IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CWP No.27816 of 2013 (O&M)**

Balbir Singh Soni ...Petitioner

Versus

State of Haryana and others ...Respondents

2. **CWP No.2625 of 2014(O&M)**

Dharam Lal Rawat ...Petitioner

Versus

State of Haryana and others ...Respondents

and

3. **CWP No.5113 of 2014 (O&M)**

Laxmi Devi ...Petitioner

Versus

State of Haryana and others ...Respondents

Date of decision**: November 20, 2015**

Coram: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.D.S.Rawat, Advocate for the petitioners.

Mr.Gaganpreet Kaur, Assistant AG, Haryana.

Mr.Aman Bahri, Advocate for ASD High School.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of aforesaid three writ petitions as the issue in all these petitions is similar .

The question is as to whether the petitioners are entitled to the counting of the period of their service from the date of their initial appointment till the date of subscription to the Contributory Provident Fund, towards qualifying service for grant of pensionary benefits. In CWP No.27816 of 2013 and CWP No.2625 of 2014, the said benefit was granted to the petitioners, but vide the impugned orders, the same has been withdrawn, which action has been challenged. In the third case i.e. CWP No.5113 of 2014, the benefit has never been granted to the petitioner and hence, by filing the petition, he has sought the same.

For facility of reference, the facts are being taken from CWP No.27816 of 2013.

On 2.9.1971, the petitioner joined the Government Aided school, namely A.S.D.High School, Full Bazaar, Narnaul – respondent No.5 as JBT teacher against a sanctioned post on regular basis. He was promoted as Master on 20.8.1973 and further to the post of Head Master on 5.8.2001. On 1.12.1981, the School opened CPF account of the petitioner by making him a member of Contributory Provident Fund Scheme and the petitioner started contributing towards CPF.

In the year 2001, the Government of Haryana framed Haryana Aided School (Special Pension and Contributory Provident Fund) Rules, 2001 providing Pension Scheme for the employees working against the sanctioned posts in the aided schools.

The petitioner retired on 31.7.2007 and was granted pension by taking into account 25 years and 8 months service as qualifying service i.e. from 1.12.1981 (date of start of contribution towards CPF) to 31.7.2007 (date of retirement). The period of service prior to his starting the CPF contribution was not taken into account while calculating pension.

The petitioner filed CWP No.19951 of 2009 claiming a direction to the respondents that his pension be revised by taking into account his entire service with the respondent- School as qualifying service as per instructions dated 5.8.2008 (Annexure P-2). In the reply filed on behalf of respondents – State, it was stated that the claim of the petitioner to count entire service of respondent – School as qualifying service as per instructions dated 5.8.2008 had been allowed and pension was also sanctioned vide PPO No.1401 dated 5.3.2010 accordingly the petition was rendered infructous. However, the said order was challenged by the respondent – School by filing LPA No.672 of 2011, wherein, in view of the admitted position that the amount as per sanction given by the State as well as by the School Management stood paid, the appeal was dismissed. However, the issue regarding the entitlement of the petitioner to get his entire service counted towards qualifying service for the purpose of pension, was not adjudicated upon on merits.

Later, vide the impugned order dated 24.1.2013 (Annexure P-10) the claim of the petitioner already accepted by counting his entire service as qualifying service towards pensionary benefits was rejected.

Aggrieved, the petitioner has filed this writ petition.

In the written statement filed on behalf of respondent – School, it is stated that the instructions dated 5.8.2008 (Annexure P-2) are not applicable to the case of the petitioner in view of Rule 114 of the Haryana School Education Rules, 2003. It is stated that Rule 114 does not contemplate that an employee/retiree can exercise his option to subscribe to the fund for the entire gap period for which he had not subscribed to the Contributory Provident Fund.

I have heard Learned counsel for the parties and have also gone through the records.

The matter regarding computation of service rendered prior to enforcement of the Pension Scheme for private aided school employees in the State of Punjab was considered by a Division Bench of this Court in **Smt.Ramesh Tuli vs. State of Punjab and others, 2007(3) SCT** 791, wherein, it was held as under:-

> "*7. In view of the above, the action of the respondents in refusing to grant pension to the petitioner is declared as illegal. The impugned order dated 30.9.2002 (P-3) is quashed. The petitioner is held entitled to count her entire service with effect from 17.8.1965 to 30.9.2001 as qualifying service for the purposes of pension. However, her contribution to the Contributory Provident Fund with effect from 17.8.1965 to 30.8.1980, which was required to be made by the petitioner, shall along with interest be adjusted and deducted from the arrears of her pension...*"

