IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P. No. 2461 of 2013
Reserved On : May 27, 2016
Pronounced On : August 24, 2016

Lakshman Dass .... Petitioner

vs.

State of Haryana and others .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. J. P. Sharma, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

* * *

DEEPAK SIBAL, J. :

The petitioner, a retired Social Studies Master, has filed the present petition seeking quashing of order dated 22.08.2012 (Annexure P-12), through which his representation to count the service rendered by him in a private aided school, which was later taken over by the State of Haryana, towards pension, had been rejected. He further seeks the issuance of a direction to the respondent State to release pension to him, along with interest, after counting the service rendered by him in the afore-referred private aided school.

The relevant facts lie in a narrow compass. On 02.09.1966, the

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petitioner was appointed as an untrained teacher in a private aided school namely Janta High School, Kaul, District Kaithal, Haryana (hereinafter referred to as – the School). While in service, he passed his B.Ed. examination and thereafter, in the year 1971, he was promoted to the post of Social Studies Master. On May 31, 1990, the School was taken over by the State of Haryana and thereafter, the petitioner was treated as a Government employee for all intents and purposes. On 31.12.1996, on attaining the age of superannuation, the petitioner retired from service. On retirement, since the petitioner's service, after the School had been taken over by the Government, was a little over six and a half years' and as per applicable service rules, a minimum of ten years of service under the Government was required for payment of pension, no pension was paid to him, leading to representations by the petitioner that the service rendered by him in the School prior to the same having been taken over by the Government be also counted towards pensionable service, primarily on the ground that the School, in which the petitioner was serving, was an aided School. His representations were ignored and finally rejected through the order impugned in the present petition.

Learned counsel for the petitioner submitted that the case of the petitioner was squarely covered in his favour by several judgments of this Court and the same should be applied to the case of the petitioner to grant him relief. The following judgments were cited :-

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1. State of Haryana vs. Ram Sarup – RSA No. 2224 of 1996,

decided on 20.09.1996 ;

2. Union of India vs. Jawahar Lal Sharma – 2003 (3) RSJ 672 ;

3. Charan Singh vs. State of Punjab and others – 2006 (6) SLR 624;

4. Harnandan Singh vs. State of Punjab – 2007 (2) RSJ 437 ;

5. Tarlok Singh and another vs. State of Punjab – CWP No.10236 of 2005, decided on 03.08.2006 ;

6. Risala Ram Saini vs. State of Haryana and others – RSA No. 3311 of 2005, decided on 27.01.2009 ;

7. Vijay Singh vs. State of Haryana and others – CWP No. 16817 of 2007, decided on 22.07.2009 ;

8. Balbir Singh Rathi vs. State of Haryana and others – CWP No. 15932 of 1993, decided on 21.01.2010 and

9. Devendra Kumar Sanchi vs. State of Haryana and others – CWP No. 13301 of 1994, decided on 21.01.2010.

Learned State counsel opposed the petition on several grounds and the first ground so raised was of delay and latches. It was submitted that the cause of action had accrued in favour of the petitioner in the year 1996 and that the present petition had been filed in the year 2013 i.e. after a delay of about 17 years. It was submitted that making of repeated representations by the petitioner could not be taken as a factor to condone the delay on the part of the petitioner in filing the present petition. Learned

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State counsel submitted that it had been brought on record by the petitioner himself that way back in the year 1998, he had accepted from the School the entire amount payable under the Group Insurance Scheme. It had further come on record that on 05.12.2000, he had also accepted the Contributory Provident Fund and these amounts were accepted by him without any protest. In view of these facts, on the ground of delay and latches, as also estoppel, it was prayed that the petition be rejected.

It was further submitted on behalf of the State that as per Rule 6.16 (1) of the Punjab Civil Services Rules, Vol. II (as applicable to State of Haryana) (hereinafter referred to as – the Rules), a minimum of ten years of service under the State was required for an employee to become eligible for the grant of pension and since the petitioner was having only a little over 6½ years of service under the Government, he was not eligible. The submissions made on behalf of the petitioner that the service rendered by him in the School, prior to it having been taken over by the Government, be counted towards pensionable service, was countered by invoking the provisions of Rule 3.16-A of the Rules, wherein it was provided that the service rendered by an employee in an aided school would not be counted towards pensionable service. It was further submitted that as per the Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001 (hereinafter referred to as – the Pension Rules), only those employees, who were in service in aided schools as on 11.05.1998, were entitled to count the service rendered by them in an aided school towards

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pension and since the petitioner had admittedly retired prior to the cut-off date i.e. on 31.12.1996, the benefit of the Pension Rules could not be given to him. It was argued that had the petitioner continued to serve in the aided school without the school having been taken over by the Government, he would have retired on 31.12.1996 and since the Pension Rules would not apply to him, his service in the aided school would not have been counted towards pension. It was brought to my notice that the afore-referred cut-off date of 11.05.1998 had, on a challenge made before this Court, been upheld in **LPA No. 469 of 2003 - Dr. Mrs. Janak Narendra vs. State of Haryana and others**, decided on **30.08.2010**. It was further submitted on behalf of the State that on 31.05.1990, when the School was taken over by the State, a gift deed was made, which formed the basis of such transfer. Relying upon Clause 5 of the gift deed, it was submitted that it was clearly stipulated in the gift deed that the Government shall not take any liability, contractual or otherwise, which may have been incurred by the School prior to the execution of the deed/taking over of the School. Relying on the afore-referred Clause 5 of the gift deed, it was submitted that the service of the petitioner rendered in the School prior to it having been taken over by the Government cannot be considered.

Learned State counsel, relied upon the judgments of the Apex Court in **State of Haryana vs. Dev Dutt Kaushal – 1995 (supp.) (4) SCC 748** and **Pepsu Road Transport Corporation, Patiala vs. Mangal Singh**

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<u>and others</u> – **<u>(2011) 11 SCC 702</u>**. The judgments cited by learned counsel for the petitioner were sought to be distinguished.

In **<u>Chander Sain vs. State of Haryana</u>** – **<u>1994 (1) SCC 750</u>**, the issue whether an employee of a Government-aided college, on the college having been taken over by the State, would be entitled to the grant of gratuity, was considered and adjudicated upon. In that case, the appellant before the Apex Court initially served in a Government-aided College, which was taken over by the State of Haryana w.e.f. 14.01.1980. After the take-over of the college, he was absorbed in the service of the Government and while serving as such, on attaining the age of 58 years, he superannuated on 01.02.1990. On 28.03.1979, the Government of Haryana had issued a Memo, which inter alia was to the effect that employees of private colleges, who were to retire on or after 01.04.1979, have to be treated at par with Government employees in the matter of gratuity. After considering the afore-referred Memo, the Apex Court was of the view that had the appellant continued in the service of the private college and superannuated in 1990, he would have been entitled to the grant of gratuity, as admissible to the Government employees, which would obviously include the service rendered by him in the private college, and therefore, only for the reason that in the year 1980, the College was taken over by the Government, he could not be denied such benefit. Paragraph 10 of the judgment, which is relevant, is reproduced for ready reference :-

*“**10.** We do not find any merit in this*

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contention of the learned counsel for the respondent-State. Para 3 of the Memo dated March 28, 1979 indicates that the employees in private colleges who were to retire on or after 1.4.1979 have to be treated on par with Government employees in the matter of gratuity. The mere fact that the appellant did not retire prior to the take over of the college by the State Government, but retired after it was so taken over, does not mean that he is not entitled to claim gratuity in respect of the period of service rendered by him before the college was taken over by the State. If the appellant would have been entitled to payment of gratuity on the basis of the service rendered by him when the college was under private management if he had retired prior to the college being taken over by the State Government, there appears to be no reason why the said period of service of the appellant while the college was under private management should be ignored for

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the purpose of computing gratuity payable to him. Merely because he retired after the college had been taken over by the State Government that shall not make any difference. The language of para 3 of the Memo dated March 28, 1979 does not support the submission of the learned counsel for the respondent-State that since the appellant retired after the college was taken over by the State Government, gratuity payable to him can only be computed on the basis of the service rendered by him after the college was taken over by the State Government and not for the period of service rendered by him before the college was taken over. Para 3 of the said Memo imposes an obligation on the management of a private college to pay gratuity to the employees. It cannot be construed as denying payment of such gratuity to a class of employees who were subsequently absorbed in Government Service and have retired after such

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> *absorption. In our opinion, therefore, the appellant is entitled to payment of gratuity computed on the basis of the entire period of his service covering the period of service rendered by him while the college was under private management as well as service rendered by him after the college was taken over by the State Government."*

A perusal of the afore-quoted portion of judgment clearly shows that the concerned employee was held entitled to the grant of gratuity, by counting the period of his service in the private college prior to the same having been taken over by the State, primarily for the reason that even if he would have continued to serve in the private college till the age of retirement, he would have been entitled to gratuity for the entire period of his service, and therefore, the same could not be denied only for the reason that in the integrum, the College had been taken over by the State.

In **Dev Dutt Kaushal's** case ***(supra)***, the Apex Court considered the case of an employee, who initially served in a private educational institution, which, on 30.06.1983, was taken over by the State Government, after which the petitioner served under the State Government till he, on attaining the age of superannuation, retired from service on 31.10.1989. He made a representation inter alia for the grant of pension after counting the service rendered by him in the private institution, but

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when no action was taken on his representation, he approached this Court by way of a writ petition, which was dismissed by a learned Single Judge. Dev Dutt Kaushal then preferred an intra-court appeal before a Division Bench, which was allowed. The State of Punjab challenged the Division Bench judgment of this Court before the Apex Court, which allowed the appeal. It was held by the Apex Court that in terms of the gift deed, which was executed at the time of take over of the college, no benefit of past service could be given to the respondent therein towards grant of pension. It was further held by the Apex Court that as per applicable Rules, no lecturer was entitled to pension unless he had put in 10 years of service under the State. The respondent therein had not served for 10 years under the Government. His contention to count the service rendered by him in the college, before the same was taken over, for the purpose of pension, was considered and rejected by the Apex Court on the ground that had the respondent therein continued to serve in the college without the same having been taken over by the Government, he would have retired in normal course, and in such a situation, he would not have been entitled to any pension since for that service, as per the applicable Rules, no pension was payable and that the employee was entitled to only Contributory Provident Fund. Paragraph 8 of the judgment, which is relevant, is as under :-

> *"8. Now coming to the claim for pension, it may be noted that according to the Government rules, no lecturer is entitled to pension unless he*

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puts in ten years service. There is no dispute about this position.There is equally no dispute that respondent had not served for ten years under the government. The contention of the respondent, however, is that the service rendered by him in the college while it was under the private management should also be counted and his pension fixed on that basis. We are again unable to appreciate this contention. As stated above, the respondent was not entitled to any pension according to the service conditions obtaining in the private college. Had the college not been taken over by the Government and had he retired in the normal course, he would not have been entitled to any pension. He was entitled only to contributory provident fund. It is only under Government service that pension is provided for. But such pension is available only if an employee puts in ten years of service under the government. Now the gift deed does not say that for the purpose of pension, the service rendered in the college while it was under the private management shall also be counted. On the

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<u>contrary, it says that the Government shall not be responsible and shall not accept any liability for the period prior to the taking over of the college and that all such liabilities shall be cleared by the managing committee of the college - which means that on the date of taking over of the college, the respondent was entitled to be paid the contributory provident fund by the then management of the college. Indeed, it is stated by the learned counsel for the State that it was so paid to and received by the respondent</u>. The correctness of the said statement has, however, not been put in issue and, therefore, we do not express any opinion on the correctness of the said statement of fact. All that we need to say is that the respondent was entitled to receive the contributory provident fund according to the relevant rules on the date of takeover of the said college from the private management. If he has not been so paid, his remedy lies against the managing committee of the college in office prior to the date of taking over. It may also be noticed that the gift deed expressly specifies the only

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exception to the rule of "new entrants" it recognised, viz., for the purpose of fitment in the appropriate scale of pay, their service in the said grade under the private management shall be taken into account. No other exception is provided for or recognised by the gift deed. Accepting the respondent's plea in this behalf would amount to reading yet another exception into the said gift deed, viz., for the purpose of pension also the service under the private management shall be counted. This we cannot do for more than one reason. Wherever it wanted to so provide, the gift deed itself specified the exception to the rule of "new entrants"; hence, no other exception can be read into it. Secondly, the gift deed provides expressly that in matters not expressly provided for in the gift deed, the rules, regulations, instructions and orders issued by the Government from time to time shall apply. In this view of the matter, the second claim of the respondent is also liable to be rejected and this is what the learned Single Judge of the High Court had opined. ***[Emphasis supplied]"***

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In my opinion, the afore-quoted observations by the Apex Court in **Dev Dutt Kaushal's** case ***(supra)*** fully covers the case of the petitioner against him.

