IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21856 of 2014 (O&M)
Date of decision: 21.03.2016

Dr. B.D. Vij

...........Petitioner

Versus

State of Haryana and another

...........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. K.L. Arora, Advocate,
for the petitioner.

Mr. Gaurav Goel, AAG, Haryana.

Ritu Bahri, J.

The petitioner is seeking a writ of certiorari for quashing the order dated 15.09.2014 (Annexure P-9) and for directing the respondent-State to release his pensionary benefits by counting the service rendered by the petitioner in Nehru College, Ajronda.

The petitioner was appointed in Nehru College, Ajronda, Faridabad as lecturer in Hindi & Sanskrit on 24.10.1968. He was confirmed on the said post vide letter dated 11.08.1970 (Annexure P-3). Later on, the said college was disaffiliated by the Punjab University w.e.f. 10.04.1973, therefore, it was closed down. Consequently, the petitioner was relieved from service vide order dated 14.04.1973 (Annexure P-4). In this background, he withdrew his provident fund. Thereafter, he was appointed in Dyal Singh College, Karnal vide order dated 14.08.1973 (Annexure P-5) as Lecturer in Hindi & Sanskrit w.e.f. 01.08.1973. He served in that college till his retirement on 30.06.1998 i.e. for 25 years. Both the above said colleges were privately affiliated colleges and were receiving grant in aid from the Haryana Government. The petitioner sent a representation dated 26.07.2013 (Annexure P-6) to the Director General, Higher Education, Haryana, making a request to count his previous service rendered in Nehru College, Ajronda w.e.f. 24.10.1968 to 09.04.1973 i.e. 4½ years towards pension etc. He also gave an undertaking to deposit the amount of provident fund along with interest as per rules and regulations. The Principal of the second college i.e. Dayal Singh College, vide letter dated 10.02.2014 (Annexure P-8), sent the pension case of the petitioner to respondent No.1 along with relevant documents. However, vide order dated 15.09.2014 (Annexure P-9), the case of the petitioner has been rejected on the ground that the same is not covered as per the provisions of Rule 2 (j) and 6 (V) of Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 (for short '1999 Rules'), as amended by 2001 Rules.

Upon notice, written statement on behalf of respondent No.1 has been filed, stating therein that vide notification dated 31.05.1999, the State Government had introduced the pension scheme for the first time to the employees working on aided sanctioned posts in the Non-Government Private Affiliated Colleges in the State of Haryana w.e.f. 11.05.1998, in lieu of Contributory Provident Fund. Prior to the introduction of Pension Scheme, 1999, the employees working in Non-Government Privately Managed Colleges were not entitled for any pensionary benefits. The benefit of Contributory Provident Fund had already been given to the petitioner as per Pension Rules. In this Pension Scheme, the benefit of commutation of pension and leave encashment has also been specifically denied. This Pension Scheme was further amended vide notification dated 24.01.2001. Relevant part of the aforesaid Scheme is reproduced as under:-

> "Section 2 (j) of the Pension Rules, 1999, defines the term "qualifying services" as under:-
>
> "Qualifying service" means the service that qualifies for pension under these Rules. It shall be reckoned in terms of completed half years, provided that the fraction to three months and above shall be treated as completed half year. However, the qualifying service will be taken into account with effect from the date an employee starts Contribution towards Contributory Provident Fund."

Rule 6 of the Pension Rules (amended up to date) prescribes for qualifying service for entitlement of an employee for retiral benefits, which is reproduced as under:-

> "Rule 6. The services of an employee shall qualify for retiral benefits under these Rules as under:-
>
> (i) The service rendered on attaining the age of 18 years on approved post admitted for grant-in-aid.
>
> (ii)The service rendered till the attainment of superannuation age of sixty years.
>
> (iii)The leave admissible under the Haryana Affiliated Colleges (Security of Service) Rules, 1979 and under instructions issued by the Government from time to time, excluding the leave without pay and period of suspension, over stay of leave not subsequently regularized and period of break in service.
>
> (iv)Service rendered in one or more private affiliated Colleges, receiving grant-in-aid under the same management.
>
> (v)Service rendered on aided sanctioned post in any aided Colleges in the State of Haryana.
>
> Provided that the official has been appointed through proper channel on aided sanctioned post and the approval of continuity in services has been obtained from the Director.
>
> **Provided further that Contributory Provident Fund account of the employee in the previous college continued as such in the subsequent college to which he is transferred or appointed and there is no break in service or the service condition as modified by the government from time to time**."