In regard to the employees of the private aided schools employees in the State of Haryana are concerned, the issue of grant of pensionary benefits by taking into consideration the period of service from the date of their initial appointments till the date of subscription to the Contributory Provident Fund as qualifying service for pensionary benefits, was examined by this Court in **CWP No.11192 of 2012** titled **"*Ramvir Sharma and others vs. State of Haryana and others*"** and other connected matters decided on 2.9.2014. The issue was answered in favour of the employees. Relevant part of the judgment reads as under:-

> *"Before proceeding to deal with the rival contentions, it is appropriate to reproduce the contents of the letter dated 14.03.2008 (P-1) as also Rule 91(5) of 2003 Rules, which read as under:-*
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> > *"Subject: Introduction of Special Pension Scheme to the employees of Privately managed Aided Schools as per Haryana School Education (amended) Rules, 20007.*
> >
> > *The Government of Haryana has amended the Haryana School Education Rules, 2003 vide Notification No.SO3/HA12/1999/S.24/2007 dated 19.01.2007 namely "Haryana School Education (amendment) Rules, 2007", copy of which has already been sent to your office vide this office memo No.23/83-2003 PS-1 dated 09.02.2007. As per Rule 114 of Haryana School Education Rules, 2003 as amended vide Rule 32 of Haryana School Educaion (Amendment) Rules, 2007.*
> >
> > *"The employee/retiree who has not availed of the option till now, may give fresh option to deposit the subscription to fund along with interest at the prevailing rate as worked out by Director within 90 days from the date of commencement of these Rules." (emphasis supplied)*
> >
> > *It is, therefore, requested to take necessary action immediately as per above mentioned Rules and employer share of CPF (duly verified by the SO concerned and Headquarter) of all the concerned employees/retirees who have exercised their option as per above Rules may be deposited into Government Head of Account No.0071 contribution and recoveries towards pension and other Retirements Benefits-01-Civil-101-subscriptions and contribution-privately managed recognize aided schools"-93) Contribution from Private Schools towards Pension.*
> >
> > *This issue with the concurrence of FD vide their UO No.73/23- 06-3FDII/3311 dated 19.12.2006.*
> >
> > *Sd/-*
> > *For Commissioner & Director General School Education, Haryana, Chandigarh. "*
>
> *It is not in dispute that the employees including retirees, like the petitioners, from the services of Private Aided Schools were extended the benefit of counting of the periods of probation towards qualifying service for pension by virtue of an amendment vide Notification dated 19.01.2007 to the existing Rule 114 of the*

2003 Rules, and the same was read as Rule 32 of the Haryana School Education (Amended) Rules, 2007, subject to the employee/retirees submitting their options within 90 days. Neither of the parties have placed on record nor reproduced in the impugned speaking order dated 04.04.2012 (P-12), passed by Director, School Education, Haryana/respondent No.2, the provisions of the Notification dated 19.01.2007 indicating the requirement of exercise of option within 90 days to be mandatory. However, the extracted provision has been mentioned in the letter dated 14.03.2008 (P-1) reproduced here above.

The stand of the State is that the retirees/petitioners were required to exercise their option within 90 days of the said Notification dated 19.01.2007 and having failed to do so, were not entitled to submit their options in pursuance to the letter dated 14.03.2008 (P-1). It does not appear to be in dispute that the petitioners have exercised their option pursuant to P-1 and also deposited their share of the contributory fund, as required. A reading of the amended provision from the hereinabove reproduced letter (P-1) makes it evident that the real intention of the amendment is to bestow the benefit and time limit of 90 days for exercising the option has been provided for facilitating the finalizing of the claims by the Government. It naturally follows that the retirees, like the petitioners, from the employment of the Private Aided Schools were to be personally intimated so as to enable them to exercise their option and for the delay, if any, no prejudice is being caused to the State as the retirees are already required to deposit their shares towards CPF along with 12% interest. It is not the case of the respondent/State that the respondent-Schools and thus the retirees/petitioners were intimated through the District Education Officers in that regard prior to the issuance of letter dated 14.03.2008 (P-1). To the contrary, it is the stand of the respondent-Schools that upon receipt of letter (P-1), the Schools had become aware of the amended provision and thereafter the needful was done by the School Authorities as well as the retirees/petitioners by exercising their options and submitting it to the School Authorities within time. It is well settled that a narrow and restrictive interpretation cannot be applied to a beneficent provision, which has to be liberally construed so as to achieve the real object. Therefore, the stand of the respondent/State upon insistence of exercise of option within 90 days of Notification dated 19.01.2007 is untenable and declared illegal. It is also held that the petitioners are ***entitled to the benefit of counting of qualifying service period from the date of appointment towards pension on their deposit of their share of CPF along with 12% interest till the date of such payment."***

