

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

CWP No.19619 of 2014 (O&M)

Date of decision: 31.03.2016

Dr. B.S. Yadav

.....Petitioner

Versus

Kurukshetra University, Kurukshetra

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

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

Present: Mr. Krishan Kumar Gupta, Advocate,
for the petitioner.

None for the respondent.

Ritu Bahri, J.

The petitioner, by way of present petition, is seeking direction to the respondent to release his revised pension and retiral benefits along with arrears after counting the past service rendered by him prior to joining service in the respondent-University as qualifying service pursuant to their own decision taken vide letter dated 18.08.2009 (Annexure P-9).

Initially, the petitioner served as Athletics Coach from 06.08.1963 to 04.08.1967 in the Netaji Subhash National Institute of Sports, Patiala, which is an autonomous body financed by the Government of India, Ministry of Education (Human Resource & Development), New Delhi.

Thereafter, he joined as Physical Training Officer in the Regional Engineering College, Kurukshetra, which was affiliated with the

Kurukshetra University, Kurukshetra and served there w.e.f. 05.08.1967 to 14.03.1975. Consequently, the petitioner was selected as Assistant Sports Officer in Kurukshetra University, Kurukshetra and he joined there as such on 15.03.1975. After being promoted as Sports Officer and thereafter, as Director Sports, he retired on 31.08.1998.

Initially, Contributory Provident Fund (CPF) Scheme was prevalent in the respondent-University and subsequently, a Pension Scheme known as Kurukshetra University Employees Pension Scheme Rules, 1997 came into force w.e.f. 01.04.1995. The petitioner opted for the pension scheme from its effective date i.e. 01.04.1995. He made a request to count his previous service which was rendered with Netaji Subhash National Institute of Sports, Patiala and Regional Engineering College, Kurukshetra towards pensionary benefits by way of representation dated 19.02.1998 (Annexure P-2). However, the said representation was rejected on the ground that under Rule 4 (vii) of the Kurukshetra University Pension Scheme, period of service rendered by an employee in any State Government or Government aided private college or in any University or autonomous body against aided post prior to joining in the University shall not be counted as qualifying service for pensionary benefits. The petitioner along with similarly situated employees of the respondent-University filed Civil Writ Petition No.18560 of 1998, titled as 'R.S. Mehrotra and others Vs. State of Haryana and others', which was disposed of on 13.07.2009 (Annexure P-6) on the statement made by counsel for respondent-University to the effect that Rule 4 (vii) of the Pension Rule would be amended and the same would be sent to the Government for approval. Thereafter, learned counsel appearing for State of Haryana made a statement that if, any

approve the same in accordance with law within a period of two months. As per Minutes of Meeting of the Executive Council held on 11.10.2008 (Annexure P-7), approval was given to the proposed amendment as per the provisions contained in the Haryana Government instructions dated 22.08.1988 and 07.01.2002 (Annexures P-4 and P-5). The Government, vide letter dated 30.04.2009 (Annexure P-8) conveyed to the University that no formal approval from the State Government was required in the matter and the University at its own level could amend the Rules in accordance with the aforesaid instructions. The respondent-University further informed the State Government, vide letter dated 18.08.2009 (Annexure P-9) that the approved amendment was being incorporated under Rule 4 (vii) of Section 1 of the Kurukshetra University Employees Pension Rules and the cases for grant of pension by counting of past service, which were pending due to non approval of the amendment, were being considered by its office. Despite issuing letter dated 18.08.2009 (Annexure P-9), the benefit has not been extended to the petitioner. A similar controversy came up for consideration before this Court in CWP No.7180 of 1999, titled as 'Prof. Jahan Singh, Deptt. of Physics, M.D. University, Rohtak Vs. Vice Chancellor, M.D. University, Rohtak and another' (Annexure P10). In that case, before joining the M.D. University, the petitioner had served in Regional Engineering College, Kurukshetra as Lecturer in Physics on 01.12.1965; research Assistant in the Department of Physics, University of Birmingham, England; Lecturer in Physics, Punjab University Post Graduate Regional Centre, Rohtak on 05.07.1970 and Assistant Director, Haryana Police Forensic Science Laboratory, Madhuban (Karnal). His services were terminated in pursuance of resolution dated 20.06.1979 and thereafter, he

joined the University on 05.10.1983 and finally retired on 31.01.2000. The petitioner's claim was allowed in view of the instructions dated 24.12.2001 and 06.06.2002 issued by the State of Haryana to the effect that the services rendered by the petitioner from 1965 to 1977 (for 9 year and 2 months) be added to the total service for the purpose of grant of gratuity as well as pension in addition to the benefit already granted from 19.10.1977 to 21.01.2000. LPA against the said judgment filed by the University, was dismissed vide judgment dated 26.05.2009 (Annexure P-11) with a slight modification that the petitioner would not be entitled to the increments emerging from the extraordinary leave in respect of the period when he worked at the University of Zambia, Lusaka (South Africa) from 30.11.1983 to 14.08.1985.

Upon notice, written statement on behalf of the respondent has been filed, wherein it has been stated that vide letter dated 19.02.1998, the petitioner had been informed that the period of service rendered by an employee in any State Government or Government aided private college or in any University/Autonomous body against aided post prior to the joining of the University shall not be counted as qualifying service for pensionary benefits. The respondent-University had adopted Government notification dated 22.08.1998 and 07.01.2002 regarding counting of past service vide resolution dated 11.10.2008. In the letter dated 07.02.2001, it was clearly mentioned that office memo dated 07.01.2002 would apply to the employees who are in service and had not been retired from the University. The petitioner retired from service on 31.03.1998, much prior to the said instructions dated 07.01.2002. Hence, he cannot be given the benefit of past service. It has been further stated that a similar petition i.e. CWP No.13644

dismissed by a Division Bench of this Court on 21.07.2011 (Annexure R-1).

After hearing learned counsel for the parties, the present petition deserves to be allowed.

Judgment dated 21.07.2011 passed by Division Bench of this Court in CWP No.13644 of 2010 (Annexure R-1), referred to by learned counsel for the respondents, will not be applicable to the facts of the present case, as in that case petitioner-Dr. O.H.Rana had been working in C.R.A. College, Sonapat, which was an aided college and as per memo dated 07.01.2002, an employee must have rendered service in State Autonomous Body/Statutory Body, which might have been created under a statute promulgated by the State or Central Government. As per explanation appended to Clause 3, a State Autonomous Body would include a State University, but it would not include a Public Sector Undertaking/Public Enterprise/Company registered under the Companies Act/Society registered under the Societies Registration Act and private bodies and managements. Since the petitioner, in that case, was working in private aided college and hence, services rendered in that college would not be covered by the Office Memorandum dated 07.01.2002.

In the present case, the petitioner had initially served as Athletics Coach in the Netaji Subhash National Institute of Sports, Patiala, w.e.f. 06.08.1963 to 04.08.1967, which is an autonomous body financed by the Government of India, Ministry of Education (Human Resource & Development) New Delhi. Thereafter, he served as Physical Training Officer in the Regional Engineering College, Kurukshetra w.e.f. 05.08.1967 to 14.03.1975, which was affiliated to Kurukshetra University. Thereafter, he joined as Assistant Sports Officer in Kurukshetra University on

State Autonomous Bodies, either financed by Government of India or by State Government. The memo dated 07.01.2002 (Annexure P-5) came up for consideration before this Court in **Prof. Jahan Singh's** case (supra) and **The Vice-Chancellor, Maharshi Dayanand University, Rohtak and another Vs. Dr.Jahan Singh**, LPA No.27 of 2006, decided on 26.05.2009 (Annexure P-11), whereby a consistent view has been taken that the services rendered by the petitioner in Regional Engineering College, Kurukshetra; Punjab University Post Graduate Regional Centre, Rohtak; Haryana Police Forensic Science Laboratory, Madhuban (Karnal) and Kurukshetra University, Kurukshetra would be clubbed together for counting retiral benefit of the petitioner as these services were rendered in State Autonomous Bodies and were duly covered under the letter dated 07.01.2002, which was adopted by the Kurukshetra University and the amendment was incorporated under Rule 4 (vii) of Section 1 of the Pension Rules.

A perusal of letter dated 22.08.1988 (Annexure P-4) further shows that a decision had been taken to count the service for the purpose of pension qua the employees of the State Government and State Autonomous Bodies seeking absorption in Central Autonomous Bodies and Central Government/Central Autonomous Bodies respectively and vice versa. Certain conditions were imposed for availing this benefit. The case of the petitioner is fully covered by the instructions dated 22.08.1988 and 07.01.2002 (Annexure P-4 and P-5). Further, pursuant to the meeting of the Executive Council held on 11.10.2008 (Annexure P-7), the respondent-University had adopted the proposed amendment. The respondent-University, vide letter dated 18.08.2009 (Annexure P-9) had informed to the

passed an order that the amendment approved by the Executive Council under Resolution No.53 in the meeting held on 11.10.2008 be implemented to consider the issue of grant of benefit of past qualifying service towards pension to the University employees as per provisions contained in letters dated 22.08.1988 and 07.01.2002 issued by the Government of Haryana, Finance Department.

The case of the petitioner is fully covered by the above instructions, which have been incorporated and implemented by M.D. University, Rohtak in Prof. Jahan Singh's case (supra) (Annexures P-10 and P-11).

In view of the above, the respondent is directed to recalculate the pension of petitioner as per instructions dated 22.08.1988 and 07.01.2002 (Annexures P-4 and P-5) by taking into consideration previous services rendered by him w.e.f. 06.08.1963 to 04.08.1967 and 05.08.1967 to 14.03.1975 along with all consequential benefits, within a period of three months.

Allowed accordingly.

31.03.2016
ajp

(RITU BAHRI)
JUDGE