



CM-18636-CWP-2024 in/&
CWP-10463-2013 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105 CM-18636-CWP-2024 in/&
CWP-10463-2013 (O&M)
Date of Decision :25.11.2024

Inder Singh and another ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Baljeet Singh Sidhu, Advocate for the petitioner No.2.
Mr. Arun Gupta, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

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Present application has been filed for fixing some actual date of
hearing in the main petition.

Notice of the application to the counsel opposite.

Mr. Arun Gupta, DAG Punjab, who is present in the Court,
accepts notice on behalf of respondent-State and raises no objection for the
grant of prayer as made in the present application.

Keeping in view the averments made in the application which
are duly supported by an affidavit, application is allowed. Main petition is
taken up for hearing today itself.



CWP No.10463 of 2013

In the present petition, the grievance of the petitioners are that the petitioners are entitled for the grant of pensionary benefits under the Old Pension Scheme and the New Contributory Pension Scheme, which came into being w.e.f 01.01.2004 is not applicable upon the petitioners.

As per the petitioners, the petitioners competed for the post of Clerk which was advertised by the respondents on 23.06.2001. The petitioners competed and were selected and appointed on 26.12.2003. In pursuance to the appointment order, the joining time was given and the petitioners joined the service on 08.01.2004. Upon joining, the respondents have made applicable the New Contributory Pension Scheme upon the petitioners on the ground that despite the fact that they were appointed on 26.12.2003 but as they joined on 08.01.2004, the said New Contributory Pension Scheme will be applicable upon them.

In the present petition, the challenge is to the action of the respondents for bringing the petitioners into the New Contributory Pension Scheme only on the basis of the joining on the post on 08.01.2004 and by ignoring their date of appointment i.e. 26.12.2003.

Learned counsel for the petitioners has argued that once the petitioners have been appointed on 26.12.2003, on which date, the Old Pension Scheme was applicable and the petitioners were given 90 days time to join the post and the joining of the petitioners is in pursuance to appointment order hence, the petitioners are entitled to be treated under the Old Pension Scheme instead of new restructured defined the Contributory Pension Scheme, which came into being after 01.01.2004 keeping in view



the date of appointment of the petitioners, which is prior to 01.01.2004.

Upon notice of motion, the respondents have filed reply wherein, the respondents conceded the fact that the petitioners were appointed on 26.12.2003 but submits that as the petitioners joined only in January, 2004, the petitioners have rightly been treated under the New Contributory Pension Scheme instead of Old Pension Scheme.

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

The question which arises for determination before this Court is, whether any appointment made prior to 01.01.2004 can be dealt with under the New Contributory Pension Scheme, which came into existence only from 01.01.2004.

As per the settled principle of law, the law which is applicable on the date of appointment, is to be made applicable for the grant of benefits admissible to the new recruit.

It is a conceded position that on the date of appointment of the petitioners as per the law existed, Old Pension Scheme was in force. Concededly, the petitioners were given 90 days time to join but they joined within a period of 10 days. Once, the petitioners joined in pursuance to the appointment order dated 26.12.2003, action of the respondents in making New Pension Scheme applicable upon them only on the ground that the petitioners joined on 08.01.2004, is totally arbitrary and illegal and cannot be sustained in the eyes of law.

Learned counsel for the respondent-State was directed to place on record the New Contributory Pension Scheme to show that same is

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applicable even qua the employees who are appointed when the Old Pension Scheme was in existence, merely upon joining the post after 01.01.2004.

Learned counsel for the respondents very fairly submits that he is not able to point out any provisions of the New Contributory Pension Scheme that the same will be applicable wherein, the direct recruit has already been appointed prior to 01.01.2004. Once, the learned State counsel has not been able to point out any rule in the New Contributory Provident Fund Scheme, which is applicable from 01.01.2004 which prohibits the grant of benefit of Old Pension Scheme to a recruit, who was recruited prior to 01.01.2004, denying the benefit under the Old Pension Scheme to the petitioners merely on the ground that they joined after 01.01.2004 is arbitrary and illegal and is not supported by any rule, instruction or even by the Contributory Pension Scheme admissible.

Not only this, as per the settled principle of law settled by the Delhi High Court in **W.P. (C) 2810/2016, titled as, Inspector Rajendra Singh and others vs. UOI and others decided on 27.03.2017** wherein, it has been held that where even the appointment was made after 01.01.2004 qua the post which was advertised prior to 01.01.2004 and selection was finalized prior to 01.01.2004, Old Pension Scheme will be applicable. Relevant paragraph of the judgment is as under:-

“13. Having regard to the facts and circumstances of this case, where advertisements for recruitment to the posts of Sub Inspectors in CAPFs were issued in November, 2002, written examinations were held on 12.01.2003, Physical Efficiency Test had been held in or before April, 2003, and the



petitioners appeared before the Medical Board between April, 2003, to June, 2003, and declared fit upon medical re-examination by Review Medical Board in December, 2003, it would be grossly unjust and arbitrary to deny the petitioners the benefit of the Old Pension Scheme, applicable at the time when the posts were advertised, only because of the fortuitous circumstance of their joining service after the enforcement of the New Pension Scheme, for reasons not attributable to them.

14. As observed above, the authorities concerned took six months' time to decide the appeal against the decision of the Medical Board, declaring the petitioners medically unfit. The petitioners were found fit by other Medical institutions of repute and ultimately found fit by a Review Medical Board constituted by the respondent authorities themselves on 28.12.2003. The respondent authorities unnecessarily delayed constitution of a Review Medical Board. Had the respondent authorities and in particular Staff Selection Commission acted with diligence, the petitioners could have been appointed within 31.12.2003.

15. The advertisements were for appointment of Sub Inspectors to Central Armed Police Forces including CRPF, ITBP and BSF. A common entrance examination was held for all the services. However, services were allotted having regard to the merit position of the candidates, as also the option exercised by them.

16. The differentiation between Sub Inspectors who applied pursuant to a common advertisement and were selected after going

through a common selection process but appointed to different armed forces, on the basis of a notification issued long after commencement of the selection process, depending on the fortuitous event of the date of joining service is arbitrary, discriminatory and violative.

17. Had the petitioners and others, who opted for the Border Security Force, known that by opting for the Border Security Force, they would have been denied the benefit of the Old Pension Scheme, they would perhaps have not opted for the Border Security Force.

18. In our view, basic terms and conditions of service, such as the right to receive pension upon superannuation, as applicable at the time of notification of the posts, cannot later be altered to the prejudice of the incumbents to the post, after commencement of the selection process.

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33. In support of their submissions, the respondent cited U.P. Jal Nigam and Another Vs. Jaswant Singh and Another 2006 (11) SCC 464, where the Supreme Court held that laches and delay were important factors that had to be considered by the Court before exercise of its discretionary power to grant relief under [Article 226](#) of the Constitution of India. The Court further held that when a person was not vigilant of his rights, his writ petition might not be heard after a couple of years to WP(C) NO. 2810/2016 consider on the ground of whether the same relief should be granted to him, as was

granted to a person similarly situated, who had been vigilant about his rights and had challenged his retirement, which was said to be made on attaining the age of 58 years.

34. The Supreme Court held that in determining, whether there had been such delay, would amount to laches, the points to be considered were acquiescence on the part of the petitioner, and any change of position that had occurred on the part of the respondent. The respondents were held to be guilty of laches, as they had acquiesced by accepting their retirement which they did not challenge in time. The Supreme Court held that if the writ petitioners had been vigilant, they would have filed writ petitions, as others did when they were made to retire on attaining 58 years of age. Relief was declined on the ground of delay.

35. The issue in U.P. Jal Nigam (supra) was, whether the employees could be retired on attaining the age of 58 years,

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WP(C) NO. 2810/2016 when State Government employees were allowed to continue till the age of 60 years. The Court found that they had already accepted their retirement. They had retired from service, and, therefore, relief was refused.

36. However, in Tukaram Kana Joshi & Ors. vs. Maharashtra & Ors. vs. Maharashtra Industrial Development Corporation & Ors. reported in (2013) 1 SCC 353, the Supreme Court held:-

"14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is



legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non- deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide: [Durga Prasad v. Chief Controller of Imports and Exports & Ors.](#), AIR 1970 SC 769; [Collector, Land Acquisition, Anantnag & Anr.v. Mst. Katiji & Ors.](#), AIR 1987 SC 1353; [Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors.](#), AIR 1993 SC 802; [Dayal Singh & Ors. v. Union of India & Ors.](#), AIR 2003 SC 1140; and [Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors.](#), AIR 2011 SC 2161)"

37. In [H.D Vora v. State of Maharashtra & Ors.](#) reported in (1984) 2 SCC 337, the Supreme Court condoned delay of 30 years in approaching the court where it found violation of substantive legal rights of the applicant in that case.

