



CWP-19427-2007

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

1099

CWP-19427-2007 (O & M)
Date of decision: 17.01.2025

Deepak Sethi

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. H.S.Dhindsa, Advocate and
 Mr. Praagbir S. Dhindsa, Advocate for the petitioner.

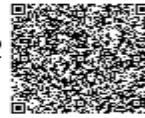
Mr. Satnam Preet Singh Chauhan, DAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for quashing condition No.8 incorporated in the appointment letter of the petitioner dated 11.05.2007 (Annexure P-2), to the effect that the petitioner will be governed by the New Contributory Pension Scheme.

2. The petitioner had applied for the post of Senior Technical Assistant (Hydrogeology/Geology), pursuant to the advertisement made in 1998, however, having not been appointed, filed CWP-17856-2003, which the Division Bench of this Court, vide judgment dated 30.05.2006, allowed directing the respondents to appoint him, relevant portion whereof reads thus:

“We have given our thoughtful consideration to the aforesaid contention of the learned counsel for the respondents. In our view, both the reasons relied upon by the respondents (narrated in the foregoing paragraphs), to deny appointment to the petitioner are misconceived. The right of the petitioner came to be crystallized by the intention of the respondent to fill nine posts of Senior Technical Assistant

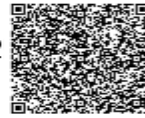


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(Hydrogeology/ Geology). The only issue to be determined is, whether the petitioner is meritorious enough to be considered for appointment against the advertised posts. The petitioner was not amongst the nine meritorious candidates and, therefore, was not favoured with an offer of appointment in first instance. But two of the selected candidates who were issued offers of appointment did not join, against the advertised posts. The petitioner would, therefore, step in the shoes of one of the candidates, who had been issued offers appointment, but had declined to accept the same, because the record shows that he was placed at Serial No.1 in the waiting list by the Board. Even though there may have been a temporary bar, for issuing offers of appointment, in our view, the right of the petitioner could not be denied of after the Code of Conduct and/or ban as noticed above, had been lifted.”

3. When deserving candidates encounter unjustified delays in their appointments due to no fault of their own, the principles of equity and fairness, as upheld by this Court in **Seema Rani vs. State of Punjab and another**, CWP-16772-2010 decided on 07.08.2012 and **Hemant Jasuja vs. State of Punjab and others**, CWP-16209-2008 decided on 10.03.2008, mandate that their induction should be granted retrospective effect, aligning their appointment dates qua similarly placed recruits from the same selection process. As a natural corollary, such appointments once having been ante-dated, the entitlement to all corresponding benefits would also flow therefrom. Accordingly, vide letter dated 11.05.2007 (Annexure P-2), the petitioner was appointed and, having no fault on his part, cannot be denied the benefit of the Old Pension Scheme, which was granted to those recruited under the same advertisement who joined before the new pension scheme came into force.

4. The discourse surrounding this matter has been settled in **Parveen Kumar and another vs. State of Punjab and others**,

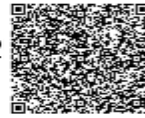


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CWP-20501-2008, decided on 12.5.2009, affirming the claim of the petitioners, selected for Clerk positions in 2001 but appointed post the directive of this Court in 2003. Likewise in CWP-18043-2018 decided on 18.11.2022 along with a batch of petitions, with the lead case titled as **Hitesh Kumar and others vs. State of Haryana and others**, to which there was no challenge laid, wherein also the petitioners having participated in the 2004 recruitment process, were placed on a waiting list despite available vacancies and appointed only on 29.08.2006 following the dictum, they were held entitled to the benefit of Old Pension Scheme, which learned State counsel despite best efforts has been unable to controvert regards the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law, relevant paras whereof read thus:

“The prayer of the petitioners for being governed under the Old Pension Scheme needs to be adjudicated by keeping in view the particular facts and circumstances. It has to be seen whether the delay in appointment is attributable to the Government or despite due diligence, appointment could not be made prior to 01.01.2006, even if, posts were advertised prior to the said date. It is only in case, an appointee is able to prove that not only posts were advertised prior to 01.01.2006 but, he/she was also selected prior to the said date and there existed clear vacancies for his/her appointment prior to 01.01.2006 but the Government in its own wisdom only offered the appointment after said date, which fact alone cannot cause prejudice to the appointee so as to ignore him/her from being governed by the Old Pension Scheme, thus, his/her claim can be granted.

The same question as raised in this petition also came up for consideration before the Delhi High Court in W.P.(C)2810/2016 titled as Inspector Rajendra Singh and others vs. UOI and others decided on 27.03.2017 wherein, in somewhat similar circumstances where a selection process had already been undertaken prior to the date when the New Defined Contributory



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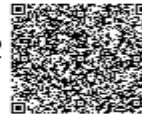
Pensionary Scheme had come into being but appointment was made after the date when New Defined Contributory Pensionary Scheme had come into force, the Hon'ble Court held that the employees, who got selected prior to the date when New Defined Contributory Pensionary Scheme had come into being but were appointed after the promulgation of the New Defined Contributory Pensionary Scheme are to be governed by the Old Pension Scheme as a right has accrued with them keeping in view their selection against the vacant posts prior to the date when New Defined Contributory Pensionary Scheme had come into being. Relevant paragraph of the judgment of Delhi High Court is as under:-

