



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(205)

CWP No. 17092 of 2016 (O&M)

Date of Decision : 10.01.2025

Arvind Pal Singh and others

...Petitioners

Versus

Union of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil K. Nehra, Advocate with
Mr. Viven Nehra, Advocate,
Mr. Rohit Mahajan, Advocate and
Mr. Akash Gahlawat, Advocate for the petitioners.

Mr. Arun Gosain, Senior Government Counsel
for respondent No. 1-UOI.

Mr. Sapan Dhir, Advocate for respondent No. 2.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance of the petitioners is that they are entitled for the benefit of pension under the Old Pension Scheme, which was applicable prior to 01.01.2004 keeping in view the fact that the petitioners were selected and appointed in pursuance to an Advertisement, which was issued prior to 01.01.2004 and, therefore, once the selection of the petitioners in pursuance to the posts advertised on 29.11.2000 was done prior to 01.01.2004, even if the appointment of the petitioners is done after 01.01.2004, the petitioners are to be governed under the Old Pension Scheme and the reliance is being placed upon the judgment of this Court in CWP No.



18043 of 2018 titled as ***Hitesh Kumar and others Vs. State of Haryana and others***, decided on 18.11.2022.

2. Learned counsel for the petitioners submits that once, the petitioners are part of the selection process, which was initiated in pursuance to the Advertisement dated 29.11.2000, the petitioners are to be treated as part of the same selection and as, number of selected and appointed candidates of the same selection have been given the benefit of Old Pension Scheme, the petitioners cannot be discriminated so as to deny the benefit of Old Pension Scheme.

3. Upon notice of motion, the respondents have filed the reply, wherein, the respondents have stated that number of posts advertised by the State vide Advertisement dated 29.11.2000 i.e. 114 posts of Peon, 04 posts of Chowkidar, 13 posts of Mali, 14 posts of Safai Sewaks, and 03 posts of Frashes already stood filled up from the selection process but the petitioners could not be selected as they were lower in merit qua the advertised posts. The posts against which the petitioners were appointed, only came into existence in the year 2006 and rather than advertising the posts afresh, the petitioners who had already competed for the posts in question and were available, the appointments were given to them against those posts which came into existence in the year 2006, hence, in the facts and circumstances of the present case, the petitioners were not appointed/selected of the selection process started in pursuance to the Advertisement dated 29.11.2000 but were only given appointment on the posts which became available after 01.01.2004 when Old Pension Scheme had already been scrapped and New Contributory Provident Fund Scheme was in operation.



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

5. Certain facts have gone un-rebutted i.e. the petitioners competed for the posts advertised on 29.11.2000 but were not meritorious enough to be selected and appointed against the advertised posts. The selection process against the advertised posts had already attained finality prior to 01.01.2004 and the petitioners keeping in view their lower merit were not selected and appointed against the advertised posts.

6. The second fact which has gone un-rebutted is that the posts against which the petitioners were appointed only came into existence after 01.01.2004 and as, the petitioners were available having already competed for the similar posts already advertised, the High Court decided to give appointment to the petitioners against those available posts which had come into existence after 01.01.2004 and their appointments were made in February/March, 2006 i.e. much after the operation of the New Contributory Provident Fund Scheme.

7. The argument being raised by learned counsel appearing on behalf of the petitioners that the petitioners are the part of the same selection process which was started in pursuance to the Advertisement dated 29.11.2000, cannot be accepted. The selection process in pursuance to the Advertisement dated 29.11.2000 came to an end when all the advertised posts were filled up according to the merit obtained by the competing candidates.

8. It is a conceded position that the petitioners never got selected or appointed against the advertised posts vide Advertisement dated 29.11.2000.

Once, the selection process came to an end and the posts against which the



petitioners were appointed, came into existence after 01.01.2004 i.e. after the selection process had already finished, the petitioners cannot claim that they are the part of the same selection process which was initiated in respect of Advertisement dated 29.11.2000 and are not similar to the appointees who were appointed against the advertised posts as advertised on 29.11.2000. Any post which has come into existence subsequent to 01.01.2004, even if, the appointments were given on the basis of any selection process conducted earlier, will not give a right to the such appointees to claim that the posts which had become available after 01.01.2004, should also be governed by Old Pension Scheme which was applicable prior to 01.01.2004.

9. The reliance which is being placed by learned counsel on the judgment in ***Hitesh Kumar and others (supra)***, is misplaced. In ***Hitesh Kumar and others (supra)***, the benefit was being claimed against the advertised posts which were advertised prior to 01.01.2004 and were vacant and the direction had already been given by the Court to consider the claim of the petitioners qua those vacant advertised posts prior to the date when the New Pension Scheme was made operational i.e. 01.01.2004. The State of Haryana had only given appointment after the date the new Contributory Provident Fund Scheme was made available, which was considered by this Court in ***Hitesh Kumar and others (supra)*** and held that once the petitioners were claiming the consideration and appointment of the posts which were advertised prior to 01.01.2006 (which was the cut off date qua the State of Haryana), the benefit was extended, which fact is missing qua the petitioners as concededly petitioners have been appointed on the posts which came into existence much after 01.01.2004.



10. The facts in the present case are entirely different. The judgment is to be made applicable on the basis of the fact and not on the basis of the wording in a particular judgment. The wording is to be made applicable after appreciating the facts and not by ignoring the facts as being done by the learned counsel appearing on behalf of the petitioners.

11. In the facts and circumstances of the present case, once it is a conceded fact that the appointment of the petitioners is against the posts which had become available after the operation of the New Contributory Provident Fund Scheme, the prayer that Old Pension Scheme should also be made applicable qua the said posts, cannot be accepted.

12. No ground is made out for the grant of relief to the petitioners in the facts and circumstances of the present case.

13. Dismissed.

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

January 10, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No