The petitioner is being denied the benefit on the ground that as per Rule 6 (v) of Pension Scheme, Contributory Provident Fund of the petitioner was never transferred in the subsequent college i.e. Dyal Singh College, Karnal after his first college i.e. Nehru College, Ajronda (Faridabad) closed down due to disaffiliation by the University. Therefore, as per the Rule 6 (v) of amended Rules, 2001, the services rendered by the petitioner from 24.10.1968 to 14.04.1973 in Nehru College, Ajronda cannot be taken into consideration for the purpose of pension etc. Another ground for denying this benefit to the petitioner, is that there was a break in CPF deduction for a period of four months. The petitioner has given an undertaking in form of option (Annexure R-1) that he shall abide by the Pension Scheme, 1999 and shall refund the amount on account of his and his employer's share as worked out by the Director. But, the petitioner did not deposit the amount of CPF along with interest. He has filed this petition after his retirement on 30.06.1998, therefore, the same is liable tobe dismissed on account of undue delay. During his entire service with the second college, i.e. Dyal Singh College, he did not raise any objection. Now, he cannot take the benefit of the judgment passed by a Division Bench of this Court in ***S.M. Acharya Vs. State of Haryana and another,*** 2008 (1) SCT 804, as in that case, the petitioner was working in Punjab and he was appointed in Haryana through proper channel, where he was governed by 2001 Rules. He had deposited his and his employer's contribution towards EPF and on account of some official lapse, the amount deposited by him was not accounted for. The Division Bench held that on account of lapse on the part of the employer, the petitioner cannot be deprived of the benefit of his entire service rendered in both the States.

In the present case, after accepting the CPF amount from first college i.e. Nehru College, Ajronda, the petitioner did not deposit the same on his appointment in Dyal Singh College way back in 1973. Till his retirement, he did not exercise any option as per Pension Scheme, 1999, which was subsequently amended in 2001. The petitioner has been given the benefit of Pension Scheme for serving for almost 25 years in Dyal Singh College, Karnal w.e.f. 01.08.1973 to 30.06.1998.

Learned counsel for the petitioner has argued that the petitioner had to leave his first college i.e. Nehru College, Ajronda on 14.04.1973 on account of disaffiliation by the university. Thereafter, he joined the second college (Dyal Singh College, Karnal) on 01.08.1973. Thereafter, was a gap of almost 4 months in joining the second college. Both the colleges were Government aided colleges and his appointments in both the colleges were by way of regular selection process. Hence, there was only 4 month's gap and by excluding this 4 months' period, 4½ years can be counted for the purpose of pension etc. At the time when the first college was closed down due to disaffiliation, the Pension Rules were not in existence. He further argued that as per rule 17 (3) of 1999 Rules, if any amount of CPF had been drawn, the same could be deposited or it could be recovered from the pensionary benefits by the State. The petitioner as per undertaking dated 07.12.1999 (Annexure R-1) had agreed to refund the amount on account of his and his employer's share as worked out by the Director. This undertaking was given by the petitioner after he had retired on 30.06.1998. The Director did not intimate the petitioner regarding the amount, which was required tobe refunded.

Learned counsel for the petitioner has referred to the judgment passed by Full Bench of this Court in ***R.S. Randhawa Vs. State of Punjab and others,*** 1997 (3) RSJ 318, to contend that in a case for claiming retiral benefit, the plea of bar of limitation cannot be permitted because the State had defaulted in the performance of its duty and it could not be denied when it became due. Finally, he has argued that his case is squarely covered by the judgment passed by a Division Bench of this Court in ***S.M. Acharya's*** case (supra), which has been upheld by the Hon'ble Supreme Court while dismissing SLP on 30.05.2014.

Learned counsel for the State has argued that in view of the stand taken in written statement, the petition is liable tobe dismissed on the ground of delay and laches.

In the present case, the petitioner retired from service on 30.06.1998 and thereafter, the Pension Scheme for the first time, was introduced for the employees working on aided sanctioned posts in the Non-Government Private Affiliated Colleges in the State of Haryana vide notification dated 31.05.1999, which was further amended in the year 2001. Sub-rule (3) of Rule 17 of the above Rules is applicable in the case of the petitioner, which came into force vide notification dated 24.01.2001 i.e. after retirement of the petitioner. Sub-rule (3) & (4) of Rule 17 is reproduced as under:-

> "(3) The employees who have retired on or after coming into force of these rules and have already drawn the employer's share of Contributory Provident Fund together with interest accrued thereon and they (or in case of death of such an employee, his legal heirs) are not in position to refund the same in cash, may be allowed to adjust the same against the amount of gratuity or arrears of pension that may be admissible to them. In such cases the employer's share of Contributory Provident Fund together with interest accrued thereon shall be refunded with 12% interest on the amount actually drawn, calculated from the date of drawl of the said amount to the date of refund or adjustment and if, there still remains any due amount, it will be adjusted by non-payment of pension till recovery of the total amount is adjusted."
>
> (4) The date of drawal and refund of the amount of employer's share

together with interest thereon shall be recorded in the service book and the entry shall be attested after verification by the Director. The concerned employee or their legal heirs, as the case may be, shall give an undertaking in writing to the effect that he has no objection to such recovery or adjustment."

The aforesaid Rules, clearly provide that if, an employee has taken his share of Contributory Provident Fund, he can refund the same with 12% on the amount actually drawn and if, any amount remains due, it will be adjusted by non payment of pension till recovery of the total amount is adjusted. As per Sub-Rule (4) above, the date of drawal and refund of the amount of employer's share shall be recorded in the service book and that entry shall be attested, after verification, by the Director.

