2026 INSC 965

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6865 OF 2022

PUNJAB SCHOOL EDUCATION BOARD AND ANOTHER ...**APPELLANT(S)**

VERSUS

SATNAM SINGH AND OTHERS ...**RESPONDENT(S)**

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1. This Appeal arises out of the judgment and order dated 14.01.2020 passed by the Division Bench of the Punjab and Haryana High Court at Chandigarh in LPA No. 1902 of 2017 (O&M). The controversy in the instant Appeal concerns the entitlement of the respondent-employees of the appellant, the Punjab School Education Board[1], to have their pre-regularization service counted as qualifying service for pension, and to therefore be governed by the old pension scheme rather than the new Defined Contributory Pension Scheme, which was introduced on 01.01.2004.

Facts in Brief

2. The appellant-Board is an autonomous body established under the Punjab School Education Board Act, 1969[2]. The respondents and others similarly

[1] For short, "**PSEB**".
[2] For short, "**PSEB Act**".

situated were first engaged by the appellant-Board as Clerks and Peons (later promoted to Junior and Senior Assistants) between 1993 and 1996 on a contract/*ad-hoc*/daily wage/work-charge basis, initially for periods of 89 days.

3. The litigation history of the matter at hand is somewhat tortuous. In short, what transpired was that, initially, in CWP No. 1046 of 1994, the High Court by order dated 30.05.1994 directed that contractual appointments would not continue beyond six months or until regular appointments to the posts were made, whichever was earlier. It was further directed that *ad hoc* appointments against the advertised posts would not continue beyond six months.

4. Pursuant thereto, the services of 224 *ad hoc* Clerks were terminated on 31.01.1995. Where any such *ad hoc* Clerk had already been regularized before 31.01.1995, his services would be deemed to have been terminated from that date. It was also directed that persons at Serial Nos. 211 to 224 amongst the said 224 employees who had in fact been working as Class-IV employees and had been appointed as *ad hoc* Clerks would revert to their earlier posts.

5. However, on account of exigencies of work and the commencement of examinations, 184 employees were again engaged on contract for a period of six months on fixed salary, pursuant to orders dated 08.02.1995, 09.02.1995, and 13.02.1995. Their contractual engagement was thereafter continued from time to time on account of administrative and operational exigencies.

6. In 1996, the Board advertised 134 posts of Clerks. This recruitment process was subsequently cancelled. A fresh advertisement was issued on

11.05.1998; however, owing to a Government-imposed ban on recruitment, the process was kept in abeyance.

7. In the meantime, several of those who had continued in service on contractual basis approached the High Court by filing a batch of writ petitions, which were dismissed by the High Court on 12.07.2000 and directed that they be permitted to continue in service for four months or until regularly selected candidates became available, whichever was earlier. The High Court further directed the concerned respondent-authorities therein to complete the selection process pursuant to the advertisement dated 11.05.1998 and make appointments within four months. It was expressly observed that continuation pursuant to the said direction was "*purely fortuitous*" and would not confer upon them any right to claim other service benefits. A challenge to the aforesaid order in SLP (C) No. 12819 of 2000 also came to be dismissed by this Court on 28.08.2000.

8. However, in the meantime, the Government of Punjab issued Notification No.11/34/2000-4PPIII/1301 dated 23.01.2001 revising the extant policy pertaining to the regularization of work-charged, daily wage, and other similar categories of employees working in government departments, public sector undertakings, corporations, boards, local authorities, and autonomous bodies. Said policy directed regularization against existing sanctioned regular vacancies within the employee's own department only. Each department was required to prepare and also periodically update lists of workers who had completed three years of service, and workers were to be absorbed or regularized against available regular posts in order of seniority, with work-charged workers receiving priority; only after all eligible work-charged employees had been accommodated could daily wage and other categories be considered. Otherwise, the ban originally imposed on 04.05.1999 on fresh engagement of daily wage and work-charged workers was sustained. The entire exercise under this revised policy was to be completed within four months.

