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

(342) **CWP No. 21891 of 2022 (O&M)**
Date of Decision : 12.12.2024

Kanwaljeet Kaur

...Petitioner

Versus

Punjabi University, Patiala and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Singh, Advocate for the petitioner.

Mr. Swapan Shorey, Deputy Advocate General, Punjab.

***

Harsimran Singh Sethi J. (Oral)

In the present petition, the grievance being raised by the petitioner is that her claim for the grant of pensionary benefits has been declined by the respondents vide order dated 10.08.2022 (Annexure P-6).

Learned counsel for the petitioner submits that the petitioner was initially appointed on temporary basis as a Restorer at Punjabi University, Patiala on 06.11.2003. The petitioner continued working as such and ultimately she was given regular appointment on 13.12.2011. After getting the said appointment, the petitioner was of the view that she will not be given the benefit under the Old Pension Scheme so the petitioner along with other employees, who were similarly situated, filed CWP No. 10959 of 2016 titled as ***Raja Chaterjee and others Vs. State of Punjab and others,*** decided on 13.08.2018 wherein, a direction was given by this Court to decide the claim of the petitioners in terms of 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 as well as CWP No. 26345 of 2017 titled as ***Harnek Singh and others Vs. Punjabi University, Patiala,*** decided on 17.11.2017.

Learned counsel for the petitioner submits that keeping in view the said direction given, the respondent-University passed an order on 11.09.2018 (Annexure P-3) stating that the petitioners will be treated under the Old Pension Scheme as they were appointed prior to 01.01.2004 and continued in service till the regularization of the same. The respondent-University themselves accepted the prayer of the petitioner so as to be treated under the Old Pension Scheme.

Learned counsel for the petitioner further submits that after the retirement of the petitioner on 30.06.2021, she raised a claim for the grant of pensionary benefits which claim has been denied by the respondents vide impugned order dated 10.08.2022 (Annexure P-6) on the ground that the petitioner was regularly appointed in the year 2011 and upto the date of retirement she has not completed 10 years of service and petitioner is, otherwise also not entitled for the pension under the Old Pension Scheme being appointed after 01.01.2004.

Learned counsel for the petitioner argues that the benefits for which the petitioner is entitled for, have been denied and that too by ignoring the order dated 11.09.2018 (Annexure P-3) by which the respondents themselves granted the benefit to the petitioner under the Old Pension

Scheme, which is only to be granted to an employee who was appointed prior to 01.01.2004 whereas, while rejecting the claim of the petitioner, petitioner is being treated in service only from the year 2011 and not from the year 2003.

Learned counsel for the petitioner further submits that even otherwise, the second reason given by the respondents to deny the claim of the petitioner is that the claim of the petitioner is not covered under Rule 14.A of the Punjabi University Calender Vol. I of 2014, the same is also factually incorrect as, the entire service of an employee rendered on work charge basis or on contingency, is to be reckoned towards retiral benefits in case, such service is followed by regular employment and in the present case, it is a conceded position that the petitioner was working with the respondents starting from the year 2003 and was given regular appointment in the year 2011, hence, on wrong basis, the benefits have been denied to the petitioner.

Learned counsel for the respondents, on the other hand, submits that though an order was passed treating the petitioner to be under Old Pension Scheme but when it was found that she was appointed on regular basis in the year 2011 and she had less than 10 years of service to her credit, the claim of the petitioner for the grant of pension or to be treated her under the Old Pension Scheme had rightly been denied.

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

The first question which arises is, as to how the pensionary benefits of an employee of the University are to be calculated. Keeping in view the service rendered by an employee, it is a conceded position that Rule 14.A of the Punjabi University Calender Vol. I of 2014 is to be brought into operation so as to calculate the benefits admissible to an employee. The said Rule is as under ;-

> *"14.A As an addition to the benefits given under the Statutes regarding the provident Fund, the Vice-Chancellor may grant at the time of retirement to an employee, or after his death, to the person whose name has been registered under clause (10) of this Statute, for efficient and faithful qualifying service a gratuity not exceeding 1/4th (one fourth) of the 'emoluments' of the officer for each completed six monthly period of qualifying service subject to a maximum of 15 times the 'emoluments'. In the case of those retiring on or after 16th November, 1993, the amount of gratuity will be 1/4th of the 'emoluments' of the officer for each completed six monthly period of qualifying service subject to 16 ½ (sixteen and a half) times the 'emoluments' in the case of officers of category 'A' & 'B' and 17 ½ (seventeen and a half) times the 'emoluments' in the case of category 'C' employees, provided that in no case gratuity shall exceed Rs. One lakh.*
>
> *Provided that in the case of such of the employees as have opted for the Pension Scheme, or those for whom the Pension Scheme is compulsory and it is also compulsory for them to become a member of General Provident Fund, at the time of retirement of the employee or after his death, the gratuity will be payable to the person whose name has been registered in Form-A under Ordinance-9 of the General Provident Fund.*
>
> *The temporary employees shall be treated at par with permanent employees in respect of all retirement benefits viz..... Retiring, Superannuation and Death-cum-Retirement Gratuities.*

The entire service rendered by an employee as work-charged as also the service paid from contingencies 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 shall be a full time job (and not part-time or portion of the day).

