

2025:PHHC:007401



2025:PHHC:007403



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Reserved on: January 17, 2025  
Pronounced on: January 20, 2025**

**(i) CWP No.1396 of 2014 (O&M)**

**Jagdish Lal . . . . Petitioner**

**Vs.**

**The State of Punjab and others . . . . Respondents**

**\* \* \* \***

**(ii) CWP No.5634 of 2014**

**Paramjit Singh and others . . . . Petitioners**

**Vs.**

**The State of Punjab and others . . . . Respondents**

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present:-** Mr. R.K. Arora, Advocate for the petitioner(s)  
in both cases.

Mr. Surya Kumar, AAG, Punjab for respondent N: 1 & 2.

Mr. Baljinder Singh, Advocate for respondent No.3  
in both the cases.

Mr. Vikas Chatrath, Advocate for  
Mr. Sachit Katoch and Ms. Preet Agroa, Advocates  
for respondent No.5.

**DEEPAK GUPTA, J.**

This order shall dispose of afore-mentioned two writ petitions,  
as issues involved in both these petitions are same. For the sake of  
convenience, the facts are being noticed from CWP NO.1396 of 2014.

2. By way of these writ petitions filed under Article 226/227 of the Constitution of India, petitioners pray for issuance of a writ in the nature of certiorari for quashing the impugned order dated 24.07.2012 (*Annexure P.14*) and order dated 27.05.2013 (*Annexure P.15*) passed by respondent No.4, to be patently illegal arbitrary and unconstitutional, whereby the petitioner has been treated as a new entrant in the service of Municipal Corporation, Patiala w.e.f. 17.03.2006 by ignoring his previous service rendered under respondent No.5 and by applying new Contributory Pension Scheme on the petitioner implemented w.e.f. 01.01.2004, thereby denying his entitlement for release of gratuity and other retiral benefits after his retirement by counting his previous service rendered under respondent No.5. Petitioner further prays to direct the respondents not to treat the petitioner as a new entrant in service; and to grant him benefit of old pension scheme by taking into consideration his previous service rendered under respondent No.5 for the purpose of pension and other retiral benefits.

3.1 Petitioner was initially appointed as Chowkidar on temporary basis under Work Charge Rules in 1975 in Punjab Small Industries and Export Corporation Limited (*herein after referred as 'PSIEC'*) – respondent N: 5. Services of the petitioner were regularised in February, 1997 and then vide an order dated 13.01.2006, his services were transferred to Municipal Corporation, Patiala – respondent N: 3 along with 21 other employees. Later on, consequent to the resolution dated 31.05.2006 (*Annexure P.7*) passed by Municipal Corporation, Patiala for absorption of the petitioner and other similar employees transferred from PSIEC, necessary approval was granted by respondent No.1 – State of Punjab vide letter dated 15.11.2006 (*Annexure P.9*). Respondent No.5 – PSIEC then transferred the gratuity amount of the petitioner and other similar employees to Municipal Corporation, Patiala for the services rendered in PSIEC. Respondent No.5 also sent its share of leave encashment of employees to the Municipal Corporation, Patiala.

3.2 Petitioner then made a representation for deduction of his pension contribution and for grant of benefit of pension under the old

Pension Scheme by counting his previous service rendered in PSIEC. However, the claim of the petitioner was declined vide impugned letter dated 24.07.2012 (*Annexure P.14*) on account of some alleged agreement between respondents No.3 and 5. Thereafter, claim of the petitioner was referred to respondent No.4 – Deputy Controller, Local Audit, MC, Patiala, who passed another order dated 27.05.2013 (*Annexure P.15*) declining the claim of the petitioner for payment of gratuity and counting of his previous service, by treating him as new entrant in service of municipal corporation w.e.f. 17.03.2006. Petitioner retired on 30.06.2016.

3.3 The grievance put forth by the petitioner is that after his initial appointment on work-charge basis followed by regularisation in February, 1997, he was transferred to Municipal Corporation, Patiala against a regular sanctioned post and on his transfer, he was absorbed in the services of the Municipal Corporation against regular sanctioned post and, therefore, he is entitled to counting of his previous service rendered in PSIEC before his transfer and absorption in Municipal Corporation, Patiala for the purpose of his pensionary benefits on deposit of employer's share of Provident Fund Contribution. Petitioner has alleged that action of the respondents to be in violation of Rule 2 (j) of the Punjab Municipal Employees Pension and General Provident Fund Rules, 1994.