Same question was considered in **Ashok Kumar vs. State of Haryana and others, 2015(4) SCT 258**, wherein taking note of the previous decisions on the point, it was observed as under:-

"18. Coming now to the issue of exercise of option by the petitioner to deposit the contribution which should have been made to the Contributory Provident Fund between 15.02.1973 to 31.03.1980, I do not find the stand of the State to be tenable on this issue, in view of the fact that the matter has been well settled by now, in

various judgments of this Court, to the effect that even if an option in that regard is exercised beyond the time given in the concerned Instructions/Rules, an employee (dependent of the employee in this case) cannot be denied the benefit of service for the said period if he/she deposits the requisite contribution for the period in question, alongwith interest as laid down by the Government in its Instructions/Rules promulgated on the issue.

In ***Smt. Veena Shashi v. State of Haryana and others (CWP No. 4466 of 2006) decided by a Division Bench of this Court on 01.12.2006****, it was held in relation to affiliated/Government aided private colleges of the State of Haryana, as under :-*

> *"In view of the above, the writ petition succeeds. The order dated 22.09.2005 (P-11) is hereby quashed and a direction is issued to the respondents to grant to the petitioner benefit of service rendered by her from 16.07.1969 till 1980 by treating the same as qualifying service for the purposes of pension. However, the payment of contributory provident fund, which has been availed by the petitioner, shall be refunded by her to the respondents. Let, revised pension be calculated and released to her after giving the benefit of service from 16.07.1969 till 1980, within a period of two months from the date of receipt of certified copy of this order."*

Even though the facts in that case and the present one are not identical, inasmuch as, the issue there was with regard to counting of service rendered by that petitioner in an aided college prior to her joining another Government aided college, the matter was otherwise identical, to the extent that the service rendered by that petitioner in the Dev Samaj College for Girls, Ambala City, between 1969 to 1986, was a period for which the employee had not deposited the amount received by her to the Contributory Provident Fund, upon her joining Hindu Girls College, Sonepat. However, the Division Bench, held that if the employee deposits the payment of Contributory Provident Fund as had been received by her, alongwith interest, the said period would be countable as service computable towards grant of pension.

Similarly, in ***Vandana Batra v. State of Haryana and another (CWP No. 3405 of 2012) decided on 09.08.2012****, a co-ordinate Bench held that if the management of a Government aided college did not deduct contribution towards CPF from an employee, it was not something which the employee had any control over and as such, if the employee was willing to deposit the requisite contribution, alongwith interest thereupon, for the period of service during which no contribution had been made towards the CPF, then the said period would be countable for calculation of pension.*

This Bench also, in ***Rajeshwar Aggarwal v. State of Haryana and another (CWP No. 7725 of 2013) decided on 04.11.2014****, has held a similar view, citing the aforesaid judgments.*

Further, pension/family pension, being a recurring

> *payment to be made on a monthly basis to a retired employee/his family, delay in subscribing/ making payment to avail of the full benefit of a pension scheme, cannot be used as an excuse, by an employer, to deny the benefits of pension/family pension. However, of course, in case of any delay on the part of an employee in making any payment/in taking action as he/she was required to take, to obtain the benefit of such pension, appropriate interest would be payable by the employee in case of a payment to be made, and further, arrears of pension/family pension, can be commensurately denied to him/her.*
>
> *19. In view of the above, it is held that the petitioner is entitled to grant of family pension by taking into account the service rendered by his wife for the period from 15.02.1973 to 31.03.1980, provided the petitioner deposits the entire amount as is calculated by the respondents, in terms of amended Rule 114 of the Rules of 2003, and instructions on the issue, as was payable towards the Contributory Provident Fund, (including interest for the said period)."*

Thus, the question is squarely covered by the decisions, referred to above.

Accordingly, the writ petitions are allowed. The impugned orders are quashed. The petitioners are held entitled to counting of their entire service with effect from the date of entry into service till their superannuation as qualifying service for pension. However, if not already done, they shall deposit the entire amount as was payable towards Contributory Provident Fund with effect from their entry into service till the date, they started contributing in the same, along with interest. Thereafter, the respondents shall fix their pension by counting their entire service as qualifying service.

November 20, 2015 **(HARINDER SINGH SIDHU)**
gian **JUDGE**