Provided further that in the case of death in harness, the death gratuity shall be admissible at the following rates:

	Length of Service	Rate of gratuity
(i)	*Less than one year*	*2 times of emoluments*
(ii)	*One year or more but than 5 years.*	*6 times of emoluments*
(iii)	*5 years or more but less than 20 years.*	*12 times of emoluments*
(iv)	*20 years and above*	*Half of emoluments for every completed six monthly period of qualifying service subject to a maximum of 33 times of emoluments provided that the amount of Death Gratuity shall in no case exceed one lakh rupees.*

Provided further that no gratuity shall be given to an employee who retires before completing 15 years continuous service.

Provided further that the Vice-Chancellor may grant such gratuity as he deems fit to an employee, who joins the University

> *service at an age when he cannot complete full fifteen years service up to the time of retirement.*
>
> *A person who after having served in other Universities in the Punjab State, including Punjab University, Chandigarh or in any Government Deptt./College in Punjab (including areas in Punjab at the time he joined this University) has joined this University, shall also be allowed the benefit of previous service while calculating gratuity at this University at the time of retirement, superannuation or pre-mature retirement, as the case may be, provided that he had in at least three years service in the parent department and opts to deposit in the Punjabi University fund the amount of gratuity, if any, received for previous service.*
>
> *However, where the Vice-Chancellor is of the opinion that the gratuity should not be paid to an employee for certain reasons, the matter may be referred to the Syndicate with full facts for its consideration and decision."*

A bare perusal of the above reproduction would show that the entire service rendered by an employee on work charge basis and also the service paid from the contingency is to be reckoned towards the qualifying service for computing the retiral benefits in case, such service is followed by a regular employment and there is no interruption in two or more spell of the service.

In the present case, the petitioner was appointed though on temporary basis in November, 2003. She continued working till her regular appointment in the year 2011. Once, the temporary service is followed by a regular employment which is a conceded fact, as per Rule 14.A of the Punjabi University Calender Vol. I of 2014, the total service rendered by an employee is to be taken into account for computing the pensionary benefits and the entitlement of the pension qua the said employee.

Keeping in view the Rules governing the service, the argument of the learned counsel for the respondents that the petitioner does not have 10 years service is incorrect as, the petitioner continuously worked from November, 2003 onward till the date of retirement i.e. 30.06.2021. The petitioner had more than 18 years of service to her credit, hence, while applying Rule 14.A of the Punjabi University Calender Vol. I of 2014, the claim of the petitioner is covered for the grant of pensionary benefits as she has more than 10 years of service to her credit.

Nothing has been brought to the notice of this Court as to how the operation of Rule 14.A of the Punjabi University Calender Vol. I of 2014 debars the petitioner for the benefit of the temporary service rendered. Rule 14.A of the Punjabi University Calender Vol. I of 2014 covers the case of the petitioner for counting the temporary service rendered by the petitioner before her regular appointment in the year 2011 towards the grant of pensionary benefits.

Further, the respondents themselves have already passed an order on 11.09.2018 (Annexure P-3) treating the petitioner under the Old Pension Scheme. Only the employees who were appointed prior to 01.01.2004 are to be given the said benefit of Old Pension Scheme and the respondent-University has already given the said benefit to the petitioner, it has to be assumed that the petitioner was appointed prior to 01.01.2004, hence, the respondents have to reckon the appointment of the petitioner from

November, 2003 onwards while granting the said benefit but while granting the actual benefits, respondent-University took a somersault and that too contrary to the Rules as well as to the order passed by the respondents themselves on 11.09.2018 (Annexure P-3), hence, the order rejecting the claim of the petitioner dated 10.08.2022 (Annexure P-6) is factually incorrect and contrary to the Rules governing the service as well as the order passed by the respondents themselves dated 11.09.2018 (Annexure P-3), hence, the same cannot be sustained in the eyes of law and is quashed.

The respondents are directed to treat the total length of service including the temporary service of the petitioner as a qualifying service and keeping in view the order dated 11.09.2018 (Annexure P-3) passed by the respondent-University itself, the petitioner will be treated under the Old Pension Scheme for the grant of the pensionary benefits.

As the respondents declined the benefit to the petitioner contrary to the provisions of the Rules as well as their own order passed and made the petitioner litigate and the amount which became admissible to the petitioner has been retained by the respondents, 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,*** the petitioner is also entitled for interest. The relevant paragraph of **J.S. 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."

As the respondents had retained the amount admissible to the petitioner, on the arrears of the pensionary benefits including the pension, which will be paid to the petitioner under this order, the same will also carry interest @ 6% per annum from the date the amount became due till the actual payment of the same.

Further, in case any retiral benefit already paid to the petitioner was paid after a period of two months, keeping in view the judgment of Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468,** even the said delayed payment will carry interest @ 6% per annum from the date the amount became due till the actual payment of the same.

Let the order be complied with within a period of eight weeks from the date of receipt of copy of this order.

Petition is allowed in above terms.

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

December 12, 2024 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes