IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230 CWP No.30763 of 2018 (O&M)
Date of Decision: 22.04.2026

RAKESH KUMAR

.....Petitioner

Versus

POST GRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH AND ANOTHER

........Respondents

<u>CORAM</u> : <u>HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI</u>
<u>HON'BLE MR. JUSTICE DEEPAK MANCHANDA</u>

Present: Mr. Raman Sharma, Advocate, for the petitioner.

Mr. Vikrant Sharma, Advocate, for respondent No.1.

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<u>HARSIMRAN SINGH SETHI, J. (Oral)</u>

1. In the present petition, the challenge is to the impugned order dated 02.11.2018 (Annexure P-1) passed by respondent No.2-Central Administrative Tribunal, U.T. Chandigarh (hereinafter referred to as 'the Tribunal') by which, the benefit of service rendered by the petitioner prior to the date of regularization in the year 2007, has not been taken into account so as to decide the claim as to whether, the petitioner will be governed under the Old Pension Scheme ((hereinafter referred to as 'the OPS') or the New Pension Scheme (hereinafter referred to as 'the NPS') for counting service as well for the grant of pensionary benefits.

2. Learned counsel for the petitioner submits that the finding recorded by the Tribunal that as the services of the petitioner were regularized in the year 2007, which is after the date, NPS had already been notified, and was under operation, hence, the claim of the petitioner to count his service rendered prior to the regularization of the service to be

considered under OPS and to compute his pensionary benefits cannot be granted, is incorrect and contrary to the settled principle of law.

3. Certain facts need to be appreciated for adjudication of the issue raised herein. The petitioner was appointed on a Class-IV post on 24.02.1992. His services were terminated on 31.08.1992, which action was challenged and during the conciliation proceedings initiated on said issue, on 07.09.1994, the petitioner was reinstated in service.

4. In June, 1998, the petitioner was marked absent from duty after which, he was not allowed to join back the service, and the services of the petitioner were again terminated on 03.02.1999 and the said termination was challenged by the petitioner by raising a reference before the Labour Court. Vide award dated 28.04.2004, the termination of the services of the petitioner was held to be bad and the petitioner was directed to be reinstated in service with benefit of continuity in service but without benefit of back-wages.

5. Thereafter, the petitioner was reinstated in service on 09.01.2006 and ultimately, on 28.08.2007, his services were also regularized.

6. The question which arose after the services of the petitioner was regularized was whether, the petitioner will be governed by the OPS or the NPS. The petitioner approached the Tribunal for the grant of benefit under the OPS, which claim was denied by the Tribunal on the ground that once the NPS was made applicable w.e.f. 01.01.2004, and the services of the petitioner were regularized in August 2007, he cannot be held entitled to be considered under OPS, which judgment dated 02.11.2018 passed by the Tribunal is under challenged in the present appeal.

7. Learned counsel for the petitioner argues that as per the settled

principle of law settled by the Division Bench of this Court in ***Harbans Lal Versus State of Punjab, CWP No.2371 of 2010, decided on 30.08.2010,*** it has been held that even if the services of an employee, who was in service as on 01.01.2004, were regularized after said date, the benefit to be considered under the OPS for purpose of grant of pensionary benefits will be applicable and the said judgment has already been upheld upto the Hon'ble Supreme Court of India and therefore, the impugned order passed by the Tribunal is contrary to the settled principle of law settled by the Division Bench of this Court in ***Harbans Lal*** (supra).

8. Learned counsel for respondent No.1 submits that the said judgment in ***Harbans Lal*** (supra) cannot be made applicable in facts and circumstance of present case as, the same was passed keeping in view the peculiar rules governing the employees working under State of Punjab according to which rules, service rendered by an employee prior to regularization is to be treated as the qualifying service for purpose of computing the pensionary benefits, which benefit is not admissible under the Central Civil Services Rules, which rules are applicable in the present case and therefore, the said differentiating fact has rightly been appreciated by the Tribunal while declining the relief to the petitioner.

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

10. The question which arises is whether, in the facts and circumstances of the present case and keeping in view the rules governing the service i.e. Central Civil Services Rules, the benefit as admissible in ***Harbans Lal*** (supra) can be given to the petitioner or not?