9. Based on this policy, four writ petitions, being CWP Nos. 7834, 11983, 12584, and 12585 of 2001, were filed before the High Court seeking regularization. However, on 14.12.2001, the Division Bench of the High Court once again dismissed the same, holding that the appellant-Board was an autonomous statutory body distinct from the State Government. Government instructions did not automatically bind it merely because they were addressed to public bodies, unless the appellant-Board chose to adopt them. In particular, there had been no reference by the Government under Section 21 of the PSEB Act, no report by the appellant-Board in response, and no binding direction subsequently issued under that provision. Moreover, in the Court's opinion, even the scope of Section 21 of the PSEB Act was broadly confined to matters of policy concerning the functions for which PSEB was established and ensuring compliance with the parent Act and Regulations and did not extend to administrative functioning or conditions of service. Hence, non-exercise of the appellant-Board's discretion to relax Punjab School Education Board (Employees Service) Regulations, 1988 by virtue of Regulation 32 thereunder meant it had impliedly been exercised against the employees therein.

10. The recruitment process for 134 Clerks was thereafter completed in December 2001 by way of direct recruitment. Their services, however, were subsequently dispensed with by order dated 02.08.2002. The termination was challenged in CWP No. 16002 of 2002. During the course of those proceedings, pursuant to a compromise, a High-Powered Committee headed by Shri Justice N.K. Aggarwal (Retd.) was constituted to enquire into the matter. The Committee affirmed that the selection process was not proper.

11. The dispute continued with the filing of CWP No. 20230 of 2003, seeking reconsideration of the claim for regularization. The said petition was disposed of on 20.12.2003 with a direction to the respondent-authorities to consider and decide the representations made by the Clerks within four months.

12. Pursuant to these directions of the High Court, the appellant-Board constituted a committee to examine the issue of regularization. This Committee met and considered the same on 09.07.2004. Its recommendation was to adopt the Government Policy dated 23.01.2001 as a one-time humanitarian measure on *mutatis mutandis* basis. In line with the policy, eligible employees had to be in service as of 23.01.2001 and have at least three years' service by that date; they would then receive appointments on probation, be governed by the appellant-Board's service regulations, and be placed at the bottom of the relevant cadre's seniority list. The recommendations of the Committee were accepted by the appellant-Board on 13.07.2004.

13. A public notice was issued in the newspaper Hindustan Times on 18.07.2004, which stated:

> *"Punjab School Education Board in its meeting held on 13.07.2004, has decided to appoint work charges/daily wages and other categories of*

> *workers/employees on Regular Basis against the permanent vacant posts."*

14. Appointment letters were accordingly issued to the respondent-employees starting in August 2004. This is particularly pertinent as the respondent-employees principally contend that the mere issuance of such letters did not alter the fact of their earlier service relationship with the appellant-Board, which had been subsisting since their initial engagement in the 1990s.

15. CWP No. 10047 of 2003 was withdrawn on 06.08.2004 following the issuance of these letters, and the respondent-employees were given regular pay scales w.e.f. August 2004.

16. Following their regularization, the respondent-employees raised a claim for pension under the old pension scheme. The matter was considered by the appellant-Board on several occasions and it was ultimately decided that it be referred to the Government of Punjab for its approval before any further action was taken. Accordingly, on 28.11.2011, the appellant-Board referred the matter to the State Government seeking approval for extending to the respondent-employees the benefit of pension under the old pension policy.

17. The State Government, however, declined the request by communication dated 09.12.2011. The Government took the view that the respondent-employees were not entitled to the benefit of the old pension scheme in view of the Defined Contributory Pension Scheme which had come into force with effect from 01.01.2004. The Finance Committee of the appellant-Board on 26.06.2013 recommended mandatory applicability of the new Scheme, which was accepted by the appellant-Board the next day.

18. It is in these circumstances that the writ petitions were preferred. The respondent-employees essentially raised two claims: *first*, that the service rendered by them prior to their regularization, while working on contract/*ad hoc*/daily-wage/work-charge basis, was liable to be counted as qualifying service for the purposes of retiral benefits; and *second*, since their services were regularized pursuant to the Government Policy dated 23.01.2001 and they were placed on regular service with effect from August 2004, they ought to be treated as falling within the old pension regime and not within the Defined Contributory Pension Scheme.

19. Both, the Single Judge and the Division Bench, *vide* their judgments and orders dated 13.02.2017 and 14.01.2020, respectively, agreed with these contentions and held against the appellant-Board; in particular, it was found that it was in substance a case of regularization and respondent-employees were entitled to the benefits flowing therefrom.

