IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) **LPA-1892-2019 (O&M)**
Reserved on:10.07.2024
Date of Pronouncement:26.07.2024

STATE OF HARYANA AND OTHERS ..... Appellants

Versus

JAI BHAGWAN ..... Respondent

2) **LPA-713-2020 (O&M)**

STATE OF HARYANA AND OTHERS .....Appellants

Versus

SHYAMO .....Respondent

3) **LPA-955-2021 (O&M)**

STATE OF HARYANA AND OTHERS .....Appellants

Versus

RISHI RAJ AND ANR .....Respondents

4) **LPA-310-2021 (O&M)**

STATE OF HARYANA AND OTHERS .....Appellants

Versus

LAL CHAND ....Respondent

5) **LPA-159-2023 (O&M)**

STATE OF HARYANA AND OTHERS .....Appellants

Versus

RAMCHANDER .....Respondent

6) **LPA-1119-2023 (O&M)**

STATE OF HARYANA AND OTHERS .....Appellants

Versus

RAMPAL ....Respondent

7) **LPA-1120-2023 (O&M)**

STATE OF HARYANA AND OTHERS .....Appellants

Versus

RAGHUBIR SINGH .....Respondent

8) **LPA-1126-2023(O&M)**

STATE OF HARYANA AND OTHERS .....Appellants

Versus

KANTA DEVI .....Respondent

9) **LPA-367-2024 (O&M)**

STATE OF HARYANA AND OTHERS .....Appellants

Versus

RANDHIR SINGH .....Respondent

10) **LPA-540-2024 (O&M)**

STATE OF HARYANA AND OTHERS .....Appellants

Versus

SANTOSH DEVI AND ANOTHER ....Respondents

11) **LPA-819-2024 (O&M)**

STATE OF HARYANA AND OTHERS ….Appellants

Versus

SAT PAL …..Respondent

12) **LPA-874-2024 (O&M)**

STATE OF HARYANA AND OTHERS …..Appellants

Versus

SURESH CHANDER ….Respondent

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE JAGMOHAN BANSAL, JUDGE

Present : Ms. Shruti Jain Goyal, Sr. DAG, Haryana,
for the appellants.

Mr. Sandeep Singal, Advocate,
for the respondent in LPA-1892-2019.

Mr. A.S. Khinda, Advocate
for the respondent in LPA-713-2020.

Mr. Kuldeep Khandelwal, Advocate
for the respondents in LPA-955-2021.

Mr. D.S. Rawat, Advocate
for the respondent in LPA-310-2021.

Mr. Sandeep Goyal, Advocate
for the respondents in LPAs-1119, 1120 & 1126-2023.

Mr. Surinder Kumar Daaria, Advocate
for the respondent in LPA-367-2024.

Dr. Surya Prakash, Advocate
Mr. Vikram Garg, Advocate
for respondent No.1 in LPA-540-2024.

Mr. Ashwani Talwar, Advocate
for respondent No.2 in LPA-540-2024.

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JAGMOHAN BANSAL, J.

1. By this common order LPA-1892-2019, LPA-713-2020, LPA-955-2021, LPA-310-2021, LPA-159-2023, LPA-1119-2023, LPA-1120-2023, LPA-1126-2023, LPA-367-2024, LPA-540-2024, LPA-819-2024 and LPA-874-2024 are disposed of since issues involved in the captioned appeals and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from LPA-1892-2019.

2. The appellant-State of Haryana through instant appeal under Clause 10 of Letters Patent of this Court is seeking setting aside of order dated 01.03.2019 passed by learned Single Judge in Civil Writ Petition No.1048 of 2016.

3. The respondent-Jai Bhagwan was appointed as a Peon on 06.08.1992 with Education Department, State of Haryana. He, without interruption, worked from August' 1992 to February' 2011 and on 27.02.2012 was regularized. He worked from 2012 to 2015 as regular employee and retired on 31.10.2015. The respondent and similarly situated Class-IV employees approached this Court with a prayer that services rendered by them on *ad hoc* basis for a period of two decades should be considered while computing pensionary benefit. The matter came up for consideration before learned Single Judge of this Court on 01.03.2019 who relying upon a Full Bench judgment in ***'Kesar Chand Vs. State of Punjab and others', 1998 SCC Online P&H 338***, a Division

Bench in ***'Harbans Lal Vs. The State of Punjab and others, 2010 SCC Online P&H 8181'*** and a Single Judge Bench in ***'Zile Singh Vs. State of Haryana and othres' CWP No.626 of 2015*** formed an opinion that petitioner is entitled to pensionary benefits under the Old Pension Scheme and his service rendered from 06.08.1992 to 27.02.2012 shall be counted for qualifying service for pensionary benefits.

