IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.4378 of 2006
Date of Decision: 13.08.2015

Sita Devi w/o Manohar Lal ....Petitioner

Versus

State of Punjab and others ....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. Whether reporters of local newspapers may be allowed to see the 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:- Ms. Anju Arora, Advocate
for the petitioner.

Mr. Anil Sharma, Addl. A.G., Punjab
for the respondent-State.

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DAYA CHAUDHARY, J.

Petitioner Sita Devi was appointed as a Craft Teacher on *ad hoc* basis in the year, 1962 in Panchayat Samiti, Zira. Her services were regularized on 23.12.1978. She was allowed to cross the efficiency bar and her basic pay was increased from ₹ 525/- to ₹ 548/-. Ultimately, she got retired from service on 31.10.2000 on attaining the age of superannuation. The pension of the petitioner was fixed on the basis of qualifying service of 11 years and 5 months but her *ad hoc* service of 16 years was not considered at the time of fixing of her pension.

The petitioner got served a legal notice upon the respondent on 20.10.2004 but no action was taken thereupon. Thereafter, a reminder was also sent on 07.01.2005 but to no avail. The petitioner was compelled to file ***CWP No.12585 of 2005*** before this Court, which was disposed of with a direction to the respondents to take the conscious decision on the demand notice served by the petitioner within a period of two months by passing a speaking order. Opportunity of hearing was given to the petitioner but the earlier service rendered by her was not counted.

Learned counsel for the petitioner submits that *ad hoc* service rendered by the petitioner prior to the appointment on regular basis is to be counted as qualifying service for pensionary benefits.

Learned counsel for the petitioner has relied upon the judgment of this Court in case ***Harbhajan Kaur vs State of Punjab and another 2004(2) S.C.T. 517*** as well as ***Rule 3.17(A)*** and ***Rule 4.23 of the Punjab Civil Services Rules, Volume-II***. He has also relied upon the judgment in case ***Smt. Om Pati vs State of Haryana and others 2007(1) S.C.T. 294***, wherein, the judgment of Hon'ble the Apex Court in case ***Mathuradas Mohan Lal Kadia and others vs S.D. Munshaw and others AIR 1981 SC 53*** as well as judgment in case ***State of Gujarat and another vs Raman Lal Keshav Lal Soni and others AIR 1984 SC 161***, have been relied upon.

Learned counsel for the respondent-State submits that for the Punjab Panchayat Samitis and Zila Parishads employees pension and Provident Fund Rules 2000 have been framed which are applicable to the employees, who retired on 01.07.1999 or thereafter. The `qualifying service' for the purpose of pension under the said rules has been defined under sub clause `K' of Rule 2. The service is to be counted as qualifying service from the date the employee has made contribution towards the Contributory Provident Fund, before and after the commencement of these rules. The petitioner has started contributing to CPF w.e.f. June, 1989 and the qualifying service will start for all intents and purpose w.e.f. June, 1989. The total qualifying service of the petitioner has been calculated w.e.f June, 1989. Learned counsel for the respondent-State also submits that before the commencement of these rules, the employees were entitled to receive employee share and Samiti share of Contributory Provident Fund.

Learned counsel for the respondent-State has relied upon the judgment of Division Bench of this Court in case ***Hari Parkash and others vs State of Punjab and others 2010(1) RCR (Civil) 114***. In that case also, the petitioners, who have filed the petition, were working in *Punjab Panchayat Samitis and Zila Parishads* and their claim was rejected and the writ petition filed by them was dismissed.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

The grievance of the petitioner is that her *ad hoc* service rendered in Panchayat Samiti has not been considered for the purpose of pensionary benefits and her pension was fixed on the basis of total length of qualifying service i.e 11 years and 05 months, whereas, she has served the respondent for more than 11 years as a regular employee and about 16 years on *ad hoc* service.

As per Section 4 of the Punjab Panchayat Samitis and Zila Parishads Provident Fund Rules, 1965 (here-in-after referred to as the "Rules, 1965), the petitioner is entitled for calculating the entire service towards pensionary benefits. Section 4 of the said Rules,1965 is reproduced as under :-

> "4. ***Servants to whom these rules shall apply :***
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> (1) The rules shall apply to servants, who -
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> (a) were absorbed by the Panchayat Samiti or Zila Parishad on the abolition of district Board under Section 118 of the Act and were entitled to the benefit

of Provident Fund under Section 118 of the Act and were entitled to the benefit of Provident Fund under the Provident Fund Rules of district board concerned, on the date of their absorption by the Panchayat Samiti or Zila Parishads, as they may be :

Provided that the Provident Fund of such servants for the period commencing from the date of their absorption by the Panchayat Samiti or the Zila Parishad and ending on the date of commencement of these rules shall be regulated by the Provident Fund Rules applicable to such servants immediately before the commencement of these rules :

Provided further that the rate of contribution of the Panchayat Samiti or Zila Parishad, as the case may be, shall not exceed (eight per cent of the salary of the subscriber;)

(b) were absorbed by the Panchayat Samiti or Zila Parishad on the abolition of a district board under Section 118 of the Act, they were not entitled to the benefit of Provident Fund under, but Provident Fund rules of the district board concerned :

(c) were appointed by the Panchayat Samitis or Zila Parishad, a the case may be, before the commencement of these rules.

(d) may be appointed by the Panchayat Samiti or Zila Parishad, as the case may be, after the commencement of these rules ;

Provided that the servants referred to in clause (b), (c), (d) shall be entitled to subscribe to the Fund after the completion of two years continuous service or from the date of commencement of these rules whichever is later.

(2) Every servant to whom these rules apply shall be a subscriber to the Provident Fund.

(3) A servant admitted to the benefit of the Fund, who was previously a subscriber to any other contributory or non-contributory Provident Fund of any

local body, the amount of his subscription and contributions of the local body, in the other Contributory Provident Fund, as the case may be, together with interest thereon shall be transferred to his credit in the Fund."

Section 18 of the Rules (*ibid)* deals with the payment of subscriptions and contributions to be made monthly to Savings Bank, which is reproduced as under :-

> "18. ***Payment of subscriptions and contributions to be made monthly to the Saving Bank*** : (1) The Panchayat Samiti or Zila Parishad, as the case may be, shall open an account in its name to be called the Panchayat Samiti or Zila Parishad Provident Fund Account, with the Saving Bank and as soon as may be at the beginning of each month and if possible, before the fourth day of each month, shall pay into such account the amount of all subscriptions recovered under the provisions of rule 6 and of the contribution payable under the provision of rule 8.
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> (2) Before a cheque is drawn for payment of subscription and contributions as required by sub-rule (1), a bill shall be prepared in form P.F. 6 and submitted with the relevant salary and establishment bills for signature to the authorized officer.
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> (3) All cheques drawn under the provisions of sub-rule (2) shall be drawn in favour of the Post Master or the Agent, State Bank of India accordingly as the Provident Fund is opened with the Post Office Saving Bank of the Saving Bank of the State Bank of India."

In ***Harbhajan Kaur's*** case (supra), the *ad hoc* service of the petitioner was not counted for pensionary benefits. It was held therein by relying upon the judgment of Division Bench of this Court in case titled as ***Hazura Singh vs State of Punjab and others (Civil Writ Petition***

No.19732 of 2001), decided on ***14.01.2003*** that *ad hoc* service rendered by an employee prior to her appointment on regular basis is to be counted as qualifying service for pensionary benefits.

Similarly, in ***Om Pati's*** case (supra), the benefit of previous service rendered in *Zila Parishad/Panchayat Samities* was considered by holding that the service rendered by the employees of *Zila Parishad/Panchayat Samities* is deemed to be government service and the State authorities are bound to comply with the orders and directions of the High Court and Supreme Court issued in various cases.

In ***Om Pati's*** case (supra), the husband of the petitioner was working as a Panchayat Secretary in Panchayat Samiti's Office and thereafter, after the amendment of Panchayat Act in the year 1971, he was treated as an employee of the Panchayat Samiti and was placed under its control. The Government granted benefit of subsequent service but his past service was not counted. The claim of the petitioner was rejected in that case as the service rendered in that case by husband of the petitioner under the Government was only for three months and that too was on *ad hoc* basis. In ***Om Pati's*** case (supra), the judgments of Hon'ble the Apex Court in ***Mathuradas Mohan Lal Kadia's*** case (supra) and ***Raman Lal Keshav Lal Soni'*** case (supra) as well as judgment of this Court in case ***Rati Ram vs State of Haryana 1995(4) SCT 491*** were relied upon.

After relying upon these judgments, the Division Bench issued directions to the respondents to calculate the family pension of the petitioner by taking into account the whole service of husband of the petitioner rendered from 01.10.1964 to 01.04.1972.

Similarly, in another judgment of Division Bench of this Court in ***Mrs. Shakuntala Puri vs State of Punjab and others 2007(3) SCT 808***, the service rendered in Privately Managed Recognized School was also counted for grant of pension. In the said judgment, the judgment of Hon'ble the Apex Court in case ***Vasant Gangaramsa Chandan vs State of Maharashtra 1996(4) SCT 403*** as well as judgment of Rajasthan High Court in case ***Rajendra Nath Sharma vs State of Rajasthan 2005(2) SCT 727*** were relied upon.

It was held in the said judgment that the petitioner was entitled for counting entire service as qualifying service for the purposes of pension and contribution towards Contributory Provident Fund is to be adjusted and deducted from the arrears of her pension. The respondents were directed to calculate the pension accordingly.

In view of the facts as well as law position as discussed above, the present petition is allowed and the petitioner is held entitled for counting of her entire service as qualifying service for the purpose of pension. However, the Contributory Provident Fund of that period will be adjusted and deducted from the arrears of her pension.

Accordingly, the respondents are directed to re-calculate the pension of the petitioner and to re-fix the same within a period of two months from the date of receipt of certified copy of this order. However, the arrears, after calculation, be paid along with retiral benefits.

The writ petition is allowed accordingly.

(DAYA CHAUDHARY)
JUDGE

13.08.2015
gurpreet