IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

253/3 CWP-28287-2022 (O&M)
Date of Decision:19.04.2024

Ashok Kumar

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

****

Present: Ms. Riti Aggarwal, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab

****

AMAN CHAUDHARY, J.

1. The prayer in the present petition is for directions to the respondents to permit the petitioners to continue with the General Provident Fund Scheme as also be entitled to benefits under the Old Pension Scheme, by counting the whole period of daily wages/contractual service of the petitioners as qualifying for the same.

2. Learned counsel submits that the petitioner was appointed as part time sweeper in 1985, whereafter his services were regularized in 2017. However he was denied benefits under the Old Pension Scheme on account of the New Contributory Pension Scheme having come into operation post 01.01.2004. The issue is no longer res integra, having been decided by the Division Bench of this Court in **Harbans Lal vs. State of Punjab and others**, CWP-2371-2010, decided on 31.08.2010, against which the SLP as well as the Review Application were dismissed on 30.07.2012 and 04.11.2015 respectively. Following the above and considering Rule 3.17 of Punjab Civil Services Rules as well, this Court allowed

CWP-14728-2018, titled as **Babunji Bhagat vs. State of Punjab and others,** on 01.02.2023, a case of a Class IV employee, who worked from May, 1995 to 2001 as Daily Wage Cook but was given a fresh appointment on 15.10.2010, thus the New Defined Contributory Pension Fund Scheme was made applicable, held him to be governed under the Old Pension Rules, being in service prior to 01.01.2004. Likewise, in **Jeewan Lata vs. State of Punjab and others**, CWP-10238-2017, decided on 10.05.2019, a part time sweeper was granted the benefit as being claimed by the petitioner herein, relevant paras whereof read thus:

> "The question of law as to whether an employee, whose services were regularised after 01-01-2004, will be governed by the New Pension Scheme or the Old Pension Scheme is well settled and has already attained finality up to the Hon'ble Supreme Court of India. The Division Bench of this Court while deciding CWP No. 2371 of 2010 titled as **Harbans Lal Vrs. State of Punjab & Ors.** decided on 31-08-2010 has held that an employee who was in service as on 01-01-2004 though his services might have been regularised after the said date, is to be governed under the Old Pension Scheme.The relevant portion of the judgement is as under:-
>
>> "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 01.01.2004. 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 Service Rules, cannot be further amended by issuing clarification/instructions dated 30.05.2008 (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 01.01.2004.
>>
>> 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 30.05.2008 (Annexure P-3), the new defined Contributory Pension Scheme would be applicable to all those employees who have been working prior to 01.01.2004 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.
>
> No order as to costs."

The above said judgement has already attained finality up to the Hon'ble Supreme Court of India as the Special Leave Petition filed against the said judgement by the State of Punjab has already been dismissed. Therefore, the first objection which the respondents have taken to deny the petitioner the benefit of pension on the ground that the petitioner will be governed by the New Contributory Provident Funds Scheme holds no ground and is liable to be rejected.

The second objection which has been taken by the respondents is that even if the Old Pension Scheme is applicable upon the petitioner, keeping in view provisions of the Rule 3.17 A, the service rendered by the petitioner on part time basis cannot be counted as qualifying service for the grant of pensionary benefits. The said Rule has already been interpreted by this Court while deciding CWP No. 626 of 2015 titled Zile Singh Vs. State of Haryana and others on 17.03.2015 wherein also a similar question of law arose. In the said case also the employees working on part time basis, were seeking the benefit of the part time service to be treated as a qualifying service for the grant of pensionary benefits. After relying upon the judgment in Kesar Chand Vs. State of Punjab and others, this Court while deciding CWP No. 626 of 2015, on 17.03.2015, held that once an employee has worked with the respondents though on part time basis, and the said part time service has been taken into account for regularisation of service of an employee, the benefit of said service, cannot be denied to be counted as a qualifying service for the grant of pensionary benefits. The relevant portion of the judgment is as under:-

xx xx xx

Against the said order LPA No. 426 of 2016 was filed by the Government of Haryana and vide order dated 18.03.2016, after noticing the provision of Rule 3.17A, the Division Bench held that only a short term part time employment and that too under a specific contingency, has to be ignored while computing the pensionary benefits. The Division Bench held that where an employee has worked for a long time and continuously, which is more than a decade, the same cannot be treated as a part time engagement, and cannot be ignored while computing the pensionary benefits. The relevant portion of the judgment of the Division Bench is as under:-