4. The appellant-State feeling aggrieved from judgment of learned Single Judge has approached this Court through Intra Court Appeal.

5. Ms. Shruti Jain Goyal, Sr. DAG, Haryana submits that learned Single Judge has wrongly relied upon judgment of ***Kesar Chand*** (supra) and ***Harbans Lal*** (supra) because these judgments are relating to employees of State of Punjab. There is a slight difference in Rule 3.17-A applicable to State of Haryana and State of Punjab. The judgment of Division Bench of this Court passed in LPA No.426 of 2016 (State of Haryana Vs. Zile Singh) needs to be re-considered. The respondents were initially appointed on part-time basis. They worked for very few hours in a day. The jurisdictional authorities like Principal/Headmaster of a school made appointment of peons on *ad hoc* basis. They worked for 3-4 hours a day, thus, neither can be considered as daily wagers nor contractual employees. Rule 3.17-A which has been invoked by learned Single Judge specifically excludes service of part-time employees, thus, learned Single Judge has mis-read Rule 3.17-A. There are almost 5,000 employees who were initially appointed on part-time basis and thereafter regularized. Counting of their service for pensionary benefits would create additional burden upon the State Exchequer. The State Government vide

notification dated 18.08.2008 brought into force Haryana New Pension Scheme, 2008 which is applicable to all Government servants who have joined service on or after 01.01.2006. The State Government vide notification dated 28.10.2005 amended Rule 1.2 of Punjab Civil Service Rules Volume-II, Part-I as applicable to State of Haryana. By said notification a proviso came to be inserted whereby it was provided that Government employees who were appointed on or after 01.01.2006 shall be covered by 'New Defined Contribution Pension Scheme' to be notified by Government. The petitioner was appointed as regular employee w.e.f. 27.01.2012 and he retired on 31.10.2015 on attaining the age of superannuation. He was not entitled to pension, though he had rendered continuous service of 23 years on the same post because he was regularized w.e.f. 21.01.2012.

6. Per contra, counsel for the respondents supporting judgment of learned Single Judge pleaded that there are few writ petitioners who were not part-time employees.

7. We have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

8. The conceded position emerging from the record is that writ petitioner was appointed as a Peon in 1992. He uninterruptedly worked with the Education Department from 1992 to 2012 i.e. for two decades. His service was regularized on 27.02.2012. He retired on 31.10.2015. The State Government vide notification dated 18.08.2008 introduced Haryana New Pension Scheme, 2008 which came into force w.e.f. 01.01.2006. The Government also issued notification dated 28.10.2005 whereby Punjab Civil Service Rules applicable to State of Haryana were amended.

The amended Rule provided that Government employees appointed on or after 01.01.2006 shall be governed by New Defined Contribution Pension Scheme. The respondent-writ petitioner was regularized after introduction of New Pension Scheme, thus, New Pension Scheme was made applicable to him.

9. A Full Bench of this Court in ***Kesar Chand*** (supra) has held that daily wage service, followed by regularization of the service ought to be counted as qualifying service for the grant of pensionary benefits. The Court considered Rule 3.17 of Punjab Civil Service Rules and held that daily wage service, followed by regular service is good enough to be treated as qualifying service for computing the pensionary benefits. The relevant extracts of Full Bench judgment are reproduced as below:

> *"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*
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> *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 workcharged 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 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."

10. It is apt to mention here that Full Bench struck down sub-rule (ii) of Rule 3.17 of Punjab Civil Service Rules on the ground that it is violative of Article 14 of the Constitution of India. The Court held that

service of a work-charged employee cannot be ignored for the purpose of pensionary benefits.

