wage/work charges prior to regularisation of services is liable to be counted for the purposes of gratuity and pension."

10. The consistent view of the judgment is that work charge service rendered before regularization, is liable to be counted as qualifying service for the purpose of pension. A Division Bench of this Court was seized of a case in which vires of Rule 3.17 A was challenged whereby half of the service paid out of contingency fund was to be counted as qualifying service. This rule has been struck down in a judgment of this Court in case of Joginder Singh v. State of Haryana, 1998 Vol.1 SCT 795. Once the entire service paid out of contingency, is liable to be counted for the purpose of qualifying service, a casual/daily rated service is also bound to be counted as qualifying service.

11. A Division Bench judgment in case of Smt. Ramesh Tuli v. State of Punjab and others, 2007(3) SCT 791 examined the proposition as to what would be the qualifying service for pension as per Clause 6(6) of the 1992 Pension Scheme applicable to the Punjab Privately Management Recognised Schools Employees. In paragraph 6 of the judgment, the following observation has been made:-

"There is another aspect of the matter. Hon'ble the Supreme Court in the case of Vansant Gangaramsa Chandan v. State of Maharashtra, 1996(4) SCT 403 : JT 1996 (Supp.) SC 544, has considered clause 23 of Chapter VI of a Pension Scheme of the Hyderabad Agricultural Committee, which is as under :-

"4. Clause 23 of Chapter VI in the scheme reads as under :
"Qualifying service of a Market Committee employee shall commence from the date he takes charge of the post to which he is first appointed or from the date the employer started deducting the P.F. contribution for the employee whichever ever later."

It was held that the clauses of the Scheme have to be read by keeping in view the fact that pension is not a bounty of the State and it is earned by employees after rendering long service to fall back upon after their retirement. The same cannot be arbitrarily denied. The clause was subjected to the principle of 'reading down' a well known tool of interpretation to sustain the constitutionality of a statutory provision and accordingly it was read down to mean that the qualifying service could commence either from the date of taking charge of the post to which the employee was first appointed or from the date he started contributing to the Contributory Provident Fund whichever was earlier. The ratio of the above mentioned



judgment would apply to the facts of the instant case, inasmuch as, the provision made in clause 6(6) of the 1992 Scheme has to be read down to mean that qualifying service would commence from the date of continuous appointment, which is 17.8.1965 in the present case, or from an earlier date if the employer had started contributing to the Contributory Provident Fund whichever is earlier. Therefore, the petitioner would be entitled to count her service with effect from the date of her appointment and approval i.e. 17.8.1965."

12. The writ petition was allowed and the petitioners were held entitled to count their entire service w.e.f. 17.8.1965 to 30.9.2001 as qualifying service for the purposes of pension. However, the Contributory Provident Fund was required to be adjusted and deducted from the arrears of her pension. We come to the conclusion that the petitioners' initial date of appointment after regularisation 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 regularisation 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.

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15. This view has been followed by a Division Bench of this Court in case of Hans Raj v. 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.

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 regularisation 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.

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 regularised 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.

18. No order as to costs.

Petition allowed.”

3. In **Babunji Bhagat vs. State of Punjab and Others¹**, this Court ruled in favor of a Class IV employee and directed the respondents to recognize the service provided as a Daily Wage Cook from May 13, 1995, to October 15, 2010, as qualifying service for pensionary and retiral benefits. Relevant paras where of read thus:

“5. A bare perusal of the aforesaid provision shows that the same is explicit and there is no ambiguity. The service is not required to be rendered in the same cadre to be covered under 3.17 Rule. The word used is 'service' and not 'cadre'. Moreover, Division Bench in Harbans Lal's case (supra) explained the import of the Rule and held as under :-

“....We come to the conclusion that the petitioners' initiate 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



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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.”

6. In view of the law laid down in Harbans Lal's case this Court finds that the case of the petitioner would be fully covered therein. Consequently, the present writ petition is allowed.

7. Accordingly,the respondents are directed to treat the whole period of daily wage service as qualifying service for pensionary/retiral benefits of the petitioner and his claim to pension will be governed as per old Rules and not under the New Defined Contributory Pension Fund Scheme.

8. Ordered accordingly.”

4. Learned State counsel despite his best efforts was unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

5. Reinforced by a rich tapestry of judicial precedents, it stands affirmed that service as a daily wager preceding regularization, is to be reckoned as qualifying service for pension. The present writ petition is disposed of in terms of **Harbans Lal** and **Babunji Bhagat** (supra).

(AMAN CHAUDHARY)
JUDGE

10.12.2024

Hemant

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