

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

CWP No.19259 of 2010

Date of decision: 05.08.2015.

Satpal Sharma and another

..Petitioners

Versus

State of Punjab and others

..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. N.P. Mittal, Advocate
for the petitioners.

Mr. P.P.S. Thethi, Addl. A.G., Punjab
for the respondents- State.

Daya Chaudhary, J.

The present writ petition has been filed for issuance of a writ in the nature of mandamus directing respondents to count the whole service rendered by the petitioners in the Department of Punjab Panchayati Raj Sports Parishad, Chandigarh as Volley Ball Coach for the purpose of pension and other pensionary benefits from 20.05.1970 to 31.03.1981 as that period has not been counted while granting pensionary benefits.

Both the petitioners were initially appointed as Volley Ball

Coach in Punjab Panchayati Raj Sports Parishad, Chandigarh on 16.05.1970/20.05.1970. Thereafter, it was taken over by the Government of Punjab and was placed under Director Sports, Punjab w.e.f. 31.03.1993. The petitioners became employees of State of Punjab. Both the petitioners retired from service on attaining the age of superannuation but they were not granted pensionary benefits by considering their earlier service inspite of the fact that they made representation to the concerned authorities. They filed CWP Nos.5333 and 5335 of 1996, which were disposed of with a direction to respondents to release pension and other retiral benefits without any further delay.

Learned counsel for the petitioners submits that although the pensionary benefits were released but their earlier service has not been considered while calculating the pensionary benefits. Learned counsel for the petitioner further submits that the judgment passed by the Division Bench of this Court in CWP No.5661 of 1999 was challenged by the State of Punjab by way of filing SLP before Hon'ble the Apex Court but the same was dismissed on 06.03.2002 and as such, the judgment passed by the Division Bench of this Court was affirmed. Learned counsel also submits that the case of the petitioners is squarely covered by the judgment passed by Division Bench of this Court in **Ram Lubhaya Khanna and others vs. State of Punjab and another, 2007 (3) SCT 780** as well as judgment passed by Single Bench of this Court in **Charanjit Singh and others vs. Pepsu Road**

Transport Corporation and another, CWP No.16690 of 2011
decided on 12.03.2012 and judgment passed by Hon'ble the
Supreme Court in **Punjab State Electricity Board and another vs.**
Narata Singh and another, (2010) 4 Supreme Court Cases 317.

Learned State counsel has raised a preliminary objection that as per Government of Punjab, Department of Sports and Youth Services, Memo dated 11.12.1996 issued with the advise of Govt. of Punjab, Department of Finance (Finance Personnel III Branch) letter dated 10.12.1996, the petitioners are not entitled to count their services for grant of pensionary benefits prior to 01.04.1981 as the petitioners started to contribute towards Contributory Provident Fund w.e.f.01.04.1981. Learned State counsel further submits that the judgments cited by learned counsel for the petitioner are not applicable in case of the petitioners. Learned State counsel also submits that the petitioners have been granted pension w.e.f. 01.04.1981 as they were not contributing towards GPF for the period between the initial date of appointment till 28.02.1968 and as such, they were not entitled to the benefits and accordingly, their claim was rejected. The controversy in the case at hand is squarely covered by the decisions passed by this Court in CWP No.6537 of 2001 and CWP No.11526 of 2001.

Heard arguments of learned counsel for the petitioners as well as learned State counsel and have also perused the documents available on the file.

Admittedly, the petitioners were initially appointed as Volley Ball Coach in Punjab Panchayati Raj Sports Parishad, Chandigarh on 20.05.1970 and thereafter, said department was taken over by State of Punjab and both the petitioners and other employees of said department became employees of State of Punjab. On their retirement, while releasing the retiral benefits, their earlier service rendered with Punjab Panchayati Raj Sports Parishad was not counted. In spite of making representation, their claim was not accepted. Thereafter, they filed CWP Nos.5333 and 5335 of 1996, which were disposed of with a direction to the respondents to consider their claim but same was considered from the date they contributed towards Contributory Provident Fund and earlier period of service was not considered.

On hearing arguments and on perusal of judgments cited by learned counsel for the petitioners, I find that the issue raised in the present writ petition is no more *res integra* as this Court in **Kasturi Lal Khurana vs. State of Punjab, 2003(4) SCT 462** has held that since the employees were not called upon to deposit their contribution towards Contributory Provident Fund from the dates of their initial appointment, no fault could be attributed to them and their entire service was required to be counted towards “qualifying service”.

The view taken in **Kasturi Lal Khurana's case (supra)** was followed in **CWP No.8285 of 2004 (Ved Parkash vs. The State of Punjab and others)** decided on **16.09.2010** wherein the service

rendered by the writ-petitioner before he started contributing his share towards the Contributory Provident Fund was directed to be taken into account as a part of 'qualifying service'.

Said judgment of **Ved parkash's case (supra)** was upheld by a Division Bench of this Court while dismissing **LPA No.207 of 2011 (Pepsu Road Transport Corporation, Patiala and another vs. Ved Parkash and another)** vide order dated **03.02.2011**.

Similarly, a Division Bench of this Court in **Ram Lubhaya Khanna's case (supra)** and by following earlier decisions including **Kasturi Lal Khurana's case (supra)**, has held that *“the ratio of above mentioned judgment would apply to the facts of the instant case, inasmuch as, the provision made in clause 6(6) of the 1992 Scheme has to be read down to mean that qualifying service would commence from the date of continuous appointment or from an earlier date if the employee had started contributing to the Contributory Provident Fund. Therefore, the petitioners would be entitled to counting of their service with effect from the date of their appointment.”*

Similar view was taken in **CWP No.19292 of 2010** titled as **Pritam Singh vs. Pepsu Road Transport Corporation and others** decided on **23.02.2012**.

In **Gurmeet Singh vs. State of Punjab and others, CWP No.13831 of 2005** decided on **08.05.2007**, this Court has held as under: -

“We have heard learned Counsel for the parties and are of the view that the strict rule of interpretation in such matters would lead to defeat justice and the object of beneficial legislation of the Act, Rules and the Scheme. In that regard, the matter has already been considered in the case of M.R. Juneja (supra). Rejecting the objection that the petitioner did not apply for his transfer to other schools through proper channel, this Court in the case of M.R. Juneja (supra) has observed as under:

“8. In order to appreciate the stand taken by the respondents for not counting the service rendered by the petitioner in M.D.A.S. Higher Secondary School at Moga, namely, that he did not apply for the fresh appointment at Ferozepur through his previous employer at Moga. I am of the view that the provisions of the 1979 Act and the 1981 Rules framed thereunder are primarily meant for protecting and regulating the service conditions of the employees of the government aided private schools. As a cardinal rule of interpretation, an effort should always be made to interpret the Act and the Rules to achieve the object for which the legislature stepped into this field. The provisions of the Act and the

Rules framed thereunder, therefore, cannot be interpreted in a manner which may defeat the legislative object by negating the protection of conditions of service of the employees of Govt. aided private schools. Keeping in view these principles, in my view Rule 9(2) of the 1981 Rules, upon which reliance has been placed by the respondents, cannot be construed to mean that the appointment of a teacher in another aided school will be rendered illegal for the purpose of grant of pension merely because he did not apply for the second post in another school through his previous employer. The object of this Rules is that the first employer is not taken by surprise if an employee intends to resign from his service so as to take up another assignment. In the absence of any such objection by the previous employer on record, the State Government cannot be permitted to take shelter behind this technicality. Moreover, the petitioner was appointed in H.M. Higher Secondary School at Ferozepur in the year 1971 and at that time, neither the 1979 Act nor the 1981 Rules framed thereunder were in force. In the absence of retrospective applicability of these provisions, the

respondents cannot be permitted to press into this objection.

When the aforementioned principles are applied to the facts of the present case, it becomes evident that the petitioner had joined the Khalsa College Senior Secondary School, Amritsar, on 2.1.1990 after rendering about 19 years of service with Shri Parkash Ashram High School, Beri Gate, Amritsar, through proper channel and without any break. The position is the same with regard to his joining service at Sant Singh Sukha Singh Khalsa Senior Secondary School, the Mall, Amritsar. Therefore, the liberal interpretation for such like beneficial legislation to advance the legislative object must be accepted, especially when the assertion of the petitioner that he applied through proper channel has not been seriously disputed. Therefore, there is no substance in the objection raised on behalf of the respondents and the whole service of the petitioner deserve to be counted as qualifying service for the purposes of pension and other retiral benefits.

