



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(229)

CWP No. 11330 of 2023
Date of Decision : 25.10.2024

Avtar Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shalender Mohan, Advocate for the petitioners.

Ms. Shruti, Assistant Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance being raised by the petitioners is that though they were in service as on 01.01.2004 but they are not being given the benefit of Old Pension Scheme only on the ground that their services have been regularized in the year 2011 on which date the Old Pension Scheme was not available.
2. Learned counsel for the petitioners argues that as per the judgment of 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, which judgment has already attained finality upto the Hon'ble Supreme Court of India, any employee who was in service as on 01.01.2004, is entitled for the grant of benefit of Old Pension Scheme even if his/her services have been regularized after 01.01.2004 hence, the respondents are denying the



benefit to the petitioner of the judgment of *Harbans Lal (supra)* and that too without any valid justification.

3. Learned counsel appearing on behalf of the respondents submits that though, the petitioners were in service as on 01.01.2004 but they were working as piece rate workers though, the learned State counsel conceded that the services of the petitioners as piece rate workers had already been regularized under the Instructions dated 11.03.2011. Learned counsel submits that as the services of the petitioners were only regularized in the year 2011, the benefit under the Old Pension Scheme cannot be given as the same was not applicable on the said date.

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

5. It is disheartening to know that despite the fact that a particular question of law has already been settled as far back as in the year 2010, the same issue is being raked up by the State of Punjab in every other case. Learned counsel for the respondents has not been able to dispute the fact that as per the judgment in *Harbans Lal (supra)*, any employee who was in service as on 01.01.2004 even as a temporary employee, is entitled for the benefit under the Old Pension Scheme even if his/her services have been regularized after the said date.

6. That being so, still the claim of the petitioners has been denied for the grant of benefit under the Old Pension Scheme only on the ground that on the date when the services of the petitioners were regularized in the year 2011, the New Contributory Provident Fund Scheme was applicable,



according to which Scheme, the benefits have been released at the time of the retirement of the petitioners.

7. The question which arises is that why, the State is making every employee who is covered by the judgment in *Harbans Lal (supra)* who has approached this Court to seek the same relief, which is also contested despite the fact that the issue has already attained finality. Learned State counsel submits that judgment in *Harbans Lal (supra)* has not been generalized by the State and approval of Finance Department is needed in every case.

8. In the present case, the relief is being claimed keeping in view the judgment of the Division Bench in *Harbans Lal (supra)*, which has already attained finality upto the Hon’ble Supreme Court of India. The relevant paragraphs of the said judgment are as under :-

“ xxx xxx xxx xxx

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 causal/daily rated service is also bound to be counted as qualifying service.*

- 11. xxx xxx xxx xxx
- 12. xxx xxx xxx xxx
- 13. xxx xxx xxx xxx
- 14. xxx xxx xxx xxx
- 15. xxx xxx xxx xxx



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 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 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.”*

9. A bare perusal of the above reproduction would show that even a temporary employee who was in service as on 01.01.2004, is entitled for the benefit under the Old Pension Scheme even if his/her services have been regularized after 01.01.2004.



10. By applying the said judgment of *Harbans Lal (supra)*, the claim of the petitioners is squarely covered for the grant of benefit under the Old Pension Scheme as concededly petitioners were in service as on 01.01.2004.

11. Only argument raised by the respondents to deny the benefit to the petitioners is that the services of the petitioners have been regularized in the year 2011 and hence, only the Scheme which was applicable, on the date of regularization, will be made applicable cannot be accepted as the said argument has already been considered by the Division Bench in *Harbans Lal (supra)* and rejected, which judgment has already attained the finality upto the Hon'ble Supreme Court of India. Raising the same argument, which has not been accepted by the Court in an earlier proceeding rather amounts to contempt of Court.

12. Keeping in view the above, as no differentiating fact has been pointed between the case of the petitioners and *Harbans Lal (supra)*, no justification arise to deny the petitioners the benefit as admissible to them under *Harbans Lal (supra)*.

13. Keeping in view the above, the present petition is also allowed. The respondents are directed to consider the claim of the petitioners under the Old Pension Scheme for the computing and grant of the pensionary benefits. Let the needful be done within a period of eight weeks from the date of receipt of copy of this order.

14. The petitioners will also be entitled for arrears of pensionary benefits as well as pension from the date they retired. The amount which has already been paid to the petitioners under the Contributory Provident Fund



Scheme will be adjusted by the respondents while giving the benefits to the petitioners under the Old Pension Scheme.

15. As on the date when the petitioners retired, the judgment in *Harbans Lal (supra)*, was very much available for being applied upon the case of the petitioners, which has not been applied and the petitioners have been made to litigate to claim the benefit, which was admissible to them under the judgment in *Harbans Lal (supra)* on the arrears, which will be paid to the petitioners under this order, the petitioners will also be entitled for interest @ 6% per annum from the date petitioners retired till the actual payment of the same.

16. Petition is allowed in above terms.

October 25, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No