11. A Division Bench of this Court in ***Harbans Lal*** (supra) considered the status of part-time, temporary and daily wage employees who have been regularized. Harban Lal was appointed as daily wage employee on 01.08.1988 and his service was regularized on 28.03.2005. The Court held that the service of petitioner as daily wage shall be counted for qualifying service for the purpose of pension. Once the entire service of a daily wager is to be counted as qualifying service then his date of appointment will relegate back to his initial date of appointment and he cannot be ousted from pension scheme by applying the date of regularization which is after introduction of New Pension Scheme. The relevant extracts of judgment are reproduced as below:

> *"The writ petition was allowed and the petitioners were held entitled to count their entire service w.e.f. 17.8.1965 to 30.9.2001 as qualifying service for the purposes of pension. However, the Contributory Provident Fund was required to be adjusted and deducted from the arrears of her pension. We come to the conclusion that the petitioners' initial date of appointment after regularization will be the date on which employee takes charge of the post. Once the entire service of a daily wager is to be counted as qualifying service then his date of appointment will relegate back to his initial date of appointment i.e. 1988 and he cannot be ousted from pension scheme by applying the date of regularization i.e. 28.3.2005 which is evidently after the new scheme or new restructured defined Contribution Pension Scheme came into force w.e.f. 1.1.2004."*

12. Case of ***Kesar Chand*** (supra) and ***Harbans Lal*** (supra) related to employees of State of Punjab. In ***Zile Singh*** (supra) matter

relating to employees of State of Haryana, came up for consideration before this Court. A Single Judge Bench vide order dated 17.03.2015 directed the respondents to consider case of the petitioner in terms of ***Kesar Chand*** (supra) case and release pensionary benefits. The State Government assailing aforesaid decision preferred Intra Court Appeal. The matter came up for consideration before a Division Bench of this Court which vide order dated 18.03.2016 passed in LPA No.426 of 2016 dismissed appeal of the State. The Court noticed that employee was engaged on work charged basis in 1996 and he was regularized on 24.05.2013. There is nothing on record to suggest that employee's services were being paid from contingencies. If service of employee was engaged only for contingencies, there was no occasion to retain the employee for such a long period. The relevant extracts of the judgment are reproduced as below:

> *"We find that the employee was engaged on work charge basis in the year 1996 and his services were regularized on 24.5.2013 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 a 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."

13. The State preferred a review application in aforesaid LPA which vide order dated 29.10.2022 came to be dismissed on account of inordinate delay. The State also preferred SLP (C) No.6069 of 2017 before Supreme Court which on the ground of delay came to be dismissed vide order dated 13.09.2019. The appellant-State is claiming that judgments of ***Harbans Lal*** (supra) and ***Kesar Chand*** (supra) are not applicable to State of Haryana as Rule 3.17-A of Punjab Civil Services Rules applicable to State of Haryana is differently worded than applicable to State of Punjab.

14. Learned State Counsel during the course of arguments conceded that case of ***Zile Singh*** (supra) relates of State of Haryana and ordered passed by this Court has already attained finality.

15. The appellant is claiming that Rule 3.17-A applicable to State of Haryana is different from State of Punjab. The said rule as reproduced in the paper-book is noted as below:

"3.17-A. (a) All service interrupted or continuous followed by confirmation shall be treated as qualifying service; the period of break shall be omitted while working out aggregate service.

(b) Extraordinary leave counted towards increments under rule 4.9 (b) (ii) of Punjab Civil Services Rules, Volume-1, Part-I, will be accounted towards service qualifying for pension.

(c) Periods of suspension, dismissal, removal, compulsory retirement followed by reinstatement will count for pension

to the extent permissible under rule 4.17 of Punjab Civil Services Rules Volume-II read with rule 7.3 of the Punjab Civil Services Rules, Volume-l, Part-I.

(d) Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service terms of rule 4.19 (a) of Punjab Civil Service Rules Volume-II.

(e) An interruption in the service of a Government employee caused by wilful absence from duty and unauthorized absence without leave will as hitherto entail forfeiture of past service.

***Explanation.-** The willful refusal to perform duties by a Government employee by any means including pen down strike shall be deemed to be willful absence from duty.*

(f) Employees retiring from Government service without confirmation (as temporary employees) in any post on or after 5 February, 1969 will be entitled to invalid/ retiring/ superannuation pension and death-cum-retirement gratuity on the same basis as admissible to permanent employees. In case of death of employees in service his family will also be entitled to similar benefits as are admissible to the families of permanent employees. This concession will, however, not apply to:

(i) Persons paid from contingencies; provided that [full period] of service of such a persons paid from contingencies rendered from 1 January, 1973 onwards for which authentic records of service is available will count as qualifying service subject to the following conditions:-

(a) Service paid from contingencies should have been in a job involving whole time employment and not part time for a portion of day, (a) Service paid from contingencies should have been in a job involving

whole time employment and not part time for a portion of day.

