(2022) 11 SHI CK 0028

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No. 3430 Of 2020

Harinder Singh — APPELLANT

Vs

State Of Himachal Pradesh And Ors — RESPONDENT

Date of Decision : 17-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Central Civil Services (Pension) Rules, 1972 — Rule 2, 4
Punjab Civil Services Rules, Volume I — Rule 3.17(ii)

Citation : (2022) 11 SHI CK 0028

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Ashwani Gupta, Sudhir Bhatnagar, Shashi Kiran

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. Petitioner herein was appointed as Chainman on daily wage basis in the year, 1992 and was granted work charge status in the year, 2002. Petitioner after being regularized against the aforesaid post in the year, 2007, applied for allotment of GPF Account Number on the prescribed application form. In the said form, petitioner expressed his willingness to deduct an amount of Rs. 4000/- per month from his salary to be remitted in his GPF No. HLR-7822 (Annexure A-1). Since despite there being allotment of GPF number, respondents failed to get the amount from the salary of the petitioner deducted to GPF number, petitioner made several requests but in vain and as such, he approached the erstwhile HP State Administrative Tribunal by way of Original Application No.2736 of 2018, which now on account of abolishment of the Tribunal, has been transferred to his court for adjudication, praying therein for following main relief:

“i) That the respondent may kindly be directed to deduct the GPF from the salary of the applicant every month and remit the same to his GPF Account No. HLR -7822 alloted by the respondent No.3.”

2. Having heard learned counsel for the parties and perused the material available on record, especially reply filed by the respondents, this Court finds that there is no dispute that though petitioner was initially appointed as Chainman on daily wage basis, but his services were regularized in the year, 2007 after being conferred work charge status in the year, 2002 and vide order dated 26.3.2013, GPF Number was allotted in his favour. It is also not in dispute that at the time of allotment of the GPF Number, petitioner had put in more than six years of service as Chainman on regular basis with the respondent department.

3. Reply filed by respondents No. 1 and 2 reveals that GPF deduction was not started because Under Secretary (Revenue) to the Government of Himachal Pradesh intimated vide letter No.Rev-A(E) 3-159/2011 dated 2.3.2013 that issue regarding deduction of either GPF or CPF from the salary of Chainmen from the dates of granting them work charge status, was taken up with the Finance Department for opinion, who after due deliberation has observed that since Central Civil Services (Pension) Rules, 1972 are applicable only to regular employees appointed before 14.5.2003 in terms of Rule 2 of these Rules, all government employees appointed on or after 15.5.2003, on regular basis are covered under the Contributory Pension Scheme (also called New Pension Scheme) and they are governed by New Contributory Pension Rules, 2006.

4. Mr. A.K. Gupta, Senior Advocate, appearing on behalf of the petitioner, argued that erstwhile HP State Administrative Tribunal vide order dated 31.7.2017, passed in OA No. 6681 of 2016, Matwar Singh v. State of Himachal Pradesh and Ors, which has been further upheld by the Division Bench of this Court vide judgment dated 18.12.2018, in CWP No. 2384 of 2018, titled State of Himachal Pradesh and Ors v. Matwar Singh, has held that work charge service followed by the regular appointment is to be counted as a component of qualifying service for the purpose of pension and other retiral benefits. If it is so, petitioner is entitled to be governed by the Old Pension Scheme. He submitted that since petitioner was conferred work charge status prior to promulgation of New Pension Scheme, he was rightly allotted GPF number by the office of Accountant General. He also invited attention of this court to Rule 4 of General Provident Fund Rules, perusal whereof reveals that all temporary government servants after a continuous service of one year are eligible to contribute/subscribe to the old Pension Scheme. Rule 4 of the aforesaid rules reads as under:

" Rule-4: CONDITIONS OF ELIGIBILITY

4. Conditions of eligibility - All temporary Government servants after a continuous service of one year, all re-employed pensioners (other than those eligible for admission to the Contributory Provident Fund) and all permanent Government servants shall subscribe to the Fund:

Provided that no such servant as has been required or permitted to subscribe to a Contributory Provident Fund shall be eligible to join or continue as a subscriber to the Fund, while he retains his right to subscribe to such a Fund:

Provided further that a temporary Government servant, who is borne on an establishment or factory to which the provisions of Employees' Provident Funds Scheme, 1952, framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), would apply or would have applied but for the exemption granted under Section 17 of the said Act, shall subscribe to the General Provident Fund if he has completed six months' continuous service or has actually worked for not less than 120 days during a period of six months or less in such establishment or factory or in any other establishment or factory to which the said Act applies, under the same employer or partly in one and partly in the other.

