

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.8094 of 2011(O&M)
Date of Decision: 22.09.2016

Man Singh

.... Petitioner

vs.

State of Haryana and Others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr.Sawinder Singh, Advocate
for the petitioner
Mr. Naveen Sheoran, DAG, Haryana
Mr. R.S. Pathania, DAG, Punjab

Kuldip Singh J.(Oral)

Petitioner was appointed purely on temporary basis as a Social Studies Master in the State of Punjab vide Annexure P-1 on 7.9.1978. Accordingly, he joined the service at Government Model School, Karandi falling in District Bhatinda on 16.9.1978. Thereafter, the State of Haryana advertised the post of Head Master. Accordingly, the petitioner applied for the post of Head Master in the State of Haryana through proper channel and the same was forwarded to the concerned authority vide diary register Annexure P-3. Thereafter, on the recommendation of Subordinate Services Selection Board, Haryana, the petitioner was selected vide selection as Head Master letter dated 4.1.1988. Consequent upon his selection, he resigned from the post of Social Studies Master from Government Model School, Karandi, Bhatinda on 13.1.1988, Annexure P-5 and thereafter, on 14.1.1988, he joined as a Head Master in the State of Haryana from where he retired on 31.1.2008. Accordingly, after his retirement PPO was issued by the Accountant General, Haryana, on 7.6.2010 (Annexure P-7) wherein

service rendered in the State of Haryana from 14.1.1988 to 31.1.2008 were considered and his service rendered in the State of Punjab from 16.9.1978 to 13.1.1988 was not considered as qualifying service for the purpose of pension. Petitioner has filed the present writ petition claiming that under his service rendered in State of Punjab is to be counted for the purpose of grant of pensionary benefits under Rule 3.17 of Haryana Civil Services Rules Volume-II (in short, 'Service Rules') and that the State of Punjab is accordingly liable to contribute to the pension so fixed after computing his service rendered in the State of Punjab also.

The State of Punjab in the short reply has not denied the service but it was stated that since the petitioner retired from State of Haryana, therefore, the Education department, State of Haryana has correctly counted his service rendered in the State of Haryana. It was primary function of Education Department of the State of Haryana to count the period of service rendered by the petitioner in Education Department of State of Punjab after following the procedure, if the petitioner applies for the job in the Haryana State through proper channel. Thereafter, the work related to refixation of pension rests with the Accountant General (A&E), Haryana, Chandigarh-respondent No.5.

The stand of the State of Haryana is that the provisions of Rules 3.17 Volume II of Service Rules are not attracted in the case of the petitioner and his past service rendered in State of Punjab cannot be counted for the grant of pension. The facts claimed by the petitioner are not denied.

I have heard learned counsel for the parties and have also carefully gone through the file.

The main controversy in this case is as to whether the service of

the petitioner rendered as Social Studies Master in State of Punjab is to be counted for computing his qualifying service for the grant of pension in the State of Haryana, where he served from 14.1.1988 to 31.1.2008 or not ?

Rule 3.17 is reproduced as below:-

“3.17 In the case of an officer retiring on or after 5th January, 1961, if he was holding substantially a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of:-

- (i) Period of temporary or officiating service in non-pensionable establishment;*
- (ii) Period of service in work charged establishment;*
- and;*
- (iii) period of service paid from contingencies” Note 1 and 2*

Xx xx xx

Note 3(a) In respect of temporary employees of the following categories who render service under the Central/State Governments prior to securing posts under the Central/State Governments on their own violation in response to advertisements or circulars, including those by Union/State Public Service Commission and who are eventually confined in their new posts, the proportionate pensionary liability in respect of temporary service rendered under the Central/State Governments to the extent such service would have qualified for grant of pension under the rules of the respective Government, will be shared by the concerned Governments on a service share basis:-

- (1) Those who having been retrenched from the service of Central/ State Government secured on their own employment under State/Central Government either with*

or without interruption between the date of retrenchment and date of new appointment.

(2) Those who while holding temporary posts under Central/ State Government apply for posts under State/Central Governments through proper channel/with proper permission of the administrative authority concerned.”

Now this Court is to examine whether the conditions laid down in the said Rule are attracted in the present case? Admittedly, as per the appointment letter Annexure P-1 petitioner was appointed on temporary basis in the State of Punjab where he served as Social Studies Master from 16.9.1978 to 13.1.1988. Thereafter, he resigned. In the meanwhile, he had applied for the post of Head Master in the State of Haryana through proper channel and was selected by Subordinate Services Selection Board. He joined in the State of Haryana on 14.1.1988. Therefore, the petitioner has complied with conditions laid down under Rule 3.17 of Service Rules and his service rendered in the State of Punjab on temporary basis is to be counted as the qualifying service for the grant of pension, with the rider that for the share of pension for the period he served in the State of Punjab, is to be shared by the Education Department of State of Punjab.

The prayer of the learned counsel for the petitioner is for counting the said period of service rendered in the State of Punjab as qualifying service towards the pension and the payment of proportionate pension by the State of Punjab along with the arrears of pension.

So far as the State of Haryana is concerned, it has paid all the arrears of pension and all other benefits.

In view of the matter, the present writ petition is allowed. The respondents State of Haryana is directed to count the service rendered by the

petitioner in State of Punjab as qualifying service for the purpose of pension. For this purpose, the State of Punjab through Secretary Department of Education shall submit all the service records to the Education Department of State of Haryana, which shall accordingly treat the temporary service of petitioner rendered in the State of Punjab as qualifying service and thereafter re-fix the pension, specifying as to what portion is to be shared by the State of Punjab. Thereafter, the State of Punjab shall contribute its share towards the pension of the petitioner continuously, which shall be disbursed by the State of Haryana to the petitioner in accordance with law. Since State of Haryana has already paid their share of pension, the arrears of pension shall be paid by the State of Punjab. Since, the petitioner has been approaching the State of Haryana and did not approach the State of Punjab, therefore, no interest on the arrears shall be paid.

Needful to be done within two months of receipt of certified copy of this order.

22.09.2016

gk

(Kuldip Singh)

Judge

Whether speaking / reasoned

Yes

Whether reportable

Yes