



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

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CWP-18074-2021 (O&M)
Date of decision: 07.02.2025

Ram Pal and Others

....Petitioners

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Baljeet Singh Sidhu, Advocate for the petitioners

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY, J. (ORAL)

1. The prayer made in the present petition is for declaring the New Restructured Defined Contribution Pension Scheme dated 02.03.2004, applicable to the petitioner.
2. The petitioners were initially appointed as Class-IV employee on part-time basis between the years 1987 to 1992 and their services were regularised between 2012 to 2015 with no break in the services. Reliance is placed on the passed by this Court in **Jeewan Lata vs. State of Punjab and Others**, CWP-10238-2017, decided on 10.05.2019, covers the case of the petitioners on all fours, which stands complied in COCP-3624-2019, to learned State counsel despite best efforts unable to controvert regards the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

“.... 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 judgment 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 judgment has already attained finality up to the Hon'ble Supreme Court of India as the Special Leave Petition filed against the said judgment 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:-

"By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks directions to the respondents to count the past service of the petitioner from 27.03.1996 to 24.05.2013 towards qualifying service for pension and other retiral benefits and to release the arrears thereof along with interest @ 18% per annum.

It is contended that the petitioner was appointed as part time sweeper on daily wage basis on 27.03.1996 and he worked continuously till 25.03.2000. The services of the petitioner were temporarily dispensed with on 26.03.2000. The learned counsel refers to Annexure P-1 and states that even, thereafter, the petitioner worked without any break on the same post with respondent No.4.

On the basis of Govt. Policy, the services of the petitioner were regularized against the regular post of sweeper, vide office order dated 24.05.2013 Annexure P-2). The petitioner retired on 31.05.2014, however, the service benefits have not been released to him.

On the other hand, the learned State counsel submits that the services of the petitioner were regularized on 24.05.2013 and he remained on regular post for 01 years and 07 days, therefore, he does not fulfill the condition and guidelines to get the retiral benefits as per Pension Rules.

In **Kesar Chand Vs. State of Punjab and others**, AIR 1988, P &H, 265, it has been held as under:-

"19. In the light of the above, let us examine the validity of rule 3.17(ii) of the Punjab Civil Services Rules, Vol. II. This rule says that the period of service in a workcharged establishment shall not be taken into account in calculating the qualifying service. After the services of a work-charged employee have been regularised he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1,



1972, between the workmen and the Chief Engineer, P.W.D. (B. & R), Establishment Branch, Punjab, Patiala, which was published in the Government Gazette dated July 14, 1972. Even otherwise. The matter was settled by the Punjab Government Memo No. 14095-BRI (3)-72/5383 dated 6th February, 1973(Annexure P7) where it was stated that all those work charged employees who had put in ten years of service or more as on 15th August, 1972, their services would be deemed to have been regularised. Once the services of a work-charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation equality. Even the temporary or officiating service under the State Government has. to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who eligible for pension and those who started workcharged employees and their services regularised subsequently, and the others is based on any intelligible criteria and, before, is not sustainable at law. After the services of a work-charged employee have n regularised, he is a public servant like other servant. To deprive him of the pension is not only unjust and inequitable is hit by the vice of arbitrariness, and for case reasons the provisions of sub-rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.”

Keeping in view the above, the instant petition is allowed in terms of Kesar Chand's case (supra). The respondents are directed to consider the case of the petitioner in terms of Kesar Chand's case (supra) and release the pensionary benefits to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

Disposed of."

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:-

This appeal is directed against the judgment of the learned Single Judge dated 17.03.2015 holding the respondent-employee entitled to the benefit of previous service rendered by him on work charge basis towards qualifying service as pension in terms of the Full Bench titled as **Kesar Chand Vs. State of Punjab and others** AIR 1988. P&H 265.

Learned counsel for the appellant while impugning the said judgment refers to Rule 3.17 A to contend that the respondent-employee was engaged on part time basis and would thus not be entitled to have this service counted for qualifying service. Rule 13.7 A is extracted herebelow:-

3.17 A (1) Subject to the provisions of rule 4.23 and other rules and except in the case mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-

(i) Service rendered in work charged establishment.

(ii) Service paid from contingencies;

Provided that after 1st January, 1973 half of the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions:-

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

(b) Service paid from contingencies should have been in a type of work or job for which regular post could have been sanctioned e.g. malis, chowkidars, khalasi etc.

(c) the service should have been one 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 relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishment.

(d) the service paid from contingencies should have been continuous and followed by absorption in regular employment without a break."

Apparently service rendered in work charge establishment is included but excluded if it is part time or for a portion of the day as is suggested by Rule 3.17 A(ii)(a).



We find that the employee was engaged on work charge basis in the year 1996 and his services were regularized on 24.05.2013 in terms of the regularization policy applied to him. There is nothing on record to suggest that employee's services were being paid from contingencies as this issue was never pleaded or raised before the writ Court. It is only for the first time that such a plea is raised before this Court in LPA which we shall not permit. There is also nothing on record which would even remotely suggest that the service of the employee was engaged only for contingencies and if the long term of employment is to be seen it clearly defies such a stand of the respondents. If a person can be engaged from 1996 till 2013 it could hardly be visualized to be contingency as the need evidently was permanent. The ratio of the Full Bench in Kesar Chand's case (supra) has been correctly applied by the learned Single Judge and thus we do not find any reason to interfere in the present appeal, particularly, when it is also barred by a large unexplained delay of 318 days. Hence, instant appeal is hereby dismissed.

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.
Present Writ Petition is Allowed in above terms.”

3. The present petition is disposed of in terms of **Jeewan Lata** (supra).

(AMAN CHAUDHARY)
JUDGE

07.02.2025
M.Kamra

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