Likewise, the objection with regard to deposit of Contributory Provident Fund deduction w.e.f. 1.4.1972 would also be not of any consequence.

Firstly, the Scheme itself had come into force in the year 1987. Secondly, the Contributory Provident Fund amount of Rs. 99,661/- withdrawn by the petitioner has already been deposited back on 30.6.2004 along with interest, amounting to Rs. 1,17,317/-. Moreover, the petitioner has placed reliance on clause 6(5) of the 1992 Scheme which specifically provides that the service rendered on an aided post in another privately managed recognised school is to count for retirement benefits. According to the proviso the Contributory Provident Fund account of the employee in the previous school is continued as such in the subsequent school to which he was transferred and there was no break in service. The petitioner fulfills both the requirements because he had continued depositing Contributory Provident Fund in the subsequent school on his appointment and there has not been any break in his service. On this additional ground also the petitioner deserve to succeed and the objection in that regard is liable to be rejected. In so far as the objection that the case of the petitioner is not covered by Clause 7 (1) of the 1992 Scheme, we are of the view that there is no force in it because after relieving on

1.1.1990 from Shri Parkash Ashram High School, Beri Gate, Amritsar, the petitioner joined on 2.1.1990 at Khalsa College Senior Secondary School, Amritsar. He was relieved from Khalsa College Senior Secondary School, Amritsar, on 30.4.1990 and joined on the same day at Sant Singh Sukha Singh Khalsa Senior Secondary School, the Mall Amritsar. Therefore, there is no substance in the objection raised.

*In view of the above, we find that on the basis of statutory Rules, the 1992 Scheme, the principle for interpretation of statutes/rules and the binding precedent the relief claimed by the petitioner deserves to be accepted. Accordingly, this petition succeeds. The respondents are directed to count the entire service of the petitioner w.e.f. 23.4.1971 to 30.11.1999 as qualifying service for the purpose of pension. The needful shall be done within a period of two months from the date of receipt of certified copy of the order. The petitioner shall also be entitled to payment of interest @ 12% from the date the pension became payable till it is actually paid, as has been laid down by a Full Bench of this Court in the case of **R.S. Randhawa v. State of Punjab**,*

1997(3) R.S.J. 318. However, the amount of Contributory Provident Fund, which the petitioner was required to deposit, alongwith interest @ 12% per annum, if not already paid, may be adjusted out of the amount which the petitioner may be found entitled to get as a result of recomputation of retiral benefits payable to him in term of this order.”

Similar controversy was there in **Mrs. Shakuntala Puri vs. State of Punjab and others, CWP No.19639 of 2005** decided on **14.05.2007** wherein judgment of Hon'ble the Supreme Court in **Vasant Gangaramsa Chandan vs. State of Maharashtra, 1996(4) SCT 403** was considered, which is as under: -

“4. Clause 23 of Chapter VI in the scheme reads as under:

Qualifying service of a Market Committee employee shall commence from the date he takes charge of the post to which he is first appointed or from the date the employer started deducting the P.F. contribution for the employee which ever later.”

It was held that the provision has to be read that the clauses of the Scheme have to be read by keeping in view the fact that pension is not a bounty of the State and it is earned by employees after rendering long service to fall back upon after their retirement.

The same cannot be arbitrarily denied. The clause was accordingly read down to mean that the qualifying service would commence either from the date of taking charge of the post to which the employee was first appointed or from the date he started contributing the Provident Fund contribution whichever was earlier. The ratio of the above mentioned judgment would apply to the facts of the instant case, inasmuch as, the provision made in clause 6(6) of the 1992 Scheme has to be read down to mean that qualifying service would commence from the date of continuous appointment or from an earlier date if the employee had started contributing to the Contributory Provident Fund. Therefore, the petitioners would be entitled to counting of their service with effect from the date of their appointment.

In view of the facts as mentioned above, the present writ petition is allowed and the petitioners are entitled to count their entire service as 'qualifying service' for the purpose of pension. However, the contribution towards Contributory Provident Fund, which was required to be made by the petitioners, shall be adjusted and deducted from the arrears of their pension. The respondents are directed to calculate the pension of the petitioners and to fix the same within a period of

two months from the date of receipt of certified copy of this order. The arrears after calculation in the aforementioned manner be paid to the petitioners within the stipulated period along with other retiral benefits, if any.

05.08.2015
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(DAYA CHAUDHARY)
JUDGE