20. The appellant-Board also draws our attention to the fact that during the pendency of the intra-court appeals, several contempt petitions were filed against it by the respondent-employees. These were adjourned *sine die* on 25.05.2019 and revived after the impugned judgment came to be passed. On 12.03.2020, notice was issued and compliance report was directed to be filed by the appellant-Board on 05.05.2020.

Analysis

21. At the outset, we do not find much merit in the plea of *res judicata* taken by the appellant-Board *vis-à-vis* the previous four rounds of litigation as: ***(a)*** the same concerned the respondent-employees' claim for regularization, whereas present proceedings concerns the pensionary consequences of regularization subsequently effected and, as discussed in more detail below; and ***(b)*** the fifth round of litigation concluded because appellant-Board voluntarily regularized the employees. In our view, the cause of action and relief sought herein are totally distinct. Moreover, given the instant dispute arises in the context of the underlying and continuing service relationship between the parties, we are not inclined to take a hypertechnical view to foreclose consideration of an independent service benefit.

22. We concur with the Courts below that the substance of the respondent-employees' engagement must prevail over its form. Though the term "*appointment*" was used in the letters issued to them, the intent of the appellant-Board to regularize the respondent-employees was unmistakable from the language consistently used across the Government Policy dated 23.01.2001, the deliberations and recommendation of the Committee to adopt said policy dated 09.07.2004, the Board's decision of 13.07.2004 accepting this recommendation, and the consequent public notice issued on 18.07.2004, which referred to appointment "*on regular basis.*"

23. More importantly, the effect of the engagement also amounted to regularization. As both, the Single Judge and Division Bench of the High Court, have pointed out, the 'advertisement' or public notice dated 18.07.2004 was not open to the general public. It merely conveyed the decision of the appellant-Board dated 13.07.2004 to appoint those already working with the appellant-Board on regular basis against permanent vacant posts, and invited objections to the same, if any. Mere nomenclature at this belated stage cannot overcome such extensive evidence establishing that the appellant-Board indeed regularized the respondent-employees.

24. We also note that respondent-employees have placed particular emphasis on the letter of the appellant-Board to the State Government dated 20.10.2011, excerpted below:

> "As per the instruction issued by Punjab Government vide letter No. 3/72/2003-FPPC/7720 dated 2.12.2006, New Defined Contributory Pension scheme have been implemented on the employees recruited on or after 1.1.2004. As such, the pension case of employees regularized in the Board after rendering long service, on the basis of Notification No.11/34/2000-4PP111/1301 dated 23.01.2001 is under consideration of the Board as they have not been newly recruited after 01.01.2004. These employees were recruited in the Board much prior to the issue of notification and at that time old pension policy of the Government was in vogue and the demand of the employees seems to be genuine for implementing the same. The committee constituted for thorough perusal of this matter has recommended to obtain approval of Government to implement old pension policy of the Government.
>
> As such it is requested that the approval of grant of benefit of old pension policy to the employees, who have been regularised on the basis of Notification No.11/34/2000-4PP111/1301 dated 23.01.2001 w.e.f. August, 2004 after rendering long service by taking Notification No.11/34/2000-4PP111/1301 dated 23.01.2001 as the base, may kindly be conveyed."

25. Given the appellant-Board itself committed to this position in writing, there is absolutely no doubt in our mind that it did in fact regularize the employees.

26. Once it is established that the services were regularized, it remains to be seen whether the service rendered prior to August 2004 must be counted as qualifying service for the purpose of retiral benefits. In this regard, the relevant provisions of the applicable Punjab School Education Board (Employees' Pension, Provident Fund and Gratuity) Regulations, 1991 are reproduced below:

> "3. Only such Board employees shall qualify for pension who were holding substantively permanent posts on the date of their retirement.
>
> (...)
>
> 5. Unless there is anything repugnant in the subject or context the terms used in these regulations shall be used in the sense here-in-alter explained:-
>
> (...)
>
> (i). 'Qualifying Service' generally includes all periods spent on duty without interruption and all periods of leave in which leave salary is paid."

Moreover, Regulation 8(2) states that:

> "Pensionary benefits shall be determined with reference to the qualifying service rendered and the emoluments/average emoluments last drawn by him."

