

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

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CWP-17166-2022 (O&M)

Date of Decision: 21.03.2024

Mukhtiar Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Vikas Chatrath and
Mr. Dharamvir Singh, Advocates for the petitioners.

Mr. Gagneshwar Walia, Addl. AG, Punjab.

AMAN CHAUDHARY, J.(ORAL)

1. The present Civil Writ Petition has been filed under Articles 226/227 of the Constitution of India for issuance of directions to the respondents to consider the case of the petitioner under the Old Pension Scheme.

2. Learned counsel would contend that the petitioner who initially joined the Department of Roadways on 01.04.1982 as a daily wager, was thereafter appointed as a Helper on 27.02.1987 till he was retrenched on 31.03.1999 and reinstated w.e.f. 01.04.1999 by the Industrial Tribunal with continuity of service and full back wages, as upheld in CWP-20509-2012 decided on 17.03.2015. He was regularized as washing boy with effect from 28.08.2015 vide Office Order dated 30.08.2016, with the condition that he would be granted pensionary benefits as per the instruction no.3/72/2003-FPPC/7280 dated 12.12.2006 issued by the Punjab Government and not under Old Pension Scheme. He superannuated on

59,613/- on 18.08.2021, while being deprived of his pension and other retiral benefits. His case is squarely covered by the judgment in **Municipal Council, Qadian vs. Musthaq Masih and others**, LPA-666-2022, dated 21.12.2023, decided relying on **Harbans Lal vs. State of Punjab and others**, 2012(3) SCT 362, wherein it was held thus:

“11. First of all, a perusal of resolution dated 01.11.2011 (Annexure P-2) shows that the Director, Local Government, Punjab, had taken a decision that services of employees working in various Municipal Councils, who had rendered more than 10 years of service on contract basis, would be regularized. In Nagar Council, Qadian, two clerks/4 Safai Sewaks were working on contract basis for the last 10 years and their case for regularization was presented for approval. As per letter dated 23.12.2011 (Annexure P-3), Mushtaq Masih-petitioner (respondent No.1) was given appointment on the post of Clerk in the regular pay scale of 5910- 20200+1900. He was to be on probation for a period of two years. His services were to be governed under the New Pension Rules. Prior to his appointment on regular basis, his last 10 years' service had been taken into account and made basis for for giving regular appointment.

12. This very issue had come up for consideration in Harbans Lal's case (supra), wherein this Court had made reference to Rule 3.17A of Punjab Civil Services Rules, Vol. II, which reads as under:-

“3.17A (I) subject to all the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-

(i) Service rendered in work-charged establishment.

(ii) Service paid from contingencies:

Provided that after 1st January, 1973 half of the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions:-

(a) Service paid from contingencies should have been in a job involving whole-time employment (and not part-time or for a portion of the day).

(b) Service paid from contingencies should have been in a type of work or job for which regular post could have been sanctioned e.g. Malis, chowkidars, khalasis, etc.

(c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for

similar jobs being performed by staff in regular establishment.

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

(iii) Casual or daily rated service.

(iv) Suspension adjusting as a specific penalty.”

13. As per the above rules, after 01.01.1973, half of the service paid from contingencies was also to be allowed to count towards pension at the time of absorption in regular employment, but in any case casual or daily rated service, amongst others cannot be counted towards qualifying service for pension. In that case, reference was made to a Full Bench judgment passed in Kesar Chand vs. State of Punjab, 1998 (2) PLR 223, wherein it was held that the work charged service rendered before regularization, was liable to be counted as qualifying service for the purpose of pension. In Harbans Lal's case (supra), further reference was made to the judgment passed in Smt. Ramesh Tuli vs. State of Punjab and others, 2007 (3) SCT, 791, wherein a Division Bench of this Court had 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 Recognized Schools Employees. It was held that the entire service would be counted as qualifying service for the purpose of pension. However, the Contributory Provident Fund was required to be adjusted and deducted from the arrears of pension. It was further held that the petitioners' initial date of appointment, after regularization, would be the date on which employee took charge of the post. Once the entire service of a daily wager was to be counted as qualifying service, then his date of appointment would relegate back to his initial date of appointment i.e. 1988 and he could not be ousted from pension scheme by applying the date of regularization i.e. 28.03.2005, which was evidently after the new scheme or new restructured defined Contribution Pension Scheme. Reference was made to another judgment passed by Division Bench of this Court in Hans Raj vs. State of Punjab and others, 2005 (3) RSJ 262. In that case, the Division Bench had examined the Punjab Municipal Employees Pension and General Provident Fund Rules, 1994. The State of Punjab, vide instructions dated 08.01.1999, had provided that since the Pension Rules had been made applicable in lieu of CPF, the period to be considered as qualifying for pension had to be restricted to the period for which the employee was contributing to his CPF. Those instructions were held contrary to the Pension Rules and the petitioner was held entitled to count his entire service as qualifying service for the purpose of pension. The condition that qualifying service would commence from the date of contribution to the CPF, had been rejected by the Division Bench. Finally, the Division Bench, while referring to the case

of Hans Raj (supra), held that the New Defined Contributory Pension Scheme came into effect w.e.f. 01.01.2004. However, since the petitioner was working from 1988, he would be deemed to be in service prior to 01.01.2004. He would be continued to be governed by the GPF Scheme and was entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Government Services prior to 01.01.2004. The clarification/instructions dated 30.05.2008 could not deny the benefit of past service to the employees.

14. The ratio of the judgment passed in Harbans Lal's case (supra) is applicable to the facts of the present case, as the New Defined Contributory Pension Scheme came into effect w.e.f. 01.01.2004. Rule 3.17A of Punjab Civil Services Rules, Vol. II, which deals with counting of past service towards pension has been elaborately examined in the said judgment. This rule has also been interpreted in Kesar Chand's case (supra), wherein it has been held that the work charged service rendered before regularization, is liable to be counted as qualifying service for the purpose of pension. The decision given in Harbans Lal's case (supra) was, thereafter, followed in Sultan Ram and others vs. State of Punjab and others, CWP13458-2012 (decided on 17.01.2013), which was later on, clarified vide order dated 31.01.2013 passed in CM-1606-2013 to the effect that Old GPF Scheme will be applicable to all those employees, who were the employees prior to 2004, but had been regularized thereafter. The said judgment has attained finality upto Hon'ble the Supreme Court.

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16. Thus, after going through the contents of appeals as well as the impugned judgment(s), this Court is of the view that the benefit of Old Pension Scheme has rightly been granted to the petitioner(s). Hence, no ground is made out to interfere in the well reasoned judgment(s) passed by the learned Single Judge.”

3. While stressing on the importance of grant of pension, Hon'ble the Supreme Court held in **State of Kerala vs. M. Padmanabhan Nair**, (1985) 1 SCC 429 that, “Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.”

4. Learned State counsel despite his best efforts was unable to

controvert the factual position as also draw out any distinctive aspects in the
aforementioned judgments or cite any contrary law.

5. In view of the aforesaid, the present petition is disposed of in terms of
the judgments passed in **Harbans Lal** and **Musthaq Masih and others** (supra).

21.03.2024

Rajeev (rvs)

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No