1[Provided also that nothing contained in these rules shall apply to Government servant appointed on or after the 1 st day of January, 2004.]

EXPLANATION. - For the purposes of this rule "continuous service" shall have the same meaning assigned to it in the Employees' Provident Funds Scheme, 1952, and the period of work for 120 days shall be computed in the manner specified in the said scheme and shall be certified by the employer.”

5. Mr. Sudhir Bhatnagar, learned Additional Advocate General, while refuting the aforesaid submission made by the learned counsel for the petitioner argued that since services of the petitioner were regularized in the year, 2007, he could not have been allotted GPF number, which in case of the petitioner was inadvertently issued. However, learned Additional Advocate General was unable to dispute that on account of judgment rendered by the Division Bench of this Court in CWP No. 2384 of 2018, State of Himachal Pradesh and Ors v. Matwar Singh and Anr, service rendered on work charge basis followed by the regular appointment is to be counted towards qualifying service for the purpose of pension and other retiral benefits. If it is so, petitioner otherwise is eligible to contribute the GPF towards Old Pension Scheme. Admittedly, if service rendered on work charge basis by the petitioner is taken into consideration, that would commence from the year, 2002 i.e. much prior to promulgation of New Pension Scheme, whereby all government employees appointed on or after 15.5.2003 on regular basis came to be held entitled to subscribe to Contributory Pension Scheme. Since on account of work charge service rendered prior to regularization, petitioner became entitled to pension under the old Scheme, he automatically becomes entitled to be governed by the Old Pension Scheme and as such, petitioner is entitled to make contribution towards the GPF, for which he has already been allotted GPF number.

6. At this stage, it would be apt to take note of the judgment dated 18.12.2018 passed in CWP No.2384 of 2018 (supra), relevant portion whereof reads as under:

2. The facts are not in dispute. The private respondent joined the petitioners’ Department as daily waged worker in the year 1992 at Saraswati Nagar Range under the jurisdiction of the Divisional Forest Officer, Forest Division, Rohru,

Distt. Shimla. He was subsequently conferred status of work charge employee w.e.f. 01.05.2002. His services were later on regularized as Forest Worker w.e.f. 06.09.2007 as per the policy of the State Government. It appears that the respondent's claim for grant of pension was declined on the ground that he did not possess the requisite qualifying service. It is in this backdrop that the respondent approached the Tribunal and his claim has been accepted.

3. It is by now well settled that the work charge status followed by regular appointment has to be counted as a component of qualifying service for the purpose of pension and other retiral benefits. Executive instructions, if any, issued by the Finance Department to the contrary, are liable to be ignored/struck down, in the light of view taken by this Court in CWP No.6167 of 2017, titled Sukru Ram vs. State of H.P. & others, decided on 6th March, 2013. A Full Bench of Punjab and Haryana High Court in Keshar Chand vs. State of Punjab through the Secretary P.W.D. B & R Chandigarh and others, (1988) 94(2) PLR 223, also dealt with an identical issue where Rule 3.17(ii) of the Punjab Civil Services Rules excluded the work charge service for the purpose of qualifying service. Setting aside the said Rule being violative of Articles 14 and 16 of the Constitution of India, it was held that the work charge service followed by regular appointment will count towards qualifying service for the purpose of pension and other retiral benefits. The aforesaid view was also confirmed by the Hon'ble Apex Court.

4. For the afore-stated reasons, we do not find any error in the impugned order passed by the Tribunal. Accordingly, the writ petition is dismissed alongwith pending application(s), if any."

7. Consequently, in view of the above, this Court finds merit in the present petition and accordingly, same is allowed and respondents are directed to forthwith deduct the GPF from the salary of the petitioner every month and remit the same to his GPF Account No. HLR-7822, which has been already allotted to him by respondent No.3. In the aforesaid terms, present petition is disposed of alongwith pending applications, if any.

