

Form J(2).
Item No. 03
Court No. 1

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Present:
THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

WPCT 159 of 2023

**Bharat Sanchar Nigam Limited and others
Vs.
Sri Gautam Kumar Ghosh & Ors.**

Appearance:-

For the Petitioners : Mr. Partha Saratha Bhattacharya, Sr. Adv.
Mr. Agniv Sinha
Mr. Sattwik Kundu

For the Respondent : Mr. Barun Chatterjee
Ms. Debjani Sengupta

Heard on : 31.03.2026

Delivered on : 31.03.2026

Judgment (Oral)

Per, SUJOY PAUL, CJ.:-

Facts of the case :

1. The petitioner BSNL/Department and the casual employees, who got temporary status after formation of BSNL, are at loggerheads on the issue of entitlement of the benefit of General Provident Fund (GPF) scheme. The stand of the employees is that since they were appointed in 1988 and

nearby dates and continuously worked till they got temporary status after formation of BSNL they are governed by GPF scheme whereas the stand of BSNL is based on their policy decision dated 23rd March, 2007 (Annexure P3) which says that they are entitled to EPF benefits.

2. The original application was filed praying for the following reliefs:-

“(a) An order directing the respondents to treat the applicants as casual employees with temporary status from 1999 i.e. prior to the date of absorption of BSNL.

b) An order holding that the applicants are entitled to the benefits of old Pension Scheme of 1972 and entitled to the contribution under the Scheme of GPF instead of EPF.

c) An order holding that switching over of the applicants to the EPF Scheme is bad in law and arbitrary and the same may be quashed and set aside.

d) An order directing the respondents to bring the applicants again under the GPF Scheme and under the purview of Pension Scheme of 1972 of the Government of India as per provisions of CCS (Pension) Rules, 1972.

e) An order directing the respondents to grant all consequential benefits to the applicants.

f) An order directing the respondents to produce/cause production of all relevant records.

g) Any other order or further order/orders as to this Hon’ble Tribunal may seem fit and proper.”

3. After completion of pleadings, the Tribunal heard and decided the original application, being OA 350/1115/2019, on 9th September, 2022. The Tribunal after recording some of the rival contentions gave its findings in paragraph nos.5 to 7 of the impugned judgment, which read thus:

“5. Ld. Counsels were heard and materials on records were perused. Considered the rival contentions. The reply as extracted supra implies that posts were available in 2001 i.e. before 01.01.04 when old Pension Rules applied, against which they were regularized but after 01.01.04 i.e., after introduction of the New Pension (NPS) scheme and they are being compelled to switch over to NPS to EPF which is bad.

6.Ld. Counsel would cite the decision of the Hon’ble High Court at Delhi in WP(C) No.2810/2016 in the case of Inspector Rajendra Singh & Ors. vs. UOI & Ors. rendered on 27.03.2017, wherein the petitioners who were recruited after 01.01.2004, against vacancies that occurred before 01.01.2004 were declared as eminently entitled to be covered by the Old Pension Rules and that bringing them into the ambit of New Pension Scheme of 2004 was bad in law, which was affirmed by the Hon’ble Apex Court.

Therefore, ld. Counsel for applicant would vociferously contend that the issue having attained a finality that, where the vacancies arose prior to 01.01.2004 and the recruitment process was also initiated prior to 01.01.2004 but the appointment letters were issued after 01.01.2004, the incumbents would still be governed by the Old Pension Rules of 1972, as held in the decisions quoted supra, direction be issued upon the respondents to consider their grievances in the light of Inspector Rajendra Singh & Ors. vs. UOI & Ors.

7. As the applicants seem to harbour a specific, persistent and genuine grievance, the OA is disposed of with a direction upon the competent authority to consider their grievance in the light of the decisions cited supra and to pass an appropriate order within 3 months from the date of receipt of copy of this order to give them benefit under Old Pension Rules.

The present OA accordingly stands disposed of. No costs.”

