



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

108

CWP-14915-2024 (O&M)
Date of decision: 05.08.2024

Dr. Ravinder Sharma

....Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Abhishek Sethi and Mr. Tej Bahadur Yadav, Advocates
for the petitioner

AMAN CHAUDHARY. J. (ORAL)

1. The prayer in the present petition is for quashing the order dated 01.04.2024 passed by respondent No.1, whereby the claim of the petitioner for grant of pension under the Old Pension Scheme instead of new pension scheme has been rejected.

2. Learned counsel submits that the petitioner was employed as Medical Officer on adhoc basis on 16.01.1995 and was regularised vide order dated 12.08.2013 w.e.f. 29.07.2011. His services of 16 years, 6 months and 14 days prior to the date of regularisation have not been counted towards the entitlement of Old Pension Scheme.

3. Learned State counsel on the last date of hearing had submitted that the issued as involved in the present case is pending adjudication in LPA-1120-2023 titled as **State of Haryana and Others vs. Jai Bhagwan** and other connected cases, decided on 26.07.2024, to this learned counsel for the petitioner submits that the same has since been dismissed and covers this case on all fours.

Relevant paras whereof read thus:



“11. A Division Bench of this Court in **Harbans Lal** (supra) considered the status of part-time, temporary and daily wage employees who have been regularized. Harban Lal was appointed as daily wage employee on 01.08.1988 and his service was regularized on 28.03.2005. The Court held that the service of petitioner as daily wage shall be counted for qualifying service for the purpose of pension. Once the entire service of a daily wager is to be counted as qualifying service then his date of appointment will relegate back to his initial date of appointment and he cannot be ousted from pension scheme by applying the date of regularization which is after introduction of New Pension Scheme. The relevant extracts of judgment are reproduced as below:

"The writ petition was allowed and the petitioners were held entitled to count their entire service w.e.f. 17.8.1965 to 30.9.2001 as qualifying service for the purposes of pension. However, the Contributory Provident Fund was required to be adjusted and deducted from the arrears of her pension. We come to the conclusion that the petitioners' initial date of appointment after regularization will be the date on which employee takes charge of the post. Once the entire service of a daily wager is to be counted as qualifying service then his date of appointment will relegate back to his initial date of appointment i.e. 1988 and he cannot be ousted from pension scheme by applying the date of regularization i.e. 28.3.2005 which is evidently after the new scheme or new restructured defined Contribution Pension Scheme came into force w.e.f. 1.1.2004."

13. The State preferred a review application in aforesaid LPA which vide order dated 29.10.2022 came to be dismissed on account of inordinate delay. The State also preferred SLP (C) No.6069 of 2017 before Supreme Court which on the ground of delay came to be dismissed vide order dated 13.09.2019. The appellant-State is claiming that judgments of **Harbans Lal** (supra) and **Kesar Chand** (supra) are not applicable to State of Haryana as Rule 3.17-A of Punjab Civil Services Rules applicable to State of Haryana is differently worded than applicable to State of Punjab.

14. Learned State Counsel during the course of arguments conceded that case of Zile Singh (supra) relates of State of Haryana and ordered passed by this Court has already attained finality.

15. The appellant is claiming that Rule 3.17-A applicable to State of Haryana is different from State of Punjab. The said rule as reproduced in the paper-book is noted as below:

"3.17-A. (a) All service interrupted or continuous followed by confirmation shall be treated as qualifying service; the period of break shall be omitted while working out aggregate service.



(b) Extraordinary leave counted towards increments under rule 4.9 (b) (ii) of Punjab Civil Services Rules, Volume-1, Part-1, will be accounted towards service qualifying for pension.

(c) Periods of suspension, dismissal, removal, compulsory retirement followed by reinstatement will count for pension to the extent permissible under rule 4.17 of Punjab Civil Services Rules Volume-II read with rule 7.3 of the Punjab Civil Services Rules, Volume-1, Part-1.

(d) Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service terms of rule 4.19 (a) of Punjab Civil Service Rules Volume-II.

(e) An interruption in the service of a Government employee caused by wilful absence from duty and unauthorized absence without leave will as hitherto entail forfeiture of past service.

Explanation.- The wilful refusal to perform duties by a Government employee by any means including pen down strike shall be deemed to be wilful absence from duty.

(f) Employees retiring from Government service without confirmation (as temporary employees) in any post on or after 5 February, 1969 will be entitled to invalid/retiring/ superannuation pension and death-cum-retirement gratuity on the same basis as admissible to permanent employees. In case of death of employees in service his family will also be entitled to similar benefits as are admissible to the families of permanent employees. This concession will, however, not apply to:

(i) Persons paid from contingencies; provided that [full period] of service of such a persons paid from contingencies rendered from 1 January, 1973 onwards for which authentic records of service is available will count as qualifying service subject to the following conditions:-

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

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

(c) The service should have been such 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 relations in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments; and
(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

Note. While bringing contingent paid employee to the regular establishment an entry for verification of contingent service should be made at the appropriate place in his service book, preferably before making any entry regarding his regular service in the following manner:

"Service from _____ to _____ paid out of contingencies verified from acquittance rolls and office copies of contingent bills". This entry should be signed by the Head of Office with date.

(ii) Deleted.

(iii) Casual Labour;

(iv) Contract Officer; and

(v) Persons born on Contributory Provident Fund Establishment.

(g) The entire service rendered by an employee as work charged shall be reckoned towards retirement benefits provided-

(i) such service is followed by regular employment:

ii) there is no interruption in the two or more spells of service or the interruptions fall within condonable limits; and

(iii) such service is a whole time employment and not part-time or portion of day. [Emphasis Supplied]

16. The appellant is relying upon Clause (g) of aforesaid rule. From the perusal of aforesaid clause (g), it comes out that service rendered by an employee as work charged shall be reckoned for all retiral benefits provided such service is followed by regular employment, there is no interruption in two or more spells of service or the interruption fall within condonable limits and such service is a whole time employment and not part-time or portion of day. The appellant claims that respondent was working as a part-time employee, thus, Rule 3.17-A is inapplicable to him. Neither from the pleadings nor from impugned order, it can be culled out that respondent had rendered service as work charged. He had worked with a school which operates around the year. If it is assumed that respondent was employed as work charged still his service cannot be ignored because he had worked for



almost two decades without interruption. It is difficult as well as highly improbable to believe that a Government school has appointed a peon or water-carrier for 3-4 hours a day. A peon or water-carrier is required for as long hours as teachers and students remain in the school. The appellant-State by tagging respondents as part-time employees has misused its position and exploited them. Unemployment in the nation is well known. A long service of two decades cannot be assumed to be a part-time service. It appears that appellant uninterruptedly availed service of respondents for two decades and in the guise of part-time employment, deprived them from their valuable right of pay and other allowances. Service of respondent was regularized after two decades and he worked without interruption. Sub- Clause (ii) of clause (g) of Rule 3.17-A contemplates interruption in two or more spells of service because in case of a work charged employee there are always possibilities of interruption in service. Clause (a) of the aforesaid rule clearly provides that interrupted or continuous service followed by confirmation shall be treated as qualifying service. The period of break is omitted by calculating aggregate service. The respondent has worked without interruption and break, thus, it would be travesty of justice, if it is concluded that they are not entitled to counting of service rendered before their regularization.”

4. Learned State counsel has been unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.
5. In wake of the aforesaid, the present petition is disposed of in terms of the judgment passed in **Jai Bhagwan** (supra).

(AMAN CHAUDHARY)
JUDGE

05.08.2024
M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No