In the present case, the respondents have placed on record an undertaking (Annexure R-1) given by the petitioner. This undertaking was given on 07.12.1999 after the petitioner had retired on 30.06.1998 and the petitioner undertook to abide by all the instructions of the Haryana Government notification dated 31.05.1999, vide which, Pension Scheme was introduced, for the first time, to the employees working on aided sanctioned posts in the Non-Government Private Affiliated Colleges in the State of Haryana. As per undertaking (Annexure R-1), it is clear that it was the Director, who was to work out the employer's share of contributory fund, which the employee would refund thereafter.

In the written statement, the respondents have not stated as to pursuant to the undertaking (Annexure R-1), whether any calculation was given to the petitioner, which he would refund as per Rule 17 (3) of the Pension Scheme. In the absence of any such communication, the case of the petitioner cannot be rejected on the ground that he did not deposit the amount of CPF as required.

In ***S.M. Acharya's*** case (supra), while interpreting Rule 17 (3) and

(4) of the Rules, the Division Bench of this Court had held that once the petitioner, in that case, had given an undertaking that he was ready to deposit the management share of CPF amount along with interest, the respondent-department should have accepted his undertaking and reckoned/released his retiral benefits after taking into account his service rendered in D.A.V. College, Hassanpur.

In the facts of the present case, once the petitioner had given an undertaking (Annexure R-1) that he will deposit the amount as calculated by the Director, it was the duty of the Director to inform the petitioner regarding the amount, which was required to be deposited with interest as per aforesaid Scheme. The petitioner cannot be deprived of his right to count 4½ years' service, which he had rendered in Nehru College, Ajronda, Faridabad towards pensionary benefits. This service rendered by the petitioner is covered under Rule 6 of 1999 Rules as "Qualifying Service." On the date of retirement, this Pension Scheme was not in force. After amendment in 2001, the employer's share could be refunded with interest at the rate of 12% per annum in order to count the previous service for the purpose of pension. The full Bench of this Court in ***R.S. Randhawa's*** case (supra), has observed as under:-

> "9. The question that now arises for our consideration is whether a retiree can approach this Court under Article 226 of the Constitution to claim interest only on the delayed payment of pension and other retiral benefits. As observed earlier, there is a duty cast on the State to disburse pension and retiral benefits immediately when they become due and it is the non-performance of this statutory duty which gives rise to the retiree to claim compensation by way of interest. This right to claim interest partakes the nature and character of the retiral benefits and is indeed a concomitant of the right to claim pension and retiral benefits and cannot be separated therefrom. This being so, a claim for interest by a pensioner cannot be equated with a claim for money simpliciter or any interest thereon arising out of contractual obligations. Moreover, in a claim for

> recovering pension or other retiral benefits which the State has wrongfully withheld or even when interest is claimed on those amounts, the plea of bar of limitation cannot be permitted to be raised because the State has defaulted in the performance of its duty in not paying the amount when it became due. In this view of the matter, it follows that when a retired government employee can seek his remedy by invoking the jurisdiction of this Court under Article 226 of the Constitution t claim pension and retiral benefits by the issuance of a writ of mandamus or any other order or direction, he is equally entitled to seek relief in the same way for claiming interest only on delayed payments which is an enforcement of an incident of the same right. It will of course, be open to the State to plead and prove that there has been no delay much less culpable delay on its part in disbursing the amount so as to entitle a retired employee to any interest as claimed by him. To put it differently, if a retired government employee can show that there was delay in the payment of pension or any other retiral benefit to him, the onus would be on the State t show that it is not guilty of any culpable delay and if it is unable to discharge the onus or satisfy the court as to the reasons for the delay a direction to pay interest for the period of delay would invariable issue."

Break in the service of the petitioner is only of 4 months, as he had left his previous college i.e. Nehru College, Ajronda on 14.04.1973 on account of the fact that the same had been disaffiliated by the University. The break was less than one year and hence, his service in the first college is liable to be counted towards qualifying services as per Rule 6 (v) 1999 Rules. Even after deleting this gap of four months, there would be continuity of service for all intents and purposes. As per amendment in aforesaid Rules in 2001, even after retirement, if the amount of CPF is returned with interest that period can be counted towards pensionary benefit. In the case of the petitioner, once he had given an undertaking (Annexure R-1) after his retirement, it was the duty of the Director to inform him to refund the amount of CPF along with interest at the rate of 12% per annum, which the Director had not done. Hence, the ratio of the judgment passed by Division Bench of this Court in ***S.M. Acharya's*** case (supra), which has been upheld by the Hon'ble Supreme Court, is applicable to the facts of the present case.

In view of the above discussion, the impugned order dated 15.09.2014 (Annexure P-9) is quashed and the respondent-department is directed to recalculate and release the pension and other pensionary benefits to the petitioner by reckoning/considering the service rendered by him in the first college i.e. Nehru College, Ajronda, Faridabad and gave him appropriate calculations to refund the amount as per his undertaking (Annexure R-1). This process be completed within three months from the date of receipt of certified copy of this order.

Allowed accordingly.

No order as to costs.

(RITU BAHRI)
JUDGE

21.03.2016
ajp