xx xx xx

The question of law as to whether, the part time service is to be counted for computing the pensionary benefits again came up for consideration before this Court in CWP No. 1048 of 2016 titled as Jai Bhagwan Vrs. State of Haryana & Others, decided on 01.03.2019. In the said case also, keeping in view the decision of the Coordinate Bench in Zile Singh's Case (Supra) as well the order passed in LPA No. 426 of 2016, the benefit of the service which an employee had rendered on part time basis continuously for more than 20 years was allowed to be computed as a qualifying service. The relevant portion of the judgment is as under:-

> "I have heard counsel for the parties and have gone through the record with their able assistance.
>
> Counsel for the petitioner contends that once the petitioner had rendered service on part time basis starting from 06.08.1992 till 27.02.2012, the same is liable to be counted as a qualifying service for the grant of pensionary benefits. Counsel for the petitioner further contends that though the petitioner was working on part time basis, but as he worked for about 20 years, it cannot be said that he discharged the duties on part time basis. Further, as the petitioner was working as Peon in a school, it cannot be said that he was discharging the duties part time and the same has to be considered a regular employment for all intents and purposes.
>
> On the other hand, counsel for the respondents states that once the appointment was made on part time basis, the same cannot be considered as a qualifying service in view of the provisions of Section 3.17 (A) of the CSR Vol-II, according to which, part time service cannot be treated as a qualifying service.
>
> It is a matter of fact that the petitioner worked on part time basis continuously for 20 years. A person is engaged on part time only for a specific job and for specified period. It cannot be said that an employee, who is working continuously for 20 years as Peon in school, was a part time job. The said service is to be treated as a long term employment for all intents and purposes.
>
> A Full Bench of this Court in Kesar Chand's case (supra) has held that daily wage service, followed by regularization of the services, is to be counted as a qualifying service for the grant of pensionary benefits. Once, the daily wage service is to be counted as a qualifying service, it cannot be said that continuous appointment rendered by the petitioner for 20 years though as part time basis, is less than the daily wage service rendered by an employee. There is no justification given by the respondents to deny the said benefit, except the Rule 3.17 (A). The said Rule has already been considered in Kesar Chand's case (supra) and it has been held that the daily wage service followed by the regular service is good enough to be treated as qualifying service for computing the pensionary benefits. Therefore, the service which the petitioner has rendered for 20 years as a Peon from 06.08.1992 till 27.02.2012 cannot be ignored for computing the pensionary benefits of the petitioner."

> The case of the petitioner is covered by the above said judgment.
>
> Learned State counsel, has not been able to differentiate the case of the petitioner from the judgments which have been cited above to prove that the petitioner is not entitled for the benefits of counting her part time service as a qualifying service after the services of the petitioner were regularized.
>
> In view of the above, the second objection which has been raised by the respondents that the part time service rendered by the petitioner from 1984 till 25.10.2010 cannot be counted as a qualifying service is liable to be rejected. As the objections raised by the Counsel for the respondents to deny the benefits are contrary to the settled principle of law and have already been rejected, petitioner is held entitled to the grant of the pensionary benefits on total length of her service under Old Pension Scheme.
>
> The Writ Petition is allowed. The respondents are directed to treat the case of the petitioner under the Old Pension Scheme for the grant of pensionary benefits and while considering the case for the grant of pensionary benefits to the petitioner under the Old Pension Scheme, the service rendered by the petitioner from 1984 till 2010 shall also be treated as a qualifying service for computing the pensionary benefits. Let the calculations of the pensionary benefits be done by the respondents within a period of two months from the receipt of the certified copy of this order and whatever amount the petitioner is found entitled for after the calculations shall be released to the petitioner within a period of next two months."

3. Learned State counsel despite his best efforts has been unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

4. In wake of the aforesaid, the present petitions are disposed of in terms of the judgments passed in **Jeewan Lata**, **Harbans Lal** and **Babunji Bhagat** (supra).

(AMAN CHAUDHARY)
JUDGE

April 19, 2024
dinesh

Whether speaking : Yes/No
Whether reportable : Yes/No