(b) Service paid from contingencies should be in a type of work or job for which regular post should have been sanctioned e.g. Malis, Chowkidars, Khalasis etc

(c) The service should have been such 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 relations in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments; and

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

Note.- While bringing contingent paid employee to the regular establishment an entry for verification of contingent service should be made at the appropriate place in his service book, preferably before making any entry regarding his regular service in the following manner:

"Service from _____to_____ paid out of contingencies verified from acquittance rolls and office copies of contingent bills". This entry should be signed by the Head of Office with date.

(ii) Deleted.

(iii) Casual Labour;

(iv) Contract Officer; and

(v) Persons born on Contributory Provident Fund Establishment.

(g) The entire service rendered by an employee as work charged shall be reckoned towards retirement benefits provided-

(i) such service is followed by regular employment:

(ii) there is no interruption in the two or more spells of service or the interruptions fall within condonable limits; and

(iii) such service is a whole time employment and not part-time or portion of day."

[Emphasis Supplied]

16. The appellant is relying upon Clause (g) of aforesaid rule. From the perusal of aforesaid clause (g), it comes out that service rendered by an employee as work charged shall be reckoned for all retiral benefits provided such service is followed by regular employment, there is no interruption in two or more spells of service or the interruption fall within condonable limits and such service is a whole time employment and not part-time or portion of day. The appellant claims that respondent was working as a part-time employee, thus, Rule 3.17-A is inapplicable to him. Neither from the pleadings nor from impugned order, it can be culled out that respondent had rendered service as work charged. He had worked with a school which operates around the year. If it is assumed that respondent was employed as work charged still his service cannot be ignored because he had worked for almost two decades without interruption. It is difficult as well as highly improbable to believe that a Government school has appointed a peon or water-carrier for 3-4 hours a day. A peon or water-carrier is required for as long hours as teachers and students remain in the school. The appellant-State by tagging respondents as part-time employees has misused its position and exploited them. Unemployment in the nation is well known. A long service of two decades cannot be assumed to be a part-time service. It appears that appellant uninterruptedly availed service of respondents for two decades

and in the guise of part-time employment, deprived them from their valuable right of pay and other allowances. Service of respondent was regularized after two decades and he worked without interruption. Sub-Clause (ii) of clause (g) of Rule 3.17-A contemplates interruption in two or more spells of service because in case of a work charged employee there are always possibilities of interruption in service. Clause (a) of the aforesaid rule clearly provides that interrupted or continuous service followed by confirmation shall be treated as qualifying service. The period of break is omitted by calculating aggregate service. The respondent has worked without interruption and break, thus, it would be travesty of justice, if it is concluded that they are not entitled to counting of service rendered before their regularization.

17. About two decades back, a Constitution Bench in ***Secretary, State of Karnataka and others Vs. Uma Devi and other (2006) 4 SCC 1*** deprecated practice of appointment of employees on part-time, daily wages or contract basis. The Court permitted to appoint employees on contract basis in case of exigencies whereas this Court is inundated with cases of part-time, daily wages and contractual employees. The State instead of making appointment on regular basis has adopted practice of making appointments on part-time or contract basis. On account of mass unemployment, the people are ready to work for a small amount and on part-time or contract basis. The State is a model employer and is not expected to exploit its citizen. Paying a small amount and depriving people from regular employment is nothing more than exploitation. India is a welfare and socialist State. The foundation on which our Constitution rests is equality of status and of opportunity. Making appointment on part

time or contract basis amounts to violation of object of 'social and economic justice' as well as 'equality of status and opportunity' enshrined in the preamble of our Constitution. This Court is of the considered opinion that State should amend its policy to make appointments on contract or part-time basis.

18. In the wake of above discussion and findings, we are of the considered opinion that instant appeals being bereft of merit deserve to be dismissed and accordingly dismissed.

19. Pending misc. application (s), if any, shall also stand disposed of.

(SHEEL NAGU)
CHIEF JUSTICE

(JAGMOHAN BANSAL)
JUDGE

26.07.2024
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*