

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 8617 of 2012 (O&M)

Date of decision : 1.9.2015

...

Dr. Manjit Singh Virk

.....Petitioner

vs.

Vice Chancellor, Punjab Agricultural University and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr.A.P.Singh, Advocate for the petitioner.

Mr. Deepak Agnihotri, Advocate
for respondents No. 1, 2 and 5.

Mr. Aman Chaudhary, Advocate
for respondents No. 3 and 4.

...

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?*

P.B. Bajanthri, J.

In the instant petition, the petitioner has questioned the order dated 26.11.2010 (Annexure P-7) and reply dated 7.3.2012 (Annexure P-9), by which the grievance of the petitioner to count the past service rendered in Central Potato Research Institute (ICAR) (for short 'Research Institute') for the period from 1.9.1976 to 29.1.1983

has been declined.

(2) The petitioner was appointed as Scientist-S-1 (Agriculture Stats) at Research Institute, Shimla on 1.9.1976. In the year 1982, petitioner applied for the post of Assistant Professor of Statistics in Punjab Agricultural University, Ludhiana (for short 'Agricultural University'), through proper channel. He was selected and appointed on 12.11.1982. Pursuant to the appointment, petitioner was relieved from the Research Institute on 31.1.1983. on the same day he has joined Agricultural University. While working in the Agricultural University, the petitioner has earned promotion to the post of Professor of Statistics in the Department of Math, Stats and Physics. He has attained the age of superannuation and retired from service on 31.7.2010 from the Agricultural University.

(3) The petitioner is stated to have requested for counting the service rendered in the Research Institute viz., from 1.9.1976 to 29.1.1983 towards qualifying service for determining his pension and other consequential benefits.

(4) On 26.11.2010, the aforesaid grievance of the petitioner was rejected vide Annexure P-7 on the ground that petitioner did not exercise his right of option timely as per the scheme/statutory regulation. Thereafter, petitioner is stated to have sent legal notice through his counsel. Even the same was rejected on 7.3.2012 vide Annexure P-9. Feeling aggrieved by the communication dated 26.11.2010 and 7.3.2012, the petitioner has presented this writ petition.

(5) The Agricultural University notified Statutes regarding Pension and Provident Funds and Pension Rules. Arising out of the said statutes, general provisions relating to grant of pension was also notified. For the purpose of case in hand, it is relevant to extract Clause 1.3, 3.13 (i) and 3.14:-

“ **1.3 (i)** The option provided in clause of the Statutes 'shall have to be exercised by such date as may be notified by the University and must reach the officer responsible for maintaining the service book of the employees concerned. The form of option are given in the Annexure-I (A to D) .

(ii) On receipt, the option shall be counter-signed by the officer responsible for maintaining the service record of the employee concerned and pasted in the service book. The receipt of the option shall be acknowledged to the employee. A photo copy of the option duly attested be also sent to the Comptroller.

XXX

XXX

XXX

3.13(i) An existing employee who has served the Central/any State Government or an autonomous body established Under the Central/State law and has been absorbed in the PAU service in the public interest or who has

come over/joined the University service after rendering service in the Central/State Government/autonomous body (provided the intervening period between leaving the service in the previous employment and joining the PAU service does not exceed 30 days) can get his past service counted towards pension if he refunds the terminal retirement benefits such as pension, gratuity etc. received, if any, by him from such Government/autonomous body for the service rendered there, to this University alongwith interest thereon as per rate of CPF prevalent in the University from time to time, from the date of receipt of these benefits, till the date of deposit with the University.

However, such an employee who is in receipt of pension from his previous employer and is still in service of the University, he shall have to give an undertaking that the amount of pension be deducted from his monthly salary bills till his retirement from the University. Further such an employee shall also give an undertaking that on his retirement from the University service, the amount of pension payable by the previous employer be deducted from his pension payable

to him by the University.

An existing employee who has served the Central Govt./any State Govt. or an autonomous body established under the Central or State Law and has been absorbed in the PAU service, in the public interest, or who has come over/joined the University service after rendering service In the Central/State Govt./autonomous body (provided his intervening period between leaving the service in the previous employment and joining the PAU service does not exceed 30 days) and was contributing towards CPF there can get his past service counted towards pension only if he refunds the amount of Gratuity and Contributory share of the institution towards CPF alongwith interest accrued thereon. He shall also have to pay interest on such amount as per rate of CPF prevalent in the University from time to time, from the date of receipt of such benefits, till the date of deposit with the University.

(ii) A University employee - who has retired during the period 1.1.1986 to the date of notification of the Statutes and is in receipt of pension from his previous employer and opts to get his past service counted towards pension in

the University, shall have to refund the amount equal to the terminal retirement from by the benefits received him till retirement, University alongwith interest thereon as per rate of CPF prevalent in the University from time to time from the date of receipt of benefits till the date of deposit with the University and then his past service shall be counted towards pension in the University and further he shall also have to give an undertaking that the amount of pension payable by his previous employer be deducted from the pension payable by the University. Such an employee shall also have to refund the University share of CPF contribution alongwith interest thereon received by him, if any.

