



CWP-16130-2022 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-16130-2022 (O&M)
Date of Decision :06.09.2024

Saroj Rani

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Karminder Singh, Advocate with
Mr. Prabhsher Singh Walia, Advocate for the petitioner.

Mr. Amarpreet Singh Bains, AAG, Punjab

* * *

Harsimran Singh Sethi, J. (Oral)

In the present petition, grievance being raised by the petitioner is that though she was entitled to be considered under the Old Pension Scheme for the release of her pensionary benefits, which was applicable prior to 01.01.2004 but the petitioner has not been considered under the said Old Pension Scheme so as to grant her the benefit of said scheme despite the fact that the claim of the petitioner is covered by the judgment of the Division Bench of this Court in **CWP-2371-2020, titled as, Harbans Lal vs. State of Punjab and others decided on 31.08.2010**, which has already been upheld up to the Hon'ble Supreme Court of India.

Upon notice of motion, the respondents have filed reply wherein, the only argument raised by the respondents so as to deny the benefit of Old Pension Scheme to the petitioner is that the petitioner's



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services were regularized after 01.01.2004 hence, the petitioner is not entitled for the grant of benefit of Old Pension Scheme.

Learned State counsel submits that the petitioner has already accepted the benefit under the New pension Scheme after her retirement hence, now she cannot raise a claim so as to be considered under Old Pension Scheme.

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

As per the judgment of the Division Bench of this Court in **Harbans Lal (supra)**, any employee, who was working with the respondent-State prior to 01.01.2004 will be governed under the Old Pension Scheme even if, his/her services were regularized after 01.01.2004.

In the present case, it has been conceded by the respondents that the petitioner was working with the respondents since 1996 however, services were regularized later on. Merely that the services of the petitioner have been regularized after 01.01.2004, the petitioner cannot be treated to be paid her pensionary benefits under the New Pension Scheme especially when her case is covered by the judgment in **Harbans Lal (supra)**.

Learned counsel for the respondent-State has not been able to point out any differentiating fact in the case of the petitioner as compared to the case of **Harbans Lal (supra)** wherein, benefit of Old Pension Scheme was granted to an employee, who was in service prior to 01.01.2004 and his services were regularized after the said date. Relevant paragraphs of the 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.”

Keeping in view the above, the respondents are directed to recalculate the pensionary benefits of the petitioner under the Old pension Scheme by giving her all the benefits of service from the date of her initial appointment till the date of her retirement so as to compute her entitlement. The petitioner will also be entitled for the benefit of arrears of pension under the Old Pension Scheme from the date the petitioner retired from service up to the date the said benefits are released. The amount which the petitioner



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has been paid under the New Pension Scheme after her retirement will be adjusted while releasing the arrears for which the petitioner becomes entitled under the Old Pension Scheme.

Further, the judgment in **Harbans Lal (supra)** was available with the respondent-State for implementation when the petitioner retired from service but without any valid justification, the said judgment has not been made applicable upon the petitioner rather she was forced to litigate for her entitled benefits hence, keeping in view the judgment of the Coordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355**, wherein, it has been held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given, the petitioner is also held entitled for the grant of interest @ 6% per annum on the arrears admissible to the petitioner from the date the same became due till the actual payment of the same. The relevant paragraph of the judgment is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

Let the present order be complied with within a period of 08



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weeks from the date of receipt of copy of this order.

Present petition is allowed in above terms.

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

September 06, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*