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

(217)

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Date of Decision : August 28, 2024

Bhag Singh**.. Petitioner****Versus****State of Punjab and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Ms. Neha Jain, Advocate, for the petitioner.

Mr. Satnam Preet Singh, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance of the petitioner is that as per condition No.4 of the regularization order of the petitioner dated 18.01.2016, the petitioner is being treated under the New Contributory Pension Scheme, which is applicable from 01.01.2004, instead of the Old Pension Scheme.

2. Learned counsel for the petitioner submits that the petitioner was working as class IV employee since 1984 but his services were not regularized till he attained the age of superannuation i.e. 31.03.2012 therefore, the petitioner had earlier approached this Court by filing CWP No.15342 of 2012 for regularization of his services, which writ petition was allowed vide order dated 15.12.2014 and the respondents were directed to



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consider the claim of the petitioner for regularization of his services w.e.f the date the similarly situated employees were regularized along with all consequential benefits.

3. Learned counsel for the petitioner further submits that keeping in view the said directions given by this Court, order dated 18.01.2016 has been passed (Annexure P-7) by the respondents by which, the services of the petitioner have been regularized but he has been ordered to be treated under the New Contributory Pension Scheme whereas, the petitioner is entitled to be considered under the Old Pension Scheme for the grant of pensionary benefits keeping in view the judgment of the Division Bench of this Court in **CWP No.2371 of 2010 titled as Harbans Lal Vs. State of Punjab and others, decided on 31.08.2010,** which judgment has already attained finality upto the Hon'ble Supreme Court of India.

4. Learned counsel for the respondents submits that as services of the petitioner were regularized after 01.01.2004 and the New Contributory Pension Scheme, which was applicable from 01.01.2004 and has rightly been made applicable upon the petitioner.

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

6. The only question which arise for consideration before this Court is whether, after the regularization of the services of the petitioner w.e.f. the year 2011, the petitioner will be governed by the New Contributory Pension Scheme which is applicable from 01.01.2004 or will be governed under the Old Pension Scheme.



7. The said question has already attained finality upto the Hon’ble Supreme Court of India keeping in view the judgment of the Division Bench of this Court in **Harbans Lal’s case (supra)**. The Division Bench has held that any employee who was in service as on 01.01.2004 will be entitled for the pensionary benefits under the Old Pension Scheme even if his/her services have been regularized after 01.01.2004. The relevant paragraph of the said judgment is as under:-

“ xxx xxx xxx xxx

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 causal/daily rated service is also bound to be counted as qualifying service.*

- 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.”

8. Learned counsel for the respondents has not been able to rebut the fact that the petitioner was working with the Department since 1984 and was in service as on 01.01.2004. Rather, in the earlier litigation, a finding has been recorded by the Coordinate Bench that it is a conceded position that the petitioner is working since the year 1984. That being so, nothing has been brought to the notice of this Court to differentiate the claim of the petitioner so as to not be covered by the judgment of the Division Bench in ***Harbans Lal's case (supra)***.

9. Keeping in view the above, the present writ petition is allowed qua condition No.4 imposed in the appointment order dated 18.01.2016 (Annexure P-7). The petitioner's claim for the grant of pensionary benefits will be considered under the Old Pension Scheme keeping in view the



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settled principle of law settled in ***Harbans Lal's case (supra)***.

10. At this stage, learned counsel for the petitioner submits that on the day when the petitioner retired from service, the judgment in ***Harbans Lal's case (supra)*** was very much available but still the respondents chose to put in the condition contrary to the settled principle of law and the petitioner has been being litigating with the respondents for the last 10 years to get the pensionary benefits for which he is entitled for hence, the petitioner is also entitled for interest on the pensionary benefits which will be admissible to the petitioner under the present order.

11. Learned counsel for the respondents rebuts the said contention and submits that once the claim of the petitioner under the Old Pension Scheme is being decided by this Court by the present order, the petitioner is not entitled for the grant of interest.

12. It may be noticed that the judgment in ***Harbans Lal's case (supra)*** was very much available with the respondents to be made applicable while deciding the claim of the petitioner when he retired from service and when the impugned order dated 18.01.2016 was passed. By ignoring the settled principle of law, the benefit for which the petitioner was entitled for, was declined and the petitioner has been made to litigate with the respondents to claim the justifiable dues for which he is entitled under law hence, the petitioner is entitled for interest on the pensionary benefits.

13. Further, a Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of ***J.S.***



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Cheema's case (supra) 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.”

14. Keeping in view the above, on the pensionary benefits which will be admissible to the petitioner under this order, the petitioner will also be entitled for interest @ 6% per annum from the date, the petitioner retired till the actual payment of the said pensionary benefits.

15. The present writ petition is allowed in above terms.

August 28, 2024

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes