

CM-21275-CWP-2023 in/and
CWP-23286-2021 (O&M)

2024:PHHC:122279



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104+252)

CM-21275-CWP-2023 in/and
CWP-23286-2021 (O&M)
Date of Decision : 17.09.2024

Bimla Devi @ Vimla Devi

...Petitioner

Versus

The Vice Chancellor, Guru Nanak University, Amritsar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shalender Mohan, Advocate for the petitioner.

Mr. M.K. Dogra, Advocate for the respondents.

Harsimran Singh Sethi J. (Oral)

CM-21275-CWP-2023

Present application has been filed for placing on record written statement filed on behalf of the respondents.

Application is allowed and written statement filed on behalf of the respondents is taken on record with all just exceptions.

CWP-23286-2021 (O&M)

1. In the present petition, the grievance being raised by the petitioner is that the husband of the petitioner who was working with the respondent-University, unfortunately died while in service but the benefits, which have been given to the petitioner is not under the Old Pension Scheme



but the Defined Contributory Pension Scheme, which had come into operation w.e.f. 01.01.2004.

2. As per the facts mentioned in the petition, the husband of the petitioner was appointed in the Teachers Holiday Home Dalhousie in Himachal Pradesh by the respondent-University on 09.05.2001. Thereafter, his services were regularized on 01.07.2004 but unfortunately, while in service the husband of the petitioner expired on 10.01.2019. While giving the benefits with regard to the service rendered by the late husband of the petitioner, Defined Contributory Provident Fund Scheme, which came into operation from 01.01.2004, has been made applicable, whereas the claim raised by the petitioner in the present petition is that the petitioner is entitled for the grant of benefit under the Old Pension Scheme including the benefit of family pension.

3. Upon notice of motion, the reply has been filed and it has been conceded that the husband of the petitioner was appointed in the year 2001 though, his services were regularized in July, 2004 and he died while in service. The only objection taken by the respondents is that as the late husband of the petitioner was regularized in service on 01.07.2004, on which date the New Defined Contributory Provident Fund Scheme was in operation, the benefits under the said Scheme have been given to the petitioner qua the service rendered by the late husband of the petitioner, hence, the claim raised by the petitioner is liable to be rejected.

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



5. It is a conceded fact between the parties that the Punjab Civil Services Rules have been made applicable upon the employees of the University for the grant of the pensionary benefits. Nothing has come on record to show that the said Rules have been implemented qua the husband of the petitioner.

6. It may be noticed that the relevant Rule 3.17 (A) of the Punjab Civil Services Rules, Vol. II, according to which the pensionary benefits are to be released to the employees, has been interpreted by 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, wherein, it has been mentioned that any employee, who was in service as on 01.01.2004, will be entitled for the benefit under the Old Pension Scheme even if his/her services have been regularized after 01.01.2004. The relevant paragraphs of the said judgment are 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.”*



7. The judgment in *Harbans Lal (supra)* has already been upheld by the Hon'ble Supreme Court of India and the same has been implemented by the State of Punjab qua its employees.

8. Learned counsel for the respondents has not been able to rebut that in case, the judgment in *Harbans Lal (supra)*, is applied upon the case of the petitioner, the petitioner will be entitled for the benefits under the Old Pension Scheme qua the service rendered by her late husband. That being the position, the respondents are under obligation to grant the petitioner the benefits under the Old Pension Scheme in respect of the service rendered by the late husband of the petitioner upto the date of his death.

9. Keeping in view the above, the claim of the petitioner for the grant of benefits in respect of the service rendered by her late husband under the Old Pension Scheme is allowed and the respondents are directed to re-calculate the benefits including the pensionary benefits as admissible to the petitioner and the same be released to the petitioner within a period of eight weeks of the receipt of copy of this order. The benefits already given to the petitioner be adjusted while extending the benefit to the petitioner under the Old Pension Scheme.

10. Present petition is allowed in above terms.

11. Pending miscellaneous application, if any, also stands disposed of.

September 17, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No