11. Corollary to above mentioned question, the further question which arises is whether, the service rendered by the petitioner prior to

regularization of services has to be treated as qualifying service for the purpose of computing pensionary benefits or not, which has been made the basis for the grant of benefits in ***Harbans Lal*** (supra). Keeping in view the fact that rules governing the present case is Central Civil Services Rules and the said rules came up for consideration before the Hon'ble Supreme Court of India in Civil Appeal Nos.5671-5672 of 2025, titled ***S.D. Jayaprakash and others Versus The Union of India and others***, decided on 29.04.2025, wherein, the Hon'ble Supreme Court of India held that even the contractual service rendered prior to regularization must be taken into account for the grant of pensionary benefits as per Rule 17 of the Central Civil Services (Pension) Rules, 1972. Once, even the contractual service rendered by an employee covered under said rules which governs the service of the petitioner is to be taken into account so as to treat the same as a qualifying service for grant of pensionary benefits, the service rendered by the petitioner starting from the year 1992 onwards till the same were regularized cannot be excluded so as to deny the benefit claimed by the petitioner. Hence, it cannot be construed that the rules governing the service qua said aspect are not *akin* to the rules which the State of Punjab has formed for its own employee and both of these set of rules aim to achieve same ends, and said rules have been made the basis for the grant of relief to be considered under the OPS, who were in service as on 01.01.2004 but were regularized thereafter.

12. The relevant paragraph of the judgment in ***S.D. Jayaprakash*** (supra) is reproduced hereunder:

> *"7. Rule 17 of the Pension Rules deals with counting of service on contract for the purpose of granting pension, which squarely covers the issue in the present case. It is extracted below for ready reference:*

"17. Counting of service on contract –

(1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either :-

(a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service; or

(b) to agree to refund to the Government the monetary benefits referred to in Clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

(2) The option under sub-rule (1) shall be communicated to the Head of Office under intimation to the Accounts Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service, or if the Government servant is on leave on that day, within three months of his return from leave, whichever is later.

(3) If no communication is received by the Head of Office within the period referred to in sub-rule (2), the Government servant shall be deemed to have opted for the retention of the monetary benefits payable or paid to him on account of service rendered on contract."

8. This rule fell for consideration and interpretation in Sheela Devi (supra), where this Court held that although Rule 2(g) of the Pension Rules excludes contractual employees from their application, Rule 17 applies once such contractual employee is regularised on a later date.

The effect is that upon regularisation, the Pension Rules become applicable and Rule 17 requires that past service as a contractual employee is to be taken into account for calculating pension.6 In this light, and considering that Rule 17 requires the regularised employee to exercise an option to either retain the Government's contribution to Contributory Provident Fund, or to refund such amount or forgo the same if they have not been paid in lieu of counting the service period for which such benefits may have been payable, this Court in Sheela Devi (supra) issued the following directions:

> *"11. In view of the above reasoning, this court is of the opinion that there is no merit in the appeal however, the following directions are issued:-*
>
> *(i) The state shall take immediate steps to indicate the mode and manner of exercising option by all the employees concerned (who had been regularized after spells of contractual employment) regardless of the dates on which they were engaged i.e. prior to the year 2003 or subsequently, within a time frame, of within eight weeks from today.*
>
> *(ii) After receiving the options within the time indicated in the notice, the concerned employee(s) who exercise the relevant options should be notified about the amounts they would have to remit in case any amount towards contribution is required, clearly.*
>
> *(iii) The options should be processed and completed within eight weeks from the last date of receiving options.*
>
> *(iv) Time limit for payment too should be indicated and entire process should be completed within four months and all orders fixing pensions or family pension as the case may be, shall be issued."*

> *9. In light of the clear language of Rule 17 of the Pension Rules as well as its interpretation in Sheela Devi (supra), the contractual service period rendered prior to the appellants' regularisation in 2015 must be counted towards the payment of their pensionary benefits in accordance with the mechanism set out in Rule 17. In line with the directions issued in Sheela Devi (supra) extracted hereinabove, we direct the respondent Union of India to take immediate steps and indicate the mode and manner for the appellants to exercise the option provided under Rule 17 of the Pension Rules as well as to notify the amounts that the appellants would have to remit in case they opt for grant of pension under the Rules."*

13. Now, as per the judgment in ***Harbans Lal*** (supra), any employee who was in service as on 01.01.2004 but his/her services were regularized thereafter has been held entitled to be governed under the OPS. The relevant paragraph of the said judgment is reproduced hereunder:

> *"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 Services 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.*
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> *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 according 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.*"

14. Learned counsel for respondent No.1 has not been able to dispute the said settled principle of law as noticed hereinabove.

15. Keeping in view the totality of the circumstances as, the judgment passed by the Tribunal is perverse to the settled principle of law, the same cannot be sustained and is accordingly set aside. The respondent No.1 is directed to consider the claim of the petitioner for the grant of pensionary benefits under the OPS by counting the service rendered by him prior to regularization as a qualifying service for computing the pensionary benefits. The said benefits will be given at the time when he attains the age of superannuation, as the petitioner is continuing in active service as of now.

16. The writ petition is allowed in the aforesaid terms.

17. Miscellaneous application pending, if any, is also disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

22.04.2026
sandeep

Whether Speaking/Reasoned : Yes
Whether Reportable : No