

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

**CWP No.7105 of 2014**

**Date of decision: 23.07.2015.**

Smt. Sheel Sharma

..Petitioner

Versus

State of Haryana and another

..Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

**Present:** Mr. Sajjan Singh, Advocate  
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana  
for the respondents – State.

**Daya Chaudhary, J.**

Petitioner-Smt. Sheel Sharma has filed the present writ petition for issuance of a writ in the nature of certiorari for quashing of impugned order dated 07/10.02.2014 (Annexure P-5), whereby, the previous service rendered by her in Govt. aided school has not been counted for grant of pensionary benefits.

The petitioner was initially appointed as Science Teacher on 04.12.1974 in Govt. Aided School i.e., Bharti Kanya Senior Secondary School, Kath Mandi, Rohtak and she continued to work there upto 11.01.1988. Thereafter, she was selected on the post of

Head-Mistress in HES-III. Ultimately, the petitioner retired from service on 30.11.2008 as Block Development Officer and was granted pension by counting the length of service rendered by her only in Govt. Schools but her service rendered in Govt. Aided School was not counted. She filed CWP No.22995 of 2012, which was disposed of on 22.11.2012 with a direction that the petitioner shall file representation, which shall be considered and decided within a period of three months. In spite of directions, the representation of the petitioner was not decided and she had to file COCP No.2189 of 2013. The claim of the petitioner was rejected vide order dated 10.02.2014, which is subject matter of challenge in the present writ petition.

Learned counsel for the petitioner submits that the impugned order has been passed without any application of mind and without affording any opportunity of hearing to the petitioner. The instructions dated 22.08.1988 has been relied upon whereas said instruction deals with the employees of State Government and State Autonomous Bodies seeking absorption in Central Autonomous Bodies and Central Government and it has nothing to do with the case of the petitioner. Learned counsel for the petitioner further submits that the case of the petitioner is squarely covered by various judgments of this Court as well as instructions dated 10.06.2011 wherein it has specifically been mentioned that the Policy framed by the Government is applicable to those employees who worked in Haryana Aided Schools (Special Pension and Contributory Provident

Fund) Rules, 1999 and as such, are entitled to the benefits of pension subject to certain conditions. Learned counsel for the petitioner has relied upon judgments of this Court in **M.R. Juneja vs. State of Punjab and others, 2004(4) SLR 796, Om Parkash and others vs. State of Haryana and others, CWP No.6773 of 2010 decided on 19.04.2010** as well as **Raj Kali vs. State of Haryana and others, CWP No.3932 of 2011, decided on 06.09.2012.**

Learned State counsel submits that the petitioner is not entitled for the benefits claimed in the present writ petition as she did not apply through proper channel while applying for the post of Headmaster in Govt. High School as required under Rule 5(4) of the Haryana Aided Schools Rule 2001. As per aforesaid rule, the service rendered in Govt. Aided Schools is to be considered in case, the official has been appointed through proper channel. The petitioner has not placed on record any document to show that she applied through proper channel. Learned State counsel also submits that the instructions dated 22.08.1988 are applicable to the case of the petitioner.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned order as well as other documents available on the file.

Admittedly, the petitioner was initially appointed as Science Teacher on 04.12.1974 in a Govt. Aided School and she continued to work in that School upto 11.01.1988. Thereafter, she was

Same controversy was there in **M.R. Juneja's case** (**supra**) wherein the benefits of service rendered in Govt. Aided School were declined by raising certain objections. The objections raised by the respondent-department were meted out by giving specific finding after application of relevant rules in para Nos.8 to 10 of the judgment and the same are reproduced as under: -

“XXX XXX XXX

8. In order to appreciate the stand taken by the respondents for not counting the service rendered by the petitioner in M.D.A.S. Higher Secondary School at Moga, namely, that he did not apply for the fresh appointment at Ferozepur through his previous employer at Moga, I am of the view that the provisions of the 1979 Act and the 1981 Rules framed thereunder are primarily meant for protecting and regulating the service conditions of the employees of the government aided private schools. As a cardinal rule of interpretation, an effort should always be made to interpret the Act and the Rules to achieve the object for which the legislature stepped into this field. The provisions of the Act and the Rules

*framed thereunder, therefore, cannot be interpreted in a manner which may defeat the legislative object by negating the protection of conditions of service of the employees of Govt. aided private schools. Keeping in view these principles, in my view Rule 9(2) of the 1981 Rules, upon which reliance has been placed by the respondents, cannot be construed to mean that the appointment of a teacher in another aided school will be rendered illegal for the purpose of grant of pension merely because he did not apply for the second post in another school through his previous employer. The object of this Rules is that the first employer is not taken by surprise if an employee intends to resign from his service so as to take up another assignment. In the absence of any such objection by the previous employer on record, the State Government cannot be permitted to take shelter behind this technicality. Moreover, the petitioner was appointed in H.M. Higher Secondary School at Ferozepur in the year 1971 and at that time, neither the 1979 Act nor the 1981 Rules framed thereunder were in force. In the absence of retrospective applicability of these provisions, the respondents cannot be permitted to press into this objection.*