27. On the strength of these provisions, we may briefly re-examine the issue. To quote from the seminal decision in ***D.S. Nakara & Others v. Union of India***[3], pension is neither a bounty nor *ex-gratia* payment but a payment for the past service rendered. The Constitution Bench of this Court in ***D.S. Nakara*** *(supra)* had also rightly observed that payment of pension is a social welfare measure rendering socio-economic justice. As the abovementioned provisions, too, codify, pension is a deferred wage that must be assessed and paid on the

[3] 1982 INSC 103

basis of the service rendered by the employee. When an employee has rendered long and continuous service, and stands ultimately regularized, denial of pensionary benefits based on technicalities or artificialities is generally unjustified.

28. We note that the respondent-employees have contended that the question of whether pre-regularization service should be counted toward qualifying service for pensionary benefits has already been conclusively settled in a plethora of judgments and even in an analogous factual matrix by the same High Court in ***Harbans Lal v. The State of Punjab & Others***[4] *vide* its decision dated 31.08.2010. Said decision was ultimately affirmed by a Division Bench of this Court in SLP (C) No.23578 of 2012. Respondent-employees also draw our attention to the fact that ***Harbans Lal*** *(supra)* itself relies on a Full Bench judgment of the High Court pertaining to a similar controversy, namely ***Kesar Chand v. State of Punjab etc.***[5].

29. We find that the Division Bench had correctly placed reliance on ***Harbans Lal*** *(supra).* To recapitulate, in that case, the concerned employee was initially appointed as a Pump Operator on 01.08.1988 on a daily-wage basis. His services were regularized on 28.03.2005. Pursuant to the direction of the State Government dated 30.05.2008, the Chief Engineer had directed that GPF deductions be stopped for workers (including said employee) who had entered Government service before 01.01.2004 but were regularized afterwards. The

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[4] 2010 SCC OnLine P&H 8181
[5] AIR 1988 P&H 265

High Court in those facts had held that the daily-wage service from 1988 until regularization had to be counted as qualifying service for pension. Because that service began before 01.01.2004, he was deemed to have entered Government service before the cutoff date. Consequently, the new Defined Contribution Pension Scheme did not apply to him. The High Court further held that the 30.05.2008 clarification could not amend or override the statutory amendment to the Punjab Civil Services Rules, and the employee therefore remained governed by the GPF Scheme and was entitled to the pensionary benefits applicable to Punjab Government employees recruited before 01.01.2004.

30. Here, too, the Single Judge and Division Bench had rightly held that the services by respondent-employees rendered on contract/*ad hoc*/daily wage basis prior to regularization must be computed as qualifying service for the purpose of retiral and pension benefits. The breaks in service were either 'notional' or artificial/administrative breaks, or precipitated by Court orders. They must be ignored and the service should be treated as continuous.

31. The fact that the appellant-Board is an autonomous body cannot come to its rescue; in fact, the High Court on 14.12.2001 had upheld that it was free to adopt or reject the Government Policy dated 23.01.2001, despite it being made expressly applicable to public sector undertakings, corporations, boards, local authorities and other autonomous bodies in the State of Punjab. The appellant-Board had thereafter voluntarily adopted the policy *mutatis mutandis*. In fact, we also find that this dimension i.e., *mutatis mutandis* rather than wholesale adoption, also negatives the appellant-Board's various contentions such as that the respondent-employees had to qualify a typewriting test, complete one year probation period, produce medical certificate, etc. as this merely indicates suitable amendment of the regularization policy to meet the appellant-Board's needs and not fresh appointment *per se*.

32. We note that respondent-employees have also drawn our attention to the fact that employees similarly situated in other departments have been granted identical relief by the High Court itself and to hold the respondents ineligible now would be *prima facie* discriminatory.

33. On a cumulative assessment of the material on record, therefore, we are satisfied that the decisions of the Courts below are legally sound and based on correct application of law to facts, and there is no illegality or infirmity that would warrant our interference in appeal. The respondent-employees were indeed regularized and are entitled to be treated as having entered Government service prior to 01.01.2004 and therefore fall under Tier II of the Defined Contributory Pension Scheme. They have the discretion to choose either the old GPF pension scheme or the new scheme, if they opt for it.

34. The Appeal is accordingly dismissed. There shall be no order as to costs.

……………………………………….J.
(PRASHANT KUMAR MISHRA)

……………………………………….J.
(SHREE CHANDRASHEKHAR)

NEW DELHI:
SEPTEMBER 08, 2026.