

(2019) 05 P&H CK 0179

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 10238 Of 2017

Jeewan Lata

APPELLANT

Vs

State Of Punjab And
Others

RESPONDENT

Date of Decision: May 10, 2019

Acts Referred:

- Punjab Civil Services Rules, Volume II, - Rule 3.17(A), 3.17(ii), 3.17 A(ii)(a), 4.23
- Constitution Of India, 1950 - Article 14, 226, 227

Hon'ble Judges: Harsimran Singh Sethi, J

Bench: Single Bench

Advocate: H.S. Dhindsa, Mehardeep Singh

Final Decision: Allowed

Judgement

In the present writ petition, the grievance of the petitioner is that though she has rendered more than 26 years of service with the respondents as Safai

Sewika, but after she retired from service on 31-01-2016, no pensionary benefits have been released to her.

As per the facts mentioned in the writ petition, petitioner joined as a Sweeper on part time basis with the respondents-Department of Education on 14-

08-1984. She continued working as such till her services were regularised by the respondents on 25-10-2010 (Annexure P-3). Thereafter, petitioner

attained the age of superannuation and ultimately retired on 31-01-2016. After the retirement, petitioner represented the respondents for the release of

the pensionary benefits, which request was not accepted by the respondents and ultimately, the present writ petition has been filed by the petitioner

claiming the retiral benefits in respect of the service which she had rendered with the respondents.

Upon notice of motion, the respondents have filed the reply in which the respondents have stated that the petitioner was initially working on part time

basis as Sweeper from 14-8-1994 to 24-10-2010 and thereafter on regular basis and then the petitioner retired on 31-01-2016. The reason which has

been given by the respondents for not granting the pensionary benefits to the petitioner is that the petitioner will be covered under the New

Contributory Provident Funds Scheme, which is applicable in the State of Punjab w.e.f 01.01.2004. As the services of the petitioner were regularised

in October, 2010 and therefore petitioner was not entitled for pension under the Old Pension Scheme. It has also been stated in the reply that the

benefits of leave encashment and General Insurance Scheme have already been released to the petitioner.

Further, an objection has been raised by the respondents that under Rule 3.17 (A) of the Punjab Civil Services Rules, the service which has been

rendered on part time basis, cannot be taken into account for computing the Pensionary benefits and therefore part time service of petitioner from 14-

08-1994 till 23-10-2010, cannot be taken into account as the qualifying service for the grant of pensionary benefits and in case the said period is taken

out, the petitioner does not have 10 years of service to her credit so as to become entitled to be granted the pensionary benefits. The relevant portion

of the reply of the respondents is as under:-

2. That in this regard, it is respectfully submitted that the petitioner had been working as part time sweeper w.e.f. 14.08.1984 to 23.10.2010 at Govt.

Primary School Salem Tabri, Ludhiana. That the petitioner was giving her services purely temporarily on part time basis before her regularization.

3. The petitioner sent her case for regularization through her Block Primary Education Officer, Mangat-2 Ludhiana, vide Letter bearing No.1275 dated

28.07.2010 (Copy of letter No. 1275 dated 28.7.2010 is annexed herewith for kind perusal of the Court as annexure R1). After the receipt of case of

the petitioner for regularization, her case was duly considered by the Screening Committee and she was found fit for regularization in the light of the

Govt. instructions and she was regularized vide order dated 9.9.2010 issued by the District Education Officer (SE) Ludhiana but the petitioner joined as regular employee on 25.10.2010 at Govt. Senior Secondary School Division No.3 Ludhiana and her regular service was covered under New Pension Scheme. Now the petitioner had retired from service w.e.f. 31.1.2016 and she had disbursed leave encashment amounting to Rs.36,629/- and GIS amounting to Rs.801/- (Annexure R2). The claim of the petitioner in the present writ petition is that her part time service should be computed as a qualifying service for grant of pension.

4. That there was specific condition No.13 in the order of regularization dated 9.9.2010 (Annexure R-3) that she would not be covered under Pension Scheme as per Punjab Civil Service Rules Vol.II but she will be covered under the New Contributory Pension Scheme. The order dated 9.9.2010 is never challenged by the petitioner. The CPF amount has already been disbursed to the petitioner. Therefore the petitioner is not entitled for counting of her part time service for the purpose of pension. A similar matter has been decided by this Hon^{ble} Court of Punjab and Haryana vide judgment dated 19.1.2017 passed in CWP No.20105 of 2012. The relevant part of the judgment is reproduced as under:-

“Therefore, none of the judgments are applicable to the facts of the present case under the rules 3.17 (A) of the Punjab Civil Services Rules, Volume II, the part time service is not to be computed towards pensionary benefits. Moreover, as per the terms and conditions of the regularization order, the petitioner is to be covered by CPF. The said order of regularization was never challenged. It being so services of the petitioner as a part time sweeper cannot be computed for grant of pensionary benefits.

In view of the above, the present petition stand dismissed.”

Rule 3.17 (A) is produced herein below:

“3.17-A(1) Subject to the provision of rule 4.23 and other rules and except in the cases 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 the 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, Khalasis, 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.

(iii) Casual or daily rated service.

(iv) Suspension adjusting as a specific penalty. Keeping in view the submissions made above, the part time service cannot be counted towards pensionary benefits, it is respectfully submitted that the present writ petition may kindly be dismissed being infructuous.

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

The claim of the petitioner is that once she has rendered more than 26 years of service, she is entitled for the benefit of pension under the Old Pension

Scheme for grant of pensionary benefits. In order to decide the claims of the petitioner for the grant of pensionary benefit, two objections, which have

been raised by the counsel for the respondents need to be addressed by this Court. The first objection taken by the respondents to deny the

pensionary benefits to the petitioner is that the services of the petitioner were regularised in October, 2010 and on the said date, there was a

Contributory Provident Funds Scheme in operation and therefore, the petitioner is not entitled for the grant of pension under the old Pension Scheme.

It is admitted that whatever the benefits for which the petitioner was entitled under the Contributory Provident Funds Scheme, which is in operation

since 01-01-2004, have already been released to the petitioner.

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 judgement 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 judgement has already attained finality up to the Hon'ble Supreme Court of India as the Special Leave Petition filed against the said

judgement 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 work-charged 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.â€

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 Chandâ€™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 Chandâ€™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.