(Emphasis Supplied)

4. A plain reading of the analysis portion reproduced hereinabove makes it clear that the Tribunal based its order solely on the judgement of Delhi High Court in the case of **Inspector Rajendra Singh & Ors. vs. UOI & Ors. (WP(C) No.2810/2016)**. The Tribunal came to hold that in the light of this judgment, the competent authority needs to consider the

grievances of the petitioners and pass appropriate order within three months.

Contention of the Department :

5. Learned senior counsel for the department placed heavy reliance on the policy dated 23rd March, 2007, relevant portion of which reads as under.

“To
The Chief General Manager,
All BSNL Circles.

Sub : Applicability of GPF/EPF scheme to the casual labourers.

Several references have been received from BSNL circles regarding applicability of Provident fund scheme in respect of casual labourers who have been regularized in BSNL on or after 01.10.2000 in view of CO BSNL letter no.269-5/2005-Pers-IV dated 10.04.2006.

In this connection DOT has issued a clarification vide their OM NO.27-2/2006-SNG dated 20.10.2006 which has been circulated vide CO.BSNL letter no.269-5/2005-Pers-IV dated 31.10.2006 as per which the Temporary Status Mazdoors who are having TSM status prior to 30.09.2000 and regularized in pursuance of DOT OM No.269-94/98-STN-II dated 29.09.2000 were to be absorbed in BSNL w.e.f. 01.10.2000 as per their status as existing on 30.09.2000 and accordingly Presidential Orders may be issued so as to allow them benefit of counting of 50% of the TSM period for pensionary benefits. In view of this clarification these officials will be under the purview of GPF scheme like BSNL absorbed employees.

It has also been clarified by DOT in their OM referred above that the casual labourers who were not having TSM status as on 30.09.2000 and who have been regularized in BSNL after 01.10.2000, their status will be of a BSNL (PSU) appointee. **Therefore, these casual labourers will be covered under EPF scheme only.**

Necessary action for EPF contribution may kindly be taken by all the circles as per the laid down procedure.

(P.K. Purwar)
DDG(CA)”
(Emphasis Supplied)

6. On the basis of this policy it is submitted that the respondents/applicants got temporary status after BSNL came into existence and as per this policy, they were entitled to be governed by EPF scheme and not by the GPF scheme. Initially, erroneously, payments were made on the basis of GPF scheme. However, upon noticing the mistake, after following the principles of natural justice by putting the employees to notice, the said defect/mistake was rectified. Thus, there is no arbitrariness on the part of the department.
7. Learned senior counsel for the department submits that the Tribunal without considering the legality, validity and propriety of the governing policy dated 23rd March, 2007 and pleadings in this regard made in paragraph 5 of the reply filed before the Tribunal mechanically applied the judgement of **Inspector Rajendra Singh (supra)**. More so, when the policy, which was coming in the way of applicants therein was also not called in question. Thus, the order of the Tribunal may be interfered with.

Contention of the respondents :-

8. Learned counsel for the respondents/applicants fairly submitted that no doubt the policy dated 23.09.2007 was not called in question, it will not make much difference because a similar issue based on similar facts came up for consideration before the Division Bench of Punjab and Haryana High Court in the case of **Harbans Lal vs. State of Punjab & Ors.** in **CWP 2371 of 2000** decided on 31.08.2010. By taking this Court to the

relevant factual matrix of the said case and the analysis made by the High Court, learned counsel for the respondents have taken pains to contend that the factual matrix of the said case are similar to the present one. The judgement of Punjab and Haryana High Court was unsuccessfully challenged by the employer therein before the Supreme Court and the SLP was dismissed by the Supreme Court by order dated 30.07.2012. The document i.e. the order passed in CWP 2371 of 2010 is referred to bolster the said submission. It is highlighted that a plain reading of this order makes it clear that the ratio of **Harbans Lal** (supra) is applicable to the employees working on daily rated basis or any work charge establishment. Since the present respondents were working from 1.12.1988 and certain near dates, they were permitted to join on the permanent post of Chowkidar etc. with effect from 12.05.2004, they are entitled to get the benefit of GPF scheme, which was in vogue at the time of DOT and before formation of BSNL.

