

CWP-19107-2021

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2024:PHHC:007289

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

228

CWP-19107-2021

Date of Decision :19.01.2024

Satyabir Singh and others

...Petitioners

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shubham Kashyap, Advocate for
Mr. Sandeep Singal, Advocate for the petitioners.

Mr. Harish Rathee, Senior DAG, Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, prayer of the petitioners is that the petitioners joined the service with the respondent-department in the year 1993 on temporary basis but their services were regularized vide order dated 25.10.2011 (Annexure P/2) from 29.07.2011 hence, keeping in view the settled principle of law settled by the Division Bench of this Court in **CWP-2371-2010 titled as Harbans Lal vs. State of Punjab and others, decided on 31.08.2010** which judgment has already attained finality up to the Hon'ble Supreme Court of India, they are entitled to be governed by the Old Pension Scheme.

2. Learned counsel for the respondents on the other hand submits that once on the date when the services of the petitioners were regularized in the year 2011, there was no Old Pension Scheme available, the petitioners

have rightly been considered under New Contributory Pension Scheme by the respondents.

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

4. The only question which arises is as to whether keeping in view the facts and circumstances of the present case, petitioners are to be treated under the Old Pension Scheme for the grant of pensionary benefits or under the New Contributory Pension Scheme, which came into operation w.e.f. 01.01.2006. The said question of law has already been decided by the Division Bench of this Court in CWP-2371-2010 titled as Harbans Lal vs. State of Punjab and others, decided on 31.08.2010, wherein, it has been held that an employee, who was in service on 01.01.2004 though on daily wage basis or on work charge basis, is entitled for to be considered under the Old Pension Scheme even if, the services of the said employee were regularized after 01.01.2004. The relevant paragraphs of the said judgment are as under:-

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.*
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|-----|-----|-----|-----|-----|
| 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.”

5. A bare perusal of the above reproduction would show that any employee who was in service on the date when the New Contributory Pension Scheme came into operation i.e. 01.01.2006, he/she is entitled to be considered under the Old Pension Scheme, even if, the services of the said employee was regularized after 01.01.2006.

6. In the present case, the petitioners were in service on 01.01.2006 but their services were regularized on 29.07.2011. That being so, claim of the petitioners is squarely covered by the settled principle of law settled by Division Bench of this Court in **Harbans Lal (supra)** for treating them under the Old Pension Scheme.

7. Keeping in view the facts and circumstances noticed hereinbefore coupled with the settled principle of law, present petition is allowed. Respondents are directed to treat the petitioners under the Old Pension Scheme.

8. Learned counsel for the petitioners submits that whatever

amount the petitioners are required to deposit under the Old Pension Scheme, the same will be deposited by the petitioners along with statutory interest.

9. Present writ petition is allowed in above terms.

January 19, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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