3.14: In respect of cases falling under clause 3.13 the concerned employee shall have to give an application. For the purpose of getting his past service counted towards pension within four months from the date of issue of notification of the Statutes alongwith bank draft of the required amount in lumpsum; failing which his past service shall not count for pensionary benefits.

However, the future entrants who Join service in the PAU after serving in the Central

Government/any State Government or an autonomous body established under the Central/State Law shall have to give an application within four months of their joining in the University for getting their past service counted towards pension and they shall have to refund to the University the terminal retirement benefits such as Pension, Gratuity, CPF etc. received by them from the previous employer for the service rendered there to this University alongwith interest thereon as per rate of CPF prevalent in the University from time to time, from the date of receipt of these benefits till the date of deposit with the University and shall have to attach alongwith their application the bank draft of the required amount in lumpsum; failing which their past service shall not count for pensionary benefits. In case they have not received the pensionary benefits including CPF from their previous employer, then their past service shall not count towards pensionary benefits in the University.”

- (6) For the purpose of counting past service of the petitioner rendered in the Research Institute, the petitioner was required to comply the aforesaid provisions. It is admitted fact that the petitioner

has not exercised his right in accordance with the aforesaid provisions.

(7) On 3.7.2006, Agricultural University, Ludhiana, issued a notification by which Clause 1.2 (iv) of the Statutes regarding Pension and Provident Funds (Part A) was substituted. An extract of the substitution of Clause 1.2 (iv) reads as following :-

“The employee of the University (teachers and non-teaching employees) with 10 years service may exercise options afresh for switching over from CPF to Pension three years before retirement provided all University contributions with interest is deposited in the Pension Corpus Fund. The family of the employees who die while in service 3 years' before retirement, may opt for the benefit of Pension Rules instead of CPF to Pension Scheme in terms of Comptroller, PAU, Ludhiana's Notification No. CAU.Pen.1/98/4156 dated 26.3.1998 can opt for counting of their past service within 30 days from the date of switching over to the pension scheme subject to fulfillment of other conditions laid down under Clause 3.13 of the Statutes regarding Pension and Provident Fund. Such employees can seek voluntary retirement at any time during the remaining period of their service

subject to fulfilling the conditions for seeking voluntary retirement.”

(8) The petitioner invoked substitution clause 1.2 (iv) dated 3.7.2006, requested for switching over to pension by making necessary application/option on 26.6.2007 and thereafter on 17.8.2007 applied for counting of past service with reference to the date of acknowledging his option for pension from 19.7.2007.

(9) Learned counsel for the petitioner vehemently submitted that past service rendered in Research Institute is to be counted as he had complied clause 1.2 (iv) of the Statutes (substitution of the said clause dated 3.7.2006). Therefore, he is entitled for counting of past service rendered in Research Institute towards pension and other consequential benefits.

(11) Per contra, counsel for respondents No. 1, 2 and 5 contended that the petitioner has missed the bus, as he has not exercised his right of option to count his past service rendered in Research Institute as per clause 1.3, 3.13 (i) and 3.14 read with substituted clause 1.2 (iv) of the Statutes. It was vehemently contended that the petitioner has failed to comply the time bound directions to the employees to exercise their option i.e. within 30 days from the date of switching over to the Pension Scheme and to seek to count past service. In this regard it was stated that on 26.6.2007 request for switching over to pension and thereafter on 17.8.2007 seeking for counting past service, which is not within 30 days. Moreover, even under the substitution clause 1.2 (iv) of the

Statutes dated 3.7.2006, requires that an employee is entitled for switching over to the Pension Scheme and counting of past service would be subject fulfillment of other conditions stipulated under Clause 3.13 of the Statutes. Therefore, grievance of the petitioner to count the past service rendered in Research Institute was rightly rejected and the petitioner has not made out a case so as to interfere with the impugned communications.

(12) Heard counsel for the parties and perused records.

(13) It is undisputed that petitioner did not exercise his right of option to count the past service pursuant to regulations No. 1.3, 3.13 (i) and 3.14. Further, it is noticed that as per Annexure P-3 dated 3.7.2006 and as per the substitution of clause 1.2 (iv) also, the petitioner do not fulfill the conditions imposed therein. The word used in clause 1.2 (iv) dated 3.7.2006 “may exercise option afresh” and “subject to fulfillment of other conditions laid down under clause 3.13”. The petitioner failed to satisfy the aforesaid conditions. Exercise option afresh means 'once again exercising option'. Admittedly, petitioner has not exercised his option as per the Statute regarding Pension and Provident Funds dated 1.1.1986. For the first time, after 3.7.2006, the petitioner exercised his option. Since the petitioner has not fulfilled the conditions imposed under clause 3.13 of the Statute, rightly the respondents have rejected the claim of the petitioner. Therefore, I am of the view that there is no infirmity in the order dated 26.11.2010 (Annexure P-7) and reply dated 7.3.2012 (Annexure P-9).

- (14) Accordingly, the writ petition is dismissed.
- (15) No order, as to costs.

September 1st, 2015.
chugh

(P.B. Bajanthri)
Judge