38. In this case, the petitioners have not retired from service. After persons similarly circumstanced, if not identically circumstanced, as the petitioners were, given the benefit of the Old Pension Scheme, may be, pursuant to orders of this Court, the petitioners approached this Court for relief. Rejection of the writ petition only on the ground of delay, would



perpetrate discrimination between persons similarly circumstanced.

39. It is well settled that relief under [Article 226](#) of the Constitution of India is discretionary. When there is acquiescence and laches and delay in approaching this Court, discretionary relief might be declined. However, delay is no bar to entertaining a writ petition. If entertaining a delayed writ petition entails the consequence of unsettling things already settled, relief may be declined. However, flagrant discrimination cannot be allowed to continue, only because of delay. Illegality must be redressed. In this case grant of relief would not result in unsettling things already settled. We are not inclined to reject the writ petition on the ground of delay.”

The same question again came up for consideration before the Delhi High Court in **W.P. (C) 756/2020** titled as **Dr. Davinder Singh Brar vs. Union of India and others decided on 28.01.2020** and again the same view was reiterated that once a candidate got selected in pursuance to an advertisement issued prior to 01.01.2004 i.e. the date when the New Defined Contributory Pensionary Scheme had come into being and even selection was made prior to the said date, merely, issuance of appointment letter after the date when the New Defined Contributory Pensionary Scheme came into being, will not take away the right by the appointee to be governed under the Old Pension Scheme.

The judgment in **Davinder Singh Brar (supra)** was challenged before the Hon'ble Supreme Court of India by the Government of India in



SLP (C) No.173/2021, titled as Union of India and others vs. Dr. Davinder

Singh Brar and the view of Delhi High Court as noticed hereinbefore was upheld by the Hon'ble Supreme Court of India and the special leave petition was dismissed on 04.02.2021. Keeping in view the settled principle of law laid down by Delhi High Court, which has already been upheld up to the Hon'ble Supreme Court of India, the claim of the petitioners needs to be allowed especially, in the facts and circumstances, where not only the petitioners were selected but appointed also prior to 01.01.2004 i.e. the date when the New Defined Contributory Pensionary Scheme had come into being will not defeat the right of the petitioners to be governed under the Old Pension Scheme merely upon joining the post within prescribed time of joining which happened to be after 01.01.2004.

Further, Notification dated 02.03.2004 issued by the Government of Punjab by which, the Punjab Civil Services Rules were amended by the Punjab Civil Services (First Amendment) Rules, 2004, which were brought into operation w.e.f. 01.01.2004, it was mentioned that the rules in Part-I-Pensions in Volume-II of Punjab Civil Services Rules shall not apply to the Government employees who are appointed to the posts mentioned in categories (1) to (5) on or after 01.01.2004 and they shall be covered by the new Defined Contributory pension Scheme to be notified by the State Government in due course. Relevant part of the said notification is being reproduced for ready reference:-

“In exercise of powers conferred by proviso to Article 309 read with clause (3) of Article 187 of the Constitution of India and all other powers enabling him in this behalf, the Governor of Punjab, after consultation with Speaker of Punjab Vidhan Sabha, in so far as such consultation is

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necessary under the aforesaid provisions, is pleased to make the following rules further to amend the Punjab Civil Services Rules, Volume-I, Part-I namely:-

(i) These rules may be called the Punjab Civil Services (First Amendment) Rules, 2004

(ii) These shall be deemed to have come into force with effect from the 1st date of January, 2004

“ In the Punjab Civil Services Rules, Volume I, Part-I in rule 1,2 the following proviso shall be added at the end of sub rule(1):

‘Provided that the rules in Part-1-Pensions in Volume-II of these rules called the Punjab Civil Services Rules, Volume-II shall not applied to the Government employees who are appointed to the posts mentioned in categories (1) to (5) on or after 01.01.2004 and they shall be covered by the new Defined Contributory pension Scheme to be notified by the State Government in due course”

