

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

Civil Writ Petition No.1254 of 2013
Date of Decision: July 22, 2015

Jitender Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Jagdish Manchanda, Advocate &
Mr.Ravi Gakhar Advocate,
for the petitioner.

Mr.Keshav Gupta, AAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The prayer made in the present writ petition is for issuance of a writ of certiorari for quashing the order dated 12.12.2012 (Annexure P-10), which has been passed in pursuance to the directions given by this Court, whereby the claim of the petitioner to treat him in Punjab CSR Vol.II (Old Pension Scheme) has been rejected on the premise that the petitioner joined the service prior to 1.1.2006 with the Central Autonomous Body and as well as continue to contribute to his GPF account with all consequential benefits in the light of the Haryana Government instructions dated 15.2.2010 (Annexure P-7) and clarification dated 19.7.2011 with a further prayer for issuance of a direction not to deduct the contribution provisionally of the

petitioner towards the contributory pension scheme during the pendency of the writ petition.

It would be relevant to mention few facts before commenting upon the reasoning assigned in the impugned order.

The petitioner was appointed as PRT Teacher in the Kendriya Vidyalaya, Central School on 19.7.2003. He joined on 9.8.2003. In pursuance to the advertisement issued by the Haryana Staff Selection Commission for the post of Science Master, the petitioner applied for the same on 19.8.2006 through proper channel and was appointed as Science Master vide appointment letter dated 24.12.2008 (Annexure P-4).

The petitioner is stated to have sent a legal notice claiming the aforementioned relief, which has been rejected by way of impugned order and hence the petitioner has been constrained to approach this Court.

Mr.Jagdish Manchanda, learned counsel appearing on behalf of the petitioner submits that the impugned order does not mention about the instructions dated 22.8.1988 and as well as the clarification dated 19.7.2011. Had those instructions/clarification been taken into consideration, perhaps the petitioner would have succeeded in his claim. He further submits that as per the clarification dated 19.7.2011, it is crystal clear that the cases where an employee who was eligible for the benefit of FD instructions dated 22.8.1988 if reappointed on or after 1.1.2006 in the Government may be covered under Punjab CSR Vol.II (Old Pension Scheme), which is applicable to Government employees, provided that he had applied through proper channel and was governed under the Old Non-Contribution Scheme of his organization.

Mr.Keshav Gupta, learned Assistant Advocate General, Haryana appearing on behalf of the State submits that the case of the petitioner is covered only under the instructions dated 22.8.1988 and not the clarification dated 19.7.2011 and the impugned order is legal and just and there is no illegality and perversity in the same.

I have heard the learned counsel for the parties and appraised the paper book.

During the course of arguments, Mr.Manchanda has also referred to the provisions of relevant instructions dated 22.8.1988, which clearly define the Central/State autonomous body, much less para 5 of the aforementioned instructions, it is clearly mentioned that if an individual has secured employment directly on his own volition provided he had applied through proper channel with proper permission of the administrative authority concerned, he would be entitled to avail old pension scheme. Para 5 of the instructions is extracted herein below:-

“These orders will be applicable only where the transfer of the employee from one organisation to another was/in with the consent of the organisation under which he was serving earlier including cases where the individual had secured employment directly on his own volition provided he had applied through proper channel with proper permission of the Administrative authority concerned.”

On going through the contents of the impugned order, it is manifest that the authorities have not taken into consideration the clarification dated 19.7.2011 (Annexure P-12), which leave no manner of doubt vis-a-vis the applicability of the Old Pension Scheme where the

Government employee has sought employment on his own through proper channel. For the same of brevity, the relevant portion of the clarification dated 19.7.2011 is extracted herein below:-

“In this connection it is clarified that such cases where an employee who was eligible for the benefit of FD instructions dated 22.8.1988 if reappointed on or after 1.1.2006 in the Government will be covered under Punjab CSR Vol.II, (Old Pension Scheme) which is applicable to government employee, who joined government service prior to 1/1/2006 provided he had applied through proper channel and who was governed under the Old-Non-Contribution Scheme of his organization. Para-A (ii) and B(II) of instructions ½ (77/37-2FR-2(II) dated 22.8.1988 may be treated as deleted w.e.f. 1.1.2006.”

Since the impugned order suffers from non-application of mind, much less, there is no reference to the aforementioned instructions and clarification, I deem it appropriate to quash the impugned order dated 12.12.2012 (Annexure P-10). Ordered accordingly.

Since the instructions clearly mention about the applicability of the Old Pension Scheme to the employees, who had sought the appointment strictly in accordance with law, the respondents are directed to consider the case of the petitioner for entitling him the benefit of Old Pension Scheme as per the provisions of Punjab CSR Vol.II and pass the consequential orders thereon in accordance with law.

Mr.Keshav Gupta submits that the department inadvertently deposited the costs of ₹5,000/- in the Registry of this Court. Since the costs of ₹5,000/- has been handed over in the Court to the learned counsel for the petitioner today, Registry is directed to refund the amount to the authorised

person of the respondents, i.e., Shri Bansi Lal, Academic Assistant, Office of Director Elementary Education, Haryana, Panchukula forthwith.

The writ petition is accordingly allowed.

July 22, 2015
ramesh

(AMIT RAWAL)
JUDGE