IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11328 of 1993
Date of decision: 13.05.2015.

Dr. Beni Parshad Singh ..Petitioner

Versus

Punjab Agricultural University, Ludhiana
and another ..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No
2. To be referred to reporters or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

Present: Mr. J.P.S. Sandhu, Advocate
for the petitioner.

Mr. Deepak Agnihotri, Advocate
for the respondents.

Daya Chaudhary, J.

The prayer in the present writ petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated 06.08.1993 (Annexure P-9) , whereby, the claim of the petitioner has been rejected without assigning any reason. A further prayer has also been made for issuance of direction to respondents to consider his two years' extraordinary leave with effect from 18.02.1981 to 17.02.1983 as qualifying period towards pension and other benefits such as annual increment, gratuity etc.

The petitioner joined respondent-University on 16.04.1966.

During his service, he was granted two years' extraordinary leave with effect from 18.02.1981 to 17.02.1983 to enable him to join foreign assignment by the University. A letter was issued by respondent No.2 i.e., Comptroller, Punjab Agricultural University that during extraordinary leave, contribution to CPF account was admissible in view of Punjab Government letter dated 18.12.1970. In response thereto, the petitioner deposited the amount of CPF in the account. The respondent-University adopted the Pension Scheme for the employees of the University vide notification dated 20.11.1991, whereby, options were called within a period of four months from the employees of the University, who were in the service of the University since 01.01.1986 and onwards. On retirement, the petitioner submitted all requisite pension documents to the respondent-University within the prescribed period for grant of pension but the pension was sanctioned by excluding two years' extraordinary leave of foreign assignment towards qualifying service for the purpose of grant of pension and other benefits. The petitioner submitted a detailed representation to the respondent-University for counting his two years' extraordinary leave period as qualifying service as he had already deposited the requisite amount of his share as well as the employer's contribution for the extraordinary leave period. Without considering the relevant rule i.e., Rule 3.6 of the Pension Rules of the University, the impugned order was passed and the claim of the petitioner was rejected, which is subject matter of challenge in the present writ petition.

Learned counsel for the petitioner submits that the extraordinary leave period is to be counted as per Rule 3.6 of the Pension Rules and the period spent on foreign assignment is to be counted towards pension. Learned counsel further submits that the extraordinary leave period was sanctioned by the respondent-University. Similarly situated employee, namely, Dr. A.C. Sharma, who was working in the Department of Economics and Sociology, Punjab Agricultural University, Ludhiana also got benefits of extraordinary leave for the period when he was on foreign assignment.

Learned counsel for the respondents opposes the submissions made by learned counsel for the petitioner. Mr. Agnihotri, learned counsel appearing for University submits that no such request was ever made by the petitioner to treat the period of extraordinary leave as qualifying service and only the extraordinary leave was sanctioned but considering that period as qualifying service period for grant of pensionary benefits, no formal order was passed. Learned counsel also submits that at the time of seeking option, even no option was given by the petitioner.

Heard arguments of learned counsel for the petitioner as well as learned counsel for the respondents.

Admittedly, the petitioner joined the University on 16.04.1966 and retired on 04.12.1987 as Extension Specialist. It is also not disputed that the petitioner was granted extraordinary leave from 18.02.1981 to 17.02.1983 to join foreign assignment. On retirement, two years' extraordinary leave was not considered as qualifying service while calculating pensionary benefits. Undisputedly, options were called within a period of four months from the employees of the University, who were in service of the University since 01.01.1986 and onwards.

As per Section 32(2) of the Haryana and Punjab Agricultural University Act, 1970, no such option was given by the petitioner as he was not in service at that time. The claim of the petitioner has been rejected only on the ground that no option was given and no formal order was passed while granting extraordinary leave of two years.

For the controversy in hand, Rule 3.6 of the Pension Rules of the University is relevant, which is reproduced as under: -

> *"3.6 **__Following periods qualify for pension__**: -*
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> *i)All duties whether interrupted or continuous*
> *ii)All periods of leave when leave salary is paid*
> *iii)All periods of Extraordinary leave which counts for increments under the service rules. However, if the period of extraordinary leave is availed of for higher studies with permission of competent authority, such period will qualify for pensionary benefits.*
> *iv)Joining time during which pay and allowances are paid.*
> *v)Periods of training, if so ordered by the competent authority.*

> *vi)Service as a probationer, if followed by confirmation on the same or another post.*
>
> *vii)An employee who is dismissed or removed from service or compulsorily retired, but reinstated on appeal or revision is entitled to count his past service for pension. The period of break in service between the date of dismissal or removal and date of reinstatement shall not count unless regularised as duty or leave by a specific order of the authority which passed the order of reinstatement.*
>
> *viii)Period of suspension of the employee who is fully exonerated of the charges. In other cases where the employee is not fully exonerated and is reinstated for other reasons, the period of suspension will count only if so decided by the authority which ordered his reinstatement.*
>
> *ix) Period spent on foreign service/assignment in or outside India if contributions towards Pension are paid to the University by the foreign employer or the employee himself."*

From perusal of sub clause (ix) of Rule 3.6 as reproduced herein above, the period spent on foreign service/assignment in or outside India if contribution towards pension is paid to the University by the employee, is to be counted towards qualifying service for the purpose of pension.

In the present case, the petitioner has deposited the pension contribution for the extraordinary leave period with the

University in the year 1982-1983, which was duly accepted by the University. It has not been disputed by learned counsel appearing for the University that similarly situated employee, namely, Dr. A.C. Sharma, was also granted benefit of extraordinary leave without pay of foreign assignment for the purpose of qualifying period of pension. The question of giving option does not arise when the petitioner was not in service.

Accordingly, in view of the facts as mentioned above, the present writ petition deserves to be allowed and impugned order dated 06.08.1993 (Annexure P-9) is set-aside. The respondent-University is directed to count the period of two years of extraordinary leave without salary for the purpose of pension and other benefits. The necessary exercise be done within a period of two months from the date of receipt of certified copy of this order.

13.05.2015 **(DAYA CHAUDHARY)**
neetu **JUDGE**