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The same question again came up for consideration before the Delhi High Court in W.P. (C) 756/2020 titled as Dr. Davinder Singh Brar vs. Union of India and others and again the same view was reiterated that once a candidate got selected in pursuance to the an advertisement issued prior to the date when the New Defined Contributory Pensionary Scheme had come into being and even selection was made prior to the said date, merely, issuance of appointment letter after the date when the New Defined Contributory Pensionary Scheme came into being, will not take away the right by the appointee to be governed under the Old Pension Scheme. The judgment in Davinder Singh Brar (supra) was challenged before the Hon'ble Supreme Court of India by the Government of India and the view of Delhi High Court as noticed hereinbefore was upheld by the Hon'ble Supreme Court of India and the special leave petition was dismissed on 04.02.2021. Keeping in view the settled principle of law laid down by Delhi High Court, which has already been upheld up to the Hon'ble Supreme Court of India, the claim of the petitioners needs to be allowed especially, in the facts and circumstances, where not only the petitioners were selected prior to 01.01.2006 i.e. the date when the New Defined Contributory Pensionary Scheme had come into being but, even the order was passed by this Court to grant the petitioners appointment prior to the said date hence, merely because the Government took time more than granted by this Court to implement the said order as the respondents were availing their legal remedies, will not defeat the right of the petitioners to be governed under the Old Pension Scheme.



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The said argument is fallacious in the facts and circumstances of this Case. It is a conceded position that a time bound direction was issued by the competent Court of law to the respondents prior to 28.10.2005 to appoint the petitioners by a date which was prior to 01.01.2006 and once the order was passed by the competent Court of law granting the benefit of appointment to the petitioners, it was the duty of the respondents to comply with the said order, which had already come into existence, it was only the respondent-State, who delayed the appointment as it was exploring its legal remedies qua the said order. Once, a right has been created with the petitioners for appointment even prior to issuance of the notification dated 28.10.2005, the said right cannot be taken away or modified by the Government through its notification. Hence, the petitioners are not required to challenge the notification dated 28.10.2005 keeping in view the facts and circumstances of the present case. Further, it will be unjust to bifurcate posts filled up through single recruitment process giving two different benefits to the selectees and appointees of the same selection. The posts are required to be filled up on the same terms and conditions which should be made applicable to all the selectees of the same selection. Merely, because a candidate, keeping in view the facts and circumstances, is not appointed along with other selected candidates and the same merit is made operational for all qua other service benefits, the grant of different pension scheme merely on the basis of different appointment date, done in pursuance to same selection process will amount to discrimination, especially when there is no attribution upon the candidate concerned for delay in appointment. Therefore, once the candidates from the same selection appointed prior to 01.01.2006, have been given benefit of Old Pension Scheme, the petitioners being the selectees of the same recruitment process duly selected prior to 01.01.2006 and advertised posts being also available to accommodate them prior to 01.01.2006, they cannot be declined the benefit to be considered under Old Pension Scheme as process of their appointment was delayed by the respondent-State hence, the ground being taken by the respondents that the candidates from the same selection process can be treated differently, is liable to be rejected and is accordingly rejected.



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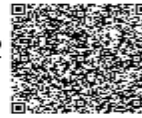
Similar dispute also arose qua Central Government employees and in order to address those issues, Government of India felt it necessary to issue guidelines so as to consider the claim of its employees where an employee will be governed by Old Pension Scheme or New Defined Contributory Pension Scheme. Notification dated 17.02.2020 issued by the Government of India is very clear on certain aspects. As per the said notification, where post in pursuance to which an employee has been recruited, was advertised prior to 01.01.2004 and selection was also finalized prior to 01.01.2004 but offer of appointment was made after 01.01.2004, which resulted in joining of an employee after the said date, the benefit under the Old Pension Scheme will be admissible on the ground that the selection process had already been completed prior to the date when the New Defined Contributory Pension Scheme came into being. Another circumstance envisaged under the policy dated 17.02.2020 where an employee who had joined after 01.01.2004 but has been made entitled for the grant of benefit under the Old Pension Scheme is where some of candidates selected through a common selection process were appointed on 01.01.2004 but the appointment to the other selected candidates was only given after 01.01.2004 due to administrative reasons but still, candidates appointed in pursuance to a common selection process were made to be governed by the Old Pension Scheme irrespective of their date of joining. Another circumstance envisaged under the policy dated 17.02.2020 is, where result of a recruitment was declared prior to 01.01.2004 but the candidates might have been declared ineligible due to any circumstance, but on review the said candidate became eligible because of which even if, the said candidate has been appointed on the date when the New Defined Contributory Pension Scheme came into being, the candidate was made entitled to be governed under the Old Pension Scheme. Clause 3 of the Instructions dated 17.02.2020 is as under:

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Keeping in view the above, the writ petitions are allowed. Petitioners are held entitled for the benefit under the Old Pension Scheme especially, in view of the settled principle of law noticed hereinbefore, which have attained finality up to the Hon'ble Supreme Court



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of India as well as factual aspects of the present case, where the petitioners not only competed in pursuance to the advertised posts prior to 01.01.2006 but also got selected prior to the said date and had also got order from the competent Court of law much prior to the date when New Defined Contributory Pensionary Scheme had come into being directing the State to appoint them.”

5. In view of the aforesaid, the present writ petition is disposed of in terms of judgment **Hitesh Kumar** (supra).

17.01.2025
parveen kumar

(AMAN CHAUDHARY)
JUDGE

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