A bare perusal of the above notification which is sought to be made applicable upon the petitioners clearly shows that the same is applicable upon the appointment which are made after 01.01.2004. It does not recites that any appointment already made prior to 01.01.2004 where the joining is to be given by candidate, notification will be made applicable. The Notification issued by the State is to be made applicable as it reads without adding anything whereas, the respondents are interpreting the said notification to mean that even if joining to the post in respect of the appointment made prior to 01.01.2004 will also attract notification dated 02.03.2004. The said interpretation is totally arbitrary and illegal and is not governed by notification dated 01.01.2004 sought to be covered the case of petitioner hence, as the petitioners already appointed on 26.12.2003, notification dated 02.03.2004 will not be applicable upon the petitioners so as to deny them the benefit of Old Pension Scheme, which was applicable on the date when the petitioners were appointed on the post in question.

Learned counsel for the respondents has not been able to rebut



the fact that notification dated 02.03.2004 will only be applicable upon the appointments which are made on or after 01.01.2004 hence, the petitioners are entitled to be governed by the Old Pension Scheme keeping in view their date of appointment irrespective of date of their joining to the said post.

In the present case, the petitioners are on higher pedestal as compared to the **Davinder Singh Brar (supra)** as they were not only selected but even appointed prior to 01.01.2004. Once, the appointment was prior to 01.01.2004 when the Old Pension Scheme was in force, making applicable the New Contributory Pension Scheme upon the petitioners only on the ground of their date of joining and that too without there being supported by any rule or even provisions of the New Contributory Pension Scheme, which was made applicable from 01.01.2004, is arbitrary and illegal and is not supported by even the provision of New Contributory Provident Fund Scheme.

Learned counsel for the respondent-State submits that another order was passed by this Court in **CWP-9893-2019 titled as Sheeru vs. State of Punjab and another decided on 15.07.2024** wherein, the benefit was given under the Old Pension Scheme wherein, LPA has been filed, which judgment has not been stayed.

It may be noticed that in the case of **Sheeru (supra)**, the appointment was after 01.01.2004 but in the present case, the appointment in pursuance to which the relief is being sought is dated 26.12.2003, which is prior to 01.01.2004 and hence, the applicability of the case of **Sheeru (supra)** in the present case does not arise and the pendency of LPA will not make any difference in the facts and circumstances of the present case.



Keeping in view the facts and circumstances recorded hereinbefore, present petition is allowed. The respondents are directed to grant the benefit of Old Pension Scheme to the petitioners for all intent and purposes.

Further, it may be noticed that the respondents have passed an illegal order, which is not supported by any rule or provisions, just to harass the petitioners, which made them to litigate before this Court.

Learned counsel for the respondents submits that he has sought instructions from Mr. Shashi Gagg, ARE, O/o DSE (S), Punjab, keeping in view the facts and circumstances of the present case so as to grant the relief to the petitioners but the Director Public Instructions (SE), Punjab was adamant that in the present case, the petitioners are not entitled for any relief.

This shows the attitude of the respondents as despite having clear cut case of being treated under the Old Pension Scheme keeping in view the date of appointment of the petitioners, which is prior to 01.01.2004, the petitioners have been made to litigate before this Court hence, the present petition is allowed with costs of Rs.1 lac to be deposited by the Director Public Instructions (SE), Punjab from his/her own pocket, not to be reimbursed under any circumstances. If an authority pass any order which is not supported by any law or Rules or Regulations, said authority is liable to compensate the petitioners and the State funds cannot be used to support arbitrary order of an authority.

Learned counsel for the petitioners submits that let the cost be used for the litigants, who do not have means to engage counsel and the

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same be paid in equal share to the Haryana State Legal Services Authority as well as the Punjab State Legal Services Authority so that the needy litigants can avail the benefit of legal service.

Ordered accordingly.

Let the present order be complied with within a period of two weeks from the date of receipt of copy of this order and an affidavit in compliance of the same be filed before this Court failing which, an appropriate action will be taken.

Present petition is allowed in above terms.

Civil miscellaneous application pending, if any, is also disposed of.

November 25, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes