IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9688 of 2005(O&M)
Date of Decision:14.01.2016

Kamarjit Kaur … Petitioner

Versus

State of Punjab & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Balbir Singh, Advocate, for the petitioner.

Mr. Inqulab Nagpal, A.A.G., Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

Prayer is to club service spent in Jawahar Navodaya Vidyalaya Samiti with service under the Punjab Government in the Education Department for pension and other pecuniary benefits. Previous service was from June 30, 1989 to August 5, 1998 as a Trained Graduate Teacher (TGT) Punjabi. While she was serving the Central Government Organization she applied for the post of Punjabi Teacher advertised in the Punjab Education Department. She applied for the post through proper channel. She succeeded and was appointed on July 22, 1988 in the grade of Rs.1630-2925. The troublesome cause was that the petitioner was drawing Rs.6375/- as basic pay in the pay scale of Rs.5500-9000 when she was relieved from Jawahar Navodaya Vidyalaya Samiti to join the new post which was in lower pay scale. Thus, she came from higher pay scale to lower pay scale. She claimed pay protection by counting her service spent in Jawahar Navodaya Vidyalaya Samiti. Her claim was rejected on July 6, 2004 by the Director Secondary Education, Punjab, Chandigarh. The reason for rejection was that the Central Government service was not countable for pay protection. That is what has brought the petitioner to this Court for claiming relief through directions.

Rule in question is Rule 4.4(b) of the Punjab Civil Services Rules Volume I, Part I read with Circular dated November 15, 2000 issued by the Punjab Government. To test the argument if any right exists as prayed, Rule 4.4 (b) would need to be read, which is as follows:-

> "4.4(b) If the conditions prescribed in clause (a) are not fulfilled, he will draw as initial pay the minimum of the time-scale:
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> Provided both in cases covered by clause (a) and in cases, other than cases of re-employment after resignation or removal or dismissal from the public service, covered by clause (b), that if he either –
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> (1) has previously held substantively or officiated in –
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> (i) the same post, or
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> (ii) a permanent or temporary post on the same time-scale, or
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> (iii)a permanent post other than a tenure post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale; or"

When the Rules speak of the "Government" it would mean State Government and not Central Government. The Rule regulates situations arising out of appointments from one to the other department of the Government or one or the other autonomous bodies within the control of the State Government or any other body owned by the State

Government. The petitioner worked with an autonomous body created by the Central Government before joining service in the Education Department, Punjab after resigning from previous service to take the position offered under the State Government. Surely, service rendered in Jawahar Navodaya Vidyalaya Samiti is not Punjab Government service. Even though the schools run by the Ministry of Human Resources Development Government of India in the Department of Education may be located within the territories of Punjab, a fiscal rule such as Rule 4.4 (b) is, it deserves strict construction of the context to avoid fastening financial liability on the State Government not visualized by it in the rules. Ordinarily, such a demand is not be within the jurisdiction of the writ Court to grant as it lies in the domain of the Policy made by the executive.

The circular dated November 15, 2000 deals with protection and fixation of pay of Government employees appointed by transfer/open selection etc. from one service to another and the term Government wherever used in the circular means none other than the State Government and not the Central Government. Therefore, the petitioner has no actionable claim for pay protection arising on the date of appointment in Punjab Education service albeit in lower pay scale accepted with open eyes with a view to secure a stable and secure career. Previous service may count for experience but can have no financial implications on the State of Punjab in absence of clear statutory rule or executive instructions laying down policy.

There is another reason why relief cannot be granted to the petitioner. While working in the Jawahar Navodaya Vidyalaya Samiti for a period of about 9 years the petitioner was not working in service of the Central Government but was employed in an autonomous body of the Central Government and thus, the instructions issued by the Punjab Government dated May 14, 1986 would apply to the case in hand. Para 3 of the circular has been cited by the State Government in its written statement to explain the circumstances under which benefit of past service can be counted as qualifying service for pension. Para 3 reads as follows:-

> "3. The employees of the autonomous bodies or Central or State Government as the case may be, who have already been sanctioned or have received pro rata retirement benefits or other terminal benefits for their past service have the option either:-
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> (a) to retain such benefits (in that event their past service will not qualify for pension under the new organization); or
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> (b) To have the past service counted as qualifying service for pension under the new organization in which case the pro rata retirement or other terminal benefits, if already received by them, will have to be deposited along with interest thereon from the date of receipt of those benefits till the date of deposit with the autonomous body of the Central/State Government, as the case may be. The right to count previous service as qualifying service shall not revive until the whole amount has been refunded. In other cases, where pro rata retirement benefits have already been sanctioned but have not yet become payable the concerned authorities shall cancel the sanction as soon as the individual concerned opts for counting of his previous service for pension and inform the individually in writing about accepting his option and cancellation of the sanction. The option shall be exercised within a period of one year from the date of issue of these orders. If no option is exercised by such employees within the prescribed time

> limit, they will be deemed to have adopted for retention of the benefits already received by them. The option once exercised shall be final.
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> Where no terminal benefits for the previous service have been received the previous service such cases will be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with the principles laid down in this letter. In no case pension contribution/liability shall be accepted from the employees concerned."

In the reply filed to C.M. No.506 of 2015, the State Government has argued that the petitioner has not disclosed the information as to whether or not she had received the terminal benefits like death-cum retirement gratuity, leave encashment, amounts lying in Contributory Provident Fund due from her previous employer nor has she impleaded the said authorities in the array of parties in the present litigation for them to confirm or answer the petition on merits. A perusal of the said instructions would further reveal that there has been no decision or agreement with regard to providing benefit of pay protection to employees who are ultimately absorbed in State/Central Government Services. At present, the State Government does not have any policy instructions according to which the pay of persons who are recruited afresh and had worked in the Central autonomous body prior to being inducted into Government service could be protected. Neither has the petitioner mentioned any policy instructions according to which her claim for pay protection can be covered. Therefore, the claim of the petitioner qua her pay protection as has been claimed in the present application as well as in the writ petition is also not legally sustainable. Therefore, the petitioner is not entitled to the benefit of pay protection which she was drawing before being appointed in the answering respondent-department.

For all the reasons recorded above, there is no life in this petition, which is ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

14.1.2016
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