IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7301 of 2012 (O&M)
Date of decision : 08.07.2015

Brij Pal Sharma ...Petitioner

V/S

State of Haryana and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R. K. Malik, Sr. Advocate
with Mr. Mandeep Singh, Advocate
for the petitioner.

Mr. Sourabh Mohunta, DAG, Haryana

Mr. Vikas Chatrath, Advocate for the respondent Nos.4 and 5

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JITENDRA CHAUHAN, J. (Oral)

This writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 30.03.2009, (Annexure P-13) passed by respondent No.2 and for issuance of directions to the respondent Nos.1 to 3 to direct respondent Nos.4 and 5 to reinstate the petitioner in service till the age of his superannuation and to make payment of the arrears of the salary, gratuity, revised pension, leave encashment, provident fund and also other dues to which the petitioner is entitled with compound interest @18% till actual payment and also the costs imposed by the respondent No.2 vide order Annexure P-6.

The learned counsel for the petitioner contends that the petitioner was appointed as a Science/Maths teacher by the respondent No.4, a Govt. aided private school on 06.12.1978. Though the petitioner was to attain the age of superannuation on 31.10.2003 but he was compulsorily retired from service vide order dated 25.03.2001 (Annexure P-2) by the respondent No.5, The Management Committee, without granting any retiral benefits as per Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001. Aggrieved against the said order, the petitioner filed CWP No. 4771 of 2001 which was disposed of by this Court vide order dated 29.03.2011, directing the petitioner to file a representation before the appropriate authority (Annexure P-3). Since the representation of the petitioner had been rejected vide order dated 09.08.2001 (Annexure P-4), he challenged the same by filing CWP No. 12405 of 2001, but the same was ultimately withdrawn vide order dated 08.12.2004 as in the meanwhile the impugned order dated 09.08.2001 (Annexure P-4) was recalled by the Director on 14.06.2004 (Annexure P-5) who vide order dated 30.06.2005 (Annexure P-6) set aside the compulsory retirement order dated 25.03.2001 (Annexure P-2) on the ground of being stigmatic and that the respondent No. 5 could only compulsorily retire an employee if he had rendered 20 years of service while in the instant case, the petitioner had completed only 18 years 6 months of service at the time of retirement. Moreover, no prior approval had been sought in terms of Section 8 (2) of Haryana School Education Act, 1995 by the respondent No. 5, and the removal was not in public interest on account of petitioner's unblemished record. Accordingly, the respondent No. 5 was directed to pay all the arrears of salary w.e.f 27.03.2001 (date of compulsory retirement) till 31.10.2003 (date of superannuation) and the arrears of retiral benefits with 18% simple interest within one month. The respondent No. 5 challenged the said order vide CWP No. 15177 of 2005 but it was disposed of on account of the statement made by Respondent No. 5 that all the retiral benefits had been sanctioned in favour of the petitioner. Thereafter, the petitioner filed a representation to the Director General to comply with the order dated 30.06.2005 (Annexure P-6) who issued a notice dated 17.10.2007 (Annexure P-11) to the Management for the same but withdraw the same vide order dated 30.03.2009 (Annexure P-13) on account of an assumption that the petitioner was satisfied on receiving pension of the period from 26.03.2001 to 31.10.2003. The petitioner filed CWP No.10119 of 2009 which was disposed of vide order dated 13.07.2009 (Annexure P-14) with a direction for clarification/ modification of the order dated 20.03.2007. He had also moved a CM No.8203 of 2011 in CWP No.15177 of 2005 wherein this Court had clarified that the petitioner was to secure the arrears claimed in the manner contemplated by Annexure P-6.

On the other hand, the learned counsel for the respondent Nos.4 and 5 contends that since the petitioner had been compulsorily retired on 25.03.2001, therefore, his case is covered by 1999 Pension Rules as against Haryana Aided Schools (Special Pension and

Contributory Provident Fund) Rules, 2001 which came into force after the date of retirement of the petitioner. As per the order of this Court dated 20.03.2007 (Annexure P-9), the gratuity and pensionary benefits to be payable as per 1999 Rules have been paid and received by the petitioner from the date of his compulsory retirement i.e 26.03.2001 till the date of superannuation i.e. 31.10.2003 and hence, he can't claim salary for the said period. In fact, the petitioner accepted the same on 20.03.2007 and the decision having become final, can't be espoused through the present petition. Moreover, the petitioner had himself withdrawn CWP No. 10119 of 2009, to a limited extent, wherein he sought that he would seek clarification of the modification regarding his claim for salary for the period from 26.03.2001 to 31.10.2003 and hence, the other reliefs had been waived off by the petitioner on his own. The instant petition is also liable to be dismissed on account of delay and laches as the petitioner is seeking to enforce the rights which allegedly accrued to him vide order dated 30.06.2005 (Annexure P-6).

Heard.

From the perusal of the order dated 20.03.2007 (Annexure P-9), it is clear that the order dated 30.06.2005 (Annexure P-6) vide which the order of compulsory retirement of the petitioner had been set aside by the Director, Secondary Education, Haryana, Chandigarh and all consequential retiral benefits released w.e.f he had been compulsorily retired till the actual date of superannuation i.e. 31.10.2003, was upheld by this Court because neither the counsel for the respondent No. 5 pressed for setting aside the order Annexure P-6 nor the same was adversely commented upon by this Court. Rather, additional directions had been issued to respondent No.5 to deposit the petitioner's arrears of pension due in his account every month. Moreover, Annexure P-6 has not been set aside by any Court of law and the said decision dated 30.06.2005 has become final and binding on both the parties. In view of the clarification given by this Court dated 23.01.2012 (Annexure P-15), it is inferred that the petitioner's claim for arrears of salary was to be independently looked upto as per Annexure P-6 by the respondent No.5 which granted the relief of releasing all retiral benefits due to the petitioner from the date of compulsory retirement i.e.26.03.2001 till the date of actual superannuation i.e.31.10.2003. The Director had also issued notice to the respondent No.5 dated 17.10.2007 (Annexure P-11) for implementation of the order dated 30.06.2005. Though it was withdrawn on account of an assumption that the petitioner was satisfied with the pension amount to be granted but it is pertinent to mention here that the petitioner didn't accept the same being contrary to the provision No.11(2) of Pension Rules, 2001 and against the order of this Court dated 20.03.2007. In the light of the clarification dated 23.01.2012 (Annexure P-15), there seems to be no justification on the part of the Government or the Management in not implementing the decision dated 30.06.2005 (Annexure P-6). In the absence of any plausible clarification given by the respondent No.5 in retiring the petitioner compulsorily while, he had an unblemished service record which couldn't be rebutted by the respondents by production of negative ACR's/appraisal of the petitioner.

Keeping in view the above discussion, this writ petition is allowed; the order dated 30.03.2009 (Annexure P-13) passed by respondent No.2 is quashed and the respondent Nos.4 and 5 are directed to make deemed reinstatement of the petitioner in service till the age of his superannuation i.e. from 26.03.2001 till 31.10.2003 and to release all the arrears of salary, gratuity, revised pension as per Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001, leave encashment, provident fund and other retiral dues to which the petitioner stands entitled alongwith interest @8% per annum from the date it became due till the date of actual payment.

(JITENDRA CHAUHAN)
JUDGE

08.07.2015
ashok

Whether referred to reporter? Yes/No.