4.1 In their reply, respondents No.1 and 2 submit that the post of Chowkidar is non-provincialised Cadre, of which Municipal Corporation, Patiala is the competent appointing/ punishing authority and that no action of respondents No.1 and 2 is under challenge.

4.2 As per the reply filed by respondent No.4, the claim of the petitioner is not tenable, as he was employee of PSIEC and he along with other employees joined the service of Municipal Corporation, Patiala on 17.03.2006. It is contended that as per the agreement signed between Commissioner, Municipal Corporation, Patiala and Chief Engineer PSIEC (*Annexure P.17*), date of appointment of the employee is to be considered from the date of joining the Municipal Corporation, Patiala i.e. 17.03.2006

and so, the benefit of previous service of PSIEC is not admissible to these employees. Respondent No.4 has thus defended the impugned orders dated 24.07.2012 (*Annexure P.14*) and dated 27.05.2013 (*Annexure P.15*).

4.3 Respondent No.5 – PSIEC concedes that services of the petitioner were regularised and then the same were transferred to the Municipal Corporation, Patiala.

4.4 In separate reply filed by respondent No.3 - Municipal Corporation, Patiala, it is submitted that after his transfer from PSIEC, the services of the petitioner were absorbed in Municipal Corporation, Patiala on 17.03.2006 vide an agreement Annexure R.3/1. It is submitted that during course of audit of another employee, respondent No.4 - the Deputy Controller (Local Audit) vide impugned letter dated 27.05.2013 (*Annexure P.15*) raised objection that since in the present case, the official (petitioner) was merged in the services of Municipal Corporation on 17.03.2006, therefore, his date of appointment was to be treated from the date of merger. It is also submitted that Punjab Government has implemented Contributory Pension Scheme from 01.01.2004, under which Punjab Civil Services Rules Volume II are not applicable to the employees appointed after 01.01.2004. It is also the contention of this respondent that no pension scheme was applicable to the petitioner in his parent department and that the petitioner cannot be granted any benefit of Punjab Municipal Corporation Employees' pension and General Provident Fund Rules, 1994, which are applicable to the employees, who are appointed on or after 1<sup>st</sup> day of April, 1990.

4.5 Thus, all the respondents have opposed the claim of the petitioner.

5. This Court has considered submissions of both the sides and have perused the paper book.

6. This is not in dispute that the petitioner was initially appointed to the post of Chowkidar in PSIEC on temporary basis under work-charge rules way back in August, 1975. Services of the petitioner along with others

were regularised by PSIEC vide an office order dated 19.02.1997 (Annexure P.3). The services of the petitioner along with 21 other employees were later on transferred from PSIEC, Chandigarh to Municipal Corporation, Patiala vide Office Order dated 13.01.2006 (Annexure P.6). Later on, resolution was passed by the Municipal Corporation, Patiala to absorb these employees of PSIEC and approval was granted by the government as per letter dated 15.11.2006 (Annexure P.9). It is further evident that amount of gratuity and leave encashment of the petitioner and other employees was transferred to Municipal Corporation, Patiala as per letters dated 15.03.1997 and 18.10.2007 (Annexure P.10 and P.11) respectively.

7. The question to be considered is whether the services rendered by the petitioner in PSIEC is liable to be counted for the pensionary benefits as is claimed by him; or whether he is to be treated as a new entrant w.e.f. 17.03.2006 as per the stand of respondent No.3.

8. The Punjab Municipal Employees Pension and General Provident Fund Rules, 1994 are applicable to the employees of the Committee, who were appointed on or after first day of April, 1990 on whole time regular basis; and who were working immediately before first day of April, 1990 on whole time regular basis. Rule 2(j) of the Rules 1994 (*ibid*) provides as under:-

“(j) ‘Qualifying service’ means the service rendered under a committee for which an employee is paid from the municipal fund and shall include any service rendered under the Government of Punjab, an Improvement Trust, a Corporation or any other Public Sector Undertaking immediately before joining the service.”