*9. Coming to the next objection raised on behalf of the respondent that the petitioner opened a new C.P.F. Account on his appointment at Ferozepur and thus proviso to sub clause (5) of Clause 6 of the Pension Scheme having not*

*been complied with, the service rendered by him at Moga does not form part of the qualifying service, I do not find any substance in this objection as well. Firstly, the Scheme has come into force with effect from the year 1987. This conditions did not exist at the time when the petitioner joined the School at Ferozepur on 31.12.1971. Moreover, from the documents on record, namely, letter dated January 27, 1992 (Annexure P-7) issued by the District Education Officer, Faridkot, the competent authority has already asked the Manager of the School at Moga for the transfer of C.P.F. Account of the petitioner from the post office at Moga to Punjab National Bank at Ferozepur. In the light of this permission granted by the District Education Officer, Faridkot, I am of the considered view that there is a substantial compliance of proviso to sub-clause (5) of Clause 6 of the Pension Scheme.*

*10. Coming to the last objection, I find from the plain reading of sub-clause (5) of Clause 6 of the Pension Scheme that the service rendered by an employee on an aided post even in another privately managed recognised school in the State of Punjab has to be counted for retiral benefits. Since the requirement of proviso to sub-clause (5) of Clause 6 has already been held to have been complied with, I find no reason as to why the service rendered by the petitioner in the School at Moga cannot be taken into account for the purpose of retiral benefits.*

*Keeping in view the object of the Pension Scheme and the intention of the competent authority to extend its benefit retrospectively so as to bring even those employees who retired on or before 5.2.1987 within its ambit, clause 6 of the Pension Scheme needs to be interpreted liberally. It cannot be over-looked that the petitioner was appointed against a government aided post whether it was in the School at Moga or Ferozepur. There is absolutely no adverse or incriminating material disqualifying him from claiming retiral benefits due to him. The petitioner served in both the schools without any break. He had no occasion to follow or meticulously comply with the provisions of 1981 Rules or the Pension Scheme as both were non-existent at the relevant time. That being so, the objections raised by the authorities in the State Government are totally hyper-technical, without any legal basis and against equity.*

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In **Om Parkash's case (supra)**, the issue was also the same and writ petition was allowed by relying upon law as laid down in decision of case in CWP No.16817 of 2007 decided on 22.07.2009, which is reproduced as under: -

*“ It is, thus, to be seen whether this service now can be excluded for the purpose of grant of pension. If the petitioner had continued to serve on an aided post in a private school, he would*

*have been entitled to count his service rendered therein for the purpose of pension and other retiral benefits. Would that service be lost to him for the purpose of pension because he has subsequently gone on to join a Government job, which is again a pensionable one? If the result is allowed to operate in this manner, it will be unfair, inequitable and harsh. The ratio of law as laid down in the case of Harnandan , Singh, Charan Singh and Chander Sain (supra) in this background would apply to the facts of the present case. Similar view has clearly been taken by the Division Bench of Rajasthan High Court in the case of Jawahar Lal Sharma Supra. In fact, the Division Bench of this Court in Charan Singh's case (supra) has observed that service rendered by a teacher in private school receiving aid is made pensionable and as such this service can not be ignored for grant of pension. The same is the situation here. Accordingly, I am of the view that the petitioner has made out a case for counting his service rendered on aided post in a private school for the purpose of pension and retiral benefits.”*

Similarly, in **Raj Kali's case (supra)**, the services rendered in Private Aided School were not counted and the writ petition was allowed by relying upon judgment of case in CWP No.16817 of 2007 decided on 22.07.2009 and it was also mentioned that the claim of the petitioner is covered by amendment in the Rules brought about vide notification dated 14.03.2008.

In view of the facts as mentioned above, the case of the petitioner is squarely covered by the decision passed in **M.R. Juneja's case (supra)**, **Om Parkash's case (supra)** and **Raj Kali's case (supra)**.

Accordingly, the present writ petition is allowed and impugned order dated 07/10.02.2014 (Annexure P-5) is quashed and the respondents are directed to release the pension and other retiral benefits due to the petitioner after taking into account the entire service including the service rendered in Govt. Aided School. The needful be done within a period of three months from the date of receipt of certified copy of this order. It is also directed that the petitioner shall deposit the employer share of CPF along with interest as per relevant instructions/Rules within a period of one month, if not deposited.

23.07.2015  
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**(DAYA CHAUDHARY)**  
**JUDGE**