IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-114-2013 (O&M)
Date of decision : 23.03.2015

Radhe Shyam Garg

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vikas Chatrath, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Vinod Bhardwaj, Advocate for respondent No.4.

Respondent No.5 ex parte.

JITENDRA CHAUHAN, J. (Oral)

The petitioner seeks counting of service rendered by him in Shri Harinam Gaurawati High School, Yamuna Nagar, respondent No.5, w.e.f. 01.08.1977 to 04.09.1979, for the purposes of pensionary benefits.

The petitioner joined as Math Master, in Shri Harinam Gaurawati High School, respondent No.5, Yamuna Nagar, on 01.08.1977 and worked as such till 04.09.1979. While serving with respondent No.5, the petitioner applied for the Post of Math Master in Mukand Lal National Higher Secondary School, after obtaining prior permission from the Management of respondent No.5. On the

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recommendations of the selection committee, the petitioner was given appointment against the sanctioned aided vacant post in the pay scale of Rs.220-400. It is worthwhile to mention here that both the schools in question are government aided privately managed and the petitioner was selected against sanctioned post in both the schools. Consequent upon his appointment with respondent No.4, the petitioner requested for protecting his pay as he had served in the same pay scale with respondent No.5. After protracted correspondence, vide order dated 18.09.1997, the Director of Secondary Education, Haryana, i.e. respondent No.2, ordered for protection of pay of the petitioner. Consequently, the pay of the petitioner was re-fixed. The petitioner continued to work with respondent No.4, till he attained the age of superannuation on 31.12.2003. However, the pension and pensionary benefits were released to the petitioner without taking into consideration the service rendered by the petitioner prior to 01.09.1981. The service rendered by the petitioner w.e.f. 01.08.1977 till 04.09.1979, was not counted on the ground that the two schools in question were managed by two different managements. Further, the service w.e.f. 05.09.1979 to 31.08.1981 was not counted on the ground that contribution towards provident fund had been deposited by the management w.e.f. 01.09.1981 only.

Feeling aggrieved, the petitioner approached this Court by filing CWP No.11890 of 2010, the operative part whereof, reads as

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under:-

> “Let the respondents count the service of the petitioner for the purpose of pension w.e.f. 5-9-1979 to 31-12-2003. The prayer of the petitioner for counting the service from 1-8-77 to 4-9-79 be considered in terms of definition of qualifying service as given in Rule 5 of Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001. The petitioner may make a representation in this regard to the respondents to show that he is fully eligible to count this service for the purpose of counting this service for pension as well.
>
> As per the case set up by the petitioner, he has already deposited share of Contributory Provident Fund for the period as well. The respondent-Government would pass an appropriate order taking into account the rule position and if this service is required to be counted, the same will be done accordingly. In case, the same is declined in any manner, the petitioner may have his remedy in accordance with law.”

In pursuance of the above order, the petitioner made a representation on 26.07.2011, whereupon, the respondents, vide order dated 14.12.2011, allowed counting of service w.e.f. 05.09.1979 rendered by the petitioner with respondent No.5, for the purposes of pensionary benefits, whereas, the request for counting the services rendered by him with respondent No.5, w.e.f. 01.08.1977 to

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04.09.1979, was declined, by placing reliance on Rule 5 of Chapter-III of Haryana Aided Schools (Special Pension & Contributory Provident Fund) Rules, 2001.

Aggrieved against the same, the petitioner has preferred the present writ petition, wherein, the only question for determination before this Court is whether the services rendered by the petitioner with respondent No.5, w.e.f. 01.08.1977 to 04.09.1979, are to be counted towards calculation of his pensionary benefits.

It is an admitted case of the parties that services rendered by the petitioner with respondent No.5, a government aided privately managed school, were against a sanctioned post and even if he had continued with respondent No.4, he would have been entitled to pension. It is also not in dispute that the petitioner joined respondent No.4 after obtaining prior approval of the authorities concerned. It is also a fact that after joining respondent No.4, the petitioner's pay was also protected vide order dated 27.01.1998 (Annexure P-3). The only ground taken by the respondents in denying the benefit sought by the petitioner is that the petitioner worked in two different schools being run by two different managements and no approval of continuity of service has been obtained from the Director, School Education, Haryana, i.e., respondent No.2. Reliance is placed on Rule 5 of Chapter III of the Haryana Aided Schools (Special Pension & Contributory Provident Fund) Rules, 2001.

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As far as the question of not taking any prior approval with regard to continuity of service by the petitioner is concerned, it is to be seen that the petitioner had applied for the post of Math Master with respondent No.4, after taking due permission from his the then employer, respondent No.5. Moreover, after joining the services of respondent No.4, the pay of the petitioner was also protected. In ***Vijay Laxmi and others Vs. State of Punjab and others,*** CWP No.17073 of 1991, decided on 16.11.1993, it has been held as under:-

> "The protection of pay etc. is indicative of the fact that the petitioners were not to be denied the benefit of their service on their becoming the employees of the Government. The benefit of their past service towards pay was duly protected. Once the past service has been recognised for the purpose of pay, there appears to be no justiication for denying them the same benefit towards pension etc. The admitted position is that the petitioners had served the Board which is virtually an instrumentality of the State for long period from 10 to 16 years before their absorption in Govt. service. The denial of the benefit claimed by the petitioners would cause them a heavy recurring loss. It would be unfair. It would be arbitrary."

In ***Mani Ram Vs. State of Haryana, 1995(3) SCT 49,*** it has been held thus:-

> "... Once the petitioner had been granted the benefit of earlier service rendered by him in the

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Animal Husbandry Department, towards his pay, he cannot be denied the benefit of the same towards pension and retiral benefits especially when the petitioner was an employee of the State of Haryana as both the departments were of the same Government. No rule or precedent has been produced before the petitioner was not entitled to the benefit of the service rendered by him in the earlier department. Under the circumstances, the period of service rendered by the petitioner in the Animal Husbandry Department has to be counted towards his pensionary benefits especially when the continuity of service was given to the petitioner towards pay and increments."

Rule 5 of Chapter-III of Haryana Aided Schools (Special Pension & Contributory Provident Fund) Rules, 2001, which read as under:-

"**Qualifying service:**

(1) The service of an employee shall qualify for retirement benefits under these rules, as under:-

(i) The service rendered on attaining the age of 18 years on aided sanctioned post;

(ii) The service rendered till the attainment of the age of sixty years in the case of Group-D employee, and in case of others, service rendered till the attainment of the age of fifty-eight years. However, the qualifying service will be taken into account with effect from the date an employee subscribes contribution

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towards contributory provident fund;

(2) The leave admissible under the rules to be framed under the Act and under the instructions issued by the Government from time to time, excluding leave without pay and period of suspension over stay of leave not subsequently regularized under the Act and period of break in service.

(3) Service rendered in one or more aided schools under the same Management provided the transfer is made in terms of the Act.

(4) The service rendered on aided sanctioned post in another aided school in the state of Haryana;

Provided that the official has been appointed through proper channel on aided sanctioned post and the approval of continuity of service has been obtained from the Director.

Provided further that the contributory provident fund account of the employee in the previous school continued as such in the subsequent school to which he is transferred or appointed and there is no break in service."

Now, the provision which is being relied upon against the petitioner in the present case is Rule 5(3), wherein, it is provided that service rendered in one or more aided schools under the same Management, is to be counted. Admittedly, the Management of both the schools is different. But the posts against which the petitioner worked in two different schools were aided posts, for which the grants were sanctioned by the Government. Both the posts are pensionable

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posts. Mere change of Management cannot lead to changing the nature of service or Government aided posts, if it was otherwise countable towards pension and retiral benefits. The petitioner cannot be put to loss or in a disadvantageous position in such a situation. The equity and fairness demand that the services rendered by the petitioner in earlier school against aided post be counted towards the pension and all consequential retiral benefits. Ordered accordingly.

In view of the above, the present writ petition is allowed and the respondents are directed to count the service rendered by the petitioner with respondent No.5, w.e.f. 01.08.1977 to 04.09.1979, while calculating/determining the pension/pensionary benefits of the petitioner. After doing the entire exercise, the arrears, if any, accrued to the petitioner shall be payable to him within a period of four months from the date of receipt of a certified copy of this judgment.

Allowed.

23.03.2015 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Note : Whether to be referred to Reporter : Yes / No

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