

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 26526 of 2015 (O&M)

Date of decision : December 19, 2015

Avtar Singh

.....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.K. Arora, Advocate
for the petitioner.

LISA GILL, J.

Petitioner prays for quashing of order dated 17.09.2015 (Annexure P-12) whereby it has been held that he is not entitled to pensionary benefits under the Punjab Privately Managed Recognised Aided Schools Retirement benefits Scheme 1992 and 2012.

Brief facts are that petitioner initially joined as SS master against aided post at JSHF Khalsa High School, Nawanshar on 01.06.1964. He worked as such till 20.09.1977. He was then appointed as Headmaster against aided post as Lt. Gen. Bikram Singh Khalsa High School, Mehndipur, District SBS Nagar on 21.09.1977. He continued on the said post till 30.04.1990. He applied for leave from 03.05.1990 to 03.11.1990 and thereafter from 04.11.1990 till 07.08.1991. Leave was duly sanctioned by the school

management. He applied for further leave from 08.08.1991 till 07.08.1992. During said period, he remained on Ex-India leave. In interregnum, above said private aided school was taken over by the State government under Gift deed w.e.f. 19.08.1991. As per terms of take over, all teachers and allied staff of private aided school, who were duly qualified to hold the respective posts would be taken over and absorbed as Government servants but restricted to those who were working at the time of take over. Petitioner's name was not included in the aided staff taken over by the Government.

Petitioner preferred CWP No. 3690 of 1994 praying for direction to respondents to permit him to join as Headmaster and grant him all consequential benefits. Said writ petition was dismissed on 03.01.2013 (Annexure P-2) by this Court while observing as under:-

“ I find that paragraph 2 of the take over Charter (P2) admits no exception to the principle that only such employees would be taken over as are working on the cut off date. The petitioner was not so working. I feel the word ‘working’ employed in para 2 should be first taken in its literal sense and present tense since extraordinary benefits flow. The petitioner was merrily living abroad. He was on leave without pay. He did not make any attempt to seek any sanction of leave from the Government or from the office of DPI(S), Punjab knowing well that he held an aided post though in a private school. He held a

responsible post in the erstwhile management as Headmaster. He has not demonstrated any thing which could amount to being kept away from work on the cut off date and for reasons beyond his control. He must have been fully conscious and alive of the fact that the private aided school was in the process of taken over by the Government with all its splendid benefits. In paragraph 4 of the petition he admits that in the year 1991 respondents 1 & 2 started taking steps for taking over the school. He should not have sought further leave from his management beyond 7.8.1991 for a further year till 7.8.1992. Here lies the Achilles heel of his case.

The school was actually taken over by State Government vide letter dated May 21, 1991 (P1). This writ petition was filed in March 1994 after considerable delay of about 3 years. The petitioner appears to have been conscious of the date 21.5.1991 and its significance as he cleverly brought the petition a little short of three years thereafter to bring the petition within the limitation of a suit. This delay and laches in approaching court especially looking to the nature of relief sought for public employment under the State is also a factor that precludes me from harbouring any thought in his favour. In any case after 20 years of the cause of action, if any it is not possible to grant any relief to the petitioner as

sought in this petition.

I find no life in this petition and accordingly dismiss the same for the reasons recorded above.”

Thereafter, petitioner raised a claim towards pension and other retiral benefits by counting his entire service rendered in two different government schools and preferred CWP No. 22927 of 2014 which was disposed of 28.11.2014 (Annexure P-11) directing competent authority to decide legal notice served by the petitioner. Pursuant thereto, impugned order dated 17.09.2015 (Annexure P-12) has been passed whereby petitioner's claim has been rejected. Aggrieved therefrom petitioner has filed this writ petition.

It is vehemently argued that petitioner was not permitted to join duty as Headmaster in the year 1992 and benefit under scheme (Annexure P-13) which came into existence on 10.02.1992 could not, therefore, have been opted for by the petitioner. It is due to circumstances beyond his control that petitioner could not submit his option. In such circumstances, he should be afforded the benefit of pension by waiving the condition of submission of option.

On hearing learned counsel for the petitioner, I find no ground to interfere in this writ petition. There is no illegality or infirmity in the impugned order. It is observed in the impugned order dated 17.09.2015, that:-

“ Thus the above said pension scheme shall not apply to the employees who are governed by the

contributory provident fund. Meaning thereby the scheme was applicable to the employees who have opt for pension and were in service on 05.02.1987. Later on pension scheme was repealed vide Government notification dated 12.09.2003 resulting in the stoppage of pensionary benefits. The said pension scheme was revived vide notification dated 01.08.2012 and this scheme is applicable to the employees who has opt pensionary benefits under the said scheme. It is admitted fact that the petitioner did no opt pension in the said scheme, rather he had given option for contributory provident fund. The petitioner had withdrawn his Contributory Provident Fund along with equal employer's share contributed by the State Government on 10.01.2005, under his own signature. Moreover the law laid down in the judgement, relied upon by the petitioners, in Ram Lubhaya Khanna's case was applicable to those who had opted out the pensionary benefits under the 1992 scheme. The Hon'ble Court held in Ram Lubhaya Khanna's case that service rendered against aided post in different schools in the State of Punjab was allowed to be counted cumulatively for the purpose of pensionary benefits. So claim of the petitioner is not covered under the judgement rendered in Ram Lubhaya Khanna's case. Keeping in view the facts of the case, it is very much

clear that Sh.Avtar Singh had not opted for the 1992 pension Scheme. He had himself withdrawn the C.P.F. amount credited to his account. Hence, he is not entitled for the pension as per the rule laid down in the 1992 pension Scheme.”

In view of specific observations of this Court in decision dated 03.01.2012 (Annexure P-2), it is clear that above said contention on behalf of the petitioner is misplaced. Once scheme is introduced and specific provisions are made thereunder, it is incumbent, that they should be complied with, for any employee to be held entitled for benefit thereunder. It is fallacious to say that petitioner was not permitted to join on the post of Headmaster and, therefore, could not submit his option. He had no right to join on the said post as has been adjudicated by this Court. Said adjudication has admittedly attained finality. as mentioned above. Furthermore, it is mentioned in impugned order dated 17.09.2015 (Annexure P-12) that petitioner had given his option for contributory provident fund. He withdrew the amount along with employer's share on 10.01.2005.

There is no illegality or infirmity in the impugned order dated 17.09.2015 (Annexure P-12), which has been correctly passed.

This writ petition is dismissed.

December 19, 2015
rts

(Lisa Gill)
Judge