9. It is, thus, clear that qualifying service not only includes the service rendered by an employee under the Committee, but also includes any service rendered by such an employee either under the Government of Punjab, or an Improvement Trust, or a Corporation or any Public Sector undertaking immediately before joining the service.

10. Since in the present case, before joining at Municipal Corporation, Patiala – respondent No.3 in 2006 upon his transfer, the

petitioner was working with respondent No.5 - Corporation, therefore, the service rendered by him with respondent No.5-Corporation is to be included within the meaning of 'qualifying service' for the purpose of pensionary benefits.

11.1 Similar issue was also considered by this Court in CWP No.27403 of 2013 titled as "***Om Parkash v. State of Punjab and others***", decided on 07.12.2023. In that case, petitioner had sought the relief of counting his qualifying service rendered with Punjab State Civil Supplies Corporation (PUNSUP) from 12.10.1978 for the purpose of pension. This Court referred to "***Mohan Lal v. State of Punjab and others***", 2015(3) SCT 683, wherein it was held as under:-

"6. Thus, the order dated 03.08.2010, fixing the pension of the petitioner without counting his earlier service with PUNSUP is illegal. The resignation submitted to the PUNSUP will not wash away the earlier service of the petitioner for the purpose of counting service in the latter department towards pension etc. It is held that the earlier service from 11.04.1975 to 19.07.1993 of the petitioner be counted towards pension etc.

7. In the circumstances, the impugned order dated 03.08.2010, is quashed and the respondents are directed to re-consider and decide the case of the petitioner in the light of the judgments in Smt. Krishna Khullar's and Ram Singh's case (supra), within a period of four months from the date of receipt of a certified copy of this judgment. In case, the petitioner is found entitled to any consequential monetary benefit, the same shall be released to him forthwith."

11.2 This Court in ***Om Parkash's case (supra)*** also referred to "***State of Haryana and another v. Shadi Lal Malik (deceased through his LRs) and others***", 2014(4) SCT 713 and then held as under:-

"9. Taking note of the aforesaid aspects, this Court in ***Mohan Lal's case (supra)*** by relying upon the judgment of the Apex Court in ***Gurmail Singh and others vs. State of Punjab and others, 1992 (7) SLR 744***, allowed the writ petition of the petitioners therein by holding that the services rendered by the employees in a corporation fully funded and administered by the

State of Haryana are to be counted with the number of years of service rendered by them in a department of the government to consider their eligibility for grant of pension.

10. In view of the above, even an employee who worked with the State Autonomous Body and controlled by the State Government, would have to be given the benefit of his service rendered by him there for the purpose of counting the qualifying service.

11. The petitioner was appointed on regular basis and, therefore, the said period of service is liable to be counted. The similar issue has already been decided in ***Mohan Lal's case (supra)***.

12. In view thereto, the writ petition deserves to be allowed and is accordingly allowed. The respondents are directed to count the said period of service for the purpose of qualifying service for pension and accordingly the pension of the petitioner shall be revised and the payment shall be released. It is made clear that the gratuity which the petitioner received for the period of service rendered with the PUNSUP, has to be deposited back/adjusted while calculating the arrears of revised pensionary benefits. Exercise shall be done within three months henceforth.”

11.3 The aforesaid decision of learned Single Judge has been upheld by the Hon'ble Division Bench in LPA No.2445 of 2024 titled '***State of Punjab & Others vs. Om Prakash & Others'*** decided on 04.10.2024.

12. Respondent No.3 has opposed the claim of the petitioner on account of an agreement between the Chief Engineer, PSIEC (respondent No.5) and the Commissioner, Municipal Corporation, Patiala, the copy of which is Annexure P-17, perusal of which would reveal that the said letter dated 29.06.2006 was sent by the Chief Engineer, PSIEC to the Commissioner, Municipal Corporation, Patiala, regarding the signing of the agreement in respect of transfer of 22 employees from PSIEC to Municipal Corporation, Patiala. Clauses Nos.3 and 4 of the same read as under:-

“3. The date of appointment of the officials shall be considered from the date of absorption with the M.C. There, officials shall work on the terms and conditions with the Municipal Corporation as on they were with the parent department.