Analysis :

9. A plain reading of the prayers made by the respondents shows that although they prayed for a direction to grant them temporary status prior to 1999 and further prayed that grant of benefit of GPF scheme instead of EPF scheme be given, fact remains that they did not challenge the scheme i.e. 23rd March, 2007 (Annexure P3) which is admittedly coming in their way. The last paragraph of the said scheme is reproduced at the cost of repetition.

“It has also been clarified by DOT in their OM referred above that the casual labourers who were not having

TSM status as on 30.09.2000 and who have been regularized in BSNL after 01.10.2000, their status will be of a BSNL (PSU) appointee. **Therefore, these casual labourers will be covered under EPF scheme only.**
(Emphasis Supplied)

10. On a specific query from the Bench the learned counsel for the respondents in her usual fairness stated that this paragraph was indeed coming in the way of the respondents and the same was not specifically called in question before the Tribunal. However, she strenuously contended that in view of the judgement of the Punjab & Haryana High Court in **Harbans Lal** (supra) said non-challenge will not make much difference.'
11. In our considered view, the employer has taken specific plea in their reply before the Tribunal about applicability of said policy dated 23rd March, 2007 which deprived the applicants therein from the fruits of GPF scheme. The minimum expectation from the Tribunal was to deal with the said defence taken by the employer. Putting it differently, if parties have taken diametrically opposite stand about entitlement under the GPF scheme, the Tribunal ought to have considered the governing policy dated 23rd March, 2007 and should have formed its opinion by assigning reasons as to why said policy will be applicable or not.
12. The reproduced analysis portion of the impugned order shows that there is no iota of discussion about the governing policy dated 23rd March, 2007. The Tribunal was carried away by the judgement of the Delhi High Court in the case of Inspector **Rajendra Singh** (supra). Without examining the applicability of the said case and without considering the policy, the

Tribunal directed the employer to consider the claim in the light of the judgement of Inspector **Rajendra Singh** (supra). We are not inclined to give our stamp of approval to the procedure adopted by the Tribunal. At the cost of repetition, in our opinion, when parties take a diametrically opposite stand and the Court is inclined to accept one stand and reject the other, the Court is obliged to assign reason therefor. In the instant case the said analysis is totally missing.

13. The ultimate direction of the Tribunal is to the employer to consider the claim in the light of the judgement in Inspector **Rajendra Singh** (supra). No cross writ petition has been filed by the employees assailing the correctness of the order of the Tribunal whereby no finding is given as to the applicability of the GPF scheme.
14. In absence of any cross writ petition being filed by the employees we are not inclined to consider the judgement in the case of **Harbans Lal** (supra).
15. In view of foregoing discussions, the impugned order of the Tribunal dated 9.9.2022 cannot be permitted to stand. Resultantly, the order dated 9.9.2022 passed in OA 350/1115/2019 is **set aside**. The OA is restored to its original number and file. The Tribunal is requested to re-hear the parties and decide the matter afresh in accordance with law. It will be open to the applicants therein to file amendment application to assail the policy dated 23rd March, 2007 to shorten the litigation. Consequently, the employer will be at liberty to file its response. Parties are also at liberty to raise all the grounds and rely on the judgements, which are applicable in

their opinion. The Tribunal shall re-hear the matter and pass the order in accordance with law.

16. Since it is a matter relating to grant of GPF benefits to the employees, who are working for decades, we request the Tribunal to decide the matter expeditiously preferably within two months from the date of completion of pleadings.
17. The petition is **disposed of**.
18. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned counsel for the parties, upon compliance of all formalities.

I agree.

(SUJOY PAUL, CJ.)

(PARTHA SARATHI SEN, J.)

RP(AR.CT.)