4. No benefit of the pension service shall be at the tail end of the employees of the Municipal Corporation.”

13. On the basis of above-said conditions in the agreement, it is contended that as the petitioner was absorbed with the Municipal Corporation, Patiala in March, 2006, therefore, he is a new entrant and that previous service rendered by him in respondent No.5-Corporation is not to be counted and so, the benefit of pension is not admissible to him.

14. There is no merit in the above-said contention of respondent No.3. Firstly, the said agreement (Annexure P-17) has been executed after the transfer of the petitioner and similarly situated employees from respondent No.5 to respondent No.3, inasmuch as they were transferred as per order dated 13.01.2006 (Annexure P-6). Secondly, the petitioners are not signatory to the agreement (Annexure P-17). The said agreement was not intimated/conveyed to the petitioners nor their consent was taken, before transferring them to Municipal Corporation, Patiala from PSIEC. The said agreement (Annexure P-17) executed *inter se* respondent Nos.3 and 5 does not tantamount to any rule or bye-law to be binding upon the petitioners.

15. As such, it is held that on the basis of the agreement (Annexure P-17), the petitioners cannot be treated to be new entrants in the Municipal Corporation, Patiala, nor the benefit of previous service rendered by them with respondent No.5 can be denied to them.

16. It was also contended during the course of arguments that being the new entrants in 2006 in Municipal Corporation, Patiala, the petitioners will be governed by the New Defined Contributory Pension Scheme issued by the Punjab Government, Department of Finance vide letter No.3/72/2003-3FPPC/7280 dated 12.12.2006 (Annexure P-22).

17. There is no merit in the contention, as bare perusal of Annexure P-22 would reveal that it is applicable only to those employees, who are appointed on or after 01.01.2004. As it has been found that prior to their transfer to Municipal Corporation, Patiala in 2006, petitioners had rendered service with respondent No.5-Corporation, which is to be counted towards

their qualifying service, therefore, petitioners are not to be governed under the New Defined Contributory Pension Scheme.

18. It is further the contention of learned counsel of respondent No.3 that there was no pension scheme applicable to the petitioners in their parent department, i.e. respondent No.5 and as such, they are not entitled for any pensionary benefits after their transfer to respondent No.3-Municipal Corporation, Patiala.

19. There is no merit in the contention, as the Provident Fund amount of the petitioners deposited by the previous employer, i.e. respondent No.5 of the petitioners with Regional Provident Fund Commissioner can be transferred to the Municipal Corporation, Patiala and then, petitioners will be entitled all retiral benefits including pension. Similar direction was given by this Court in CWP No.16644 of 2008, titled as ***“Darshan Singh and others v. The State of Punjab and others”***, decided on 21.02.2011, copy of which has been annexed by the petitioners as Annexure P-20.

20. On account of entire discussion as above, the present writ petitions are hereby accepted. It is directed that respondent No.5 shall transfer the provident fund amount of the petitioners for the service as rendered by them in respondent N:5/corporation with the Regional Provident Fund Commissioner, Chandigarh, to the Municipal Corporation, Patiala – respondent N: 3. The petitioners will facilitate in the said transfer. The petitioners will be also at liberty to approach the Regional Provident Fund Commissioner, Chandigarh for transferring of the contributory amount deposited by respondent No.5 – Corporation in the respective provident fund accounts of the petitioners to the Municipal Corporation, Patiala. In case, the petitioners have already withdrawn the said amount, they shall deposit the same alongwith interest at the permissible rate with the Municipal Corporation, Patiala. On deposit/transfer of the said amount, respondent No.3 – Municipal Corporation, Patiala is directed to count the service rendered by the petitioners in respondent No.5-Corporation for the purpose

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of retiral benefits. The needful shall be done within a period of 02 months from the date of transfer of the such amount by the petitioners, in accordance with law.

21. Both the petitions are allowed accordingly.

Photocopy of this order be placed on the connected case file.

**January 20, 2025**  
*Renu/Sarita*

**(DEEPAK GUPTA)**  
**JUDGE**

Whether speaking/reasoned?	Yes
Whether reportable?	Yes