In **Dev Dutt Kaushal's** case ***(supra)***, the respondent before the Apex Court was denied the benefit of counting of his past service in a private college before the same was taken over by the Government, for the purpose of making him eligible for the grant of pension for two reasons, which were that the grant of the benefit to the respondent therein would go against the terms and conditions of the gift deed which was executed at the time when the college was taken over and that had the respondent continued in the service of the college without the same having been taken over by the Government and retired, as per applicable Rules, he would not have been entitled to any pension as till the date of his retirement, Contributory Provident Fund Scheme was applicable.

The terms of the gift deed in **Dev Dutt Kaushal's** case ***(supra)***, to deny relief to the respondent therein, were that the State shall not accept any liability for the period prior to taking over the college and all such liability shall be of the Managing Committee. The provision in the gift deed in the case in hand is similar. Clause 5 of the same is reproduced below :-

> ***"5.*** *The Government shall not take any liability contractual or otherwise which may have been incurred by the donor prior to on the*

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execution of this deed, taking over of the School."

Further, there is no dispute that the College, in which the petitioner served, was taken over by the State of Haryana on 31.05.1990, and that he retired from service on 31.12.1996. Thus, from the date the college was taken over by the State till the date of his retirement, he had only put in a little over 6½ years of service under the State. It is further not disputed that under Rule 6.16 of the Rules, a minimum of 10 years of service under the State was required for an employee to become eligible for the grant of pension. Rule 6.16 is reproduced below for ready reference :-

> ***"6.16.*** *A Government employee retiring in accordance with the provisions of these rules before completing the qualifying service of ten years shall not be entitled to any pension but he shall be entitled to a service gratuity calculated at the uniform rate of half month's emoluments for every completed six monthly period of service."*

Thus, as per the afore-quoted Rule, for the service of about 6½ years rendered by the petitioner under the State, he is not eligible for pension.

The service of the petitioner, prior to the College having been taken over by the State cannot be ordered to be counted towards pensionable service, not only for the reason that the same would be against the provisions of gift deed, but also for the reason that had the petitioner

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continued in service of the college and retired in normal course on 31.12.1996, he would have not been entitled to the grant of pension. He would, at that time, be entitled only to the Contributory Fund Scheme, which was applicable.

At this juncture, the Pension Rules can be referred to. Rule 3 of the Pension Rules, which provides that only those employees of aided schools, who were appointed on and after 11.05.1998 or who were working on an aided sanctioned post immediately before 11.05.1998 and continued to work thereafter in aided schools, would be entitled to count their period of service rendered in such school for the purpose of pension. Rule 3 (1) of the Pension Rules is reproduced below :-

> ***"3(1)*** *Except as otherwise provided in any rule, and subject to the condition that the Management of an aided school executes an agreement in Form I, duly supported by a resolution of the Management to abide by the provisions of these rules and undertaking of the employee in triplicate in Form II and instructions issued by the Government from time to time, these rules shall apply to all the employees who :-*
>
> ***(a)*** *are appointed to an aided sanctioned post on or after the 11^{th} day of May, 1998 ;*
>
> ***(b)*** ***were working on the aided sanctioned***

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> ***posts immediately before 11th day of May, 1998 and continue to work as such thereafter*** **:**
>
> *Provided that the employees who were appointed to the aided sanctioned posts and have attained the age of superannuation on or after the 11th day of May, 1998 to the date of publication of these rules shall have the right to exercise option in triplicate in Form III* ***as to whether to be governed by these rules or not within a period of three months from the date of publication*** *of these rules in Official Gazettee.* ***[Emphasis supplied]"***

It is not disputed that the petitioner retired from service on 31.12.1996, and therefore, since he was not in service on the cut-off date prescribed in the afore-quoted Rule i.e. 11.05.1998, he would not be entitled to the benefit of the Rule. Thus, had he continued to serve the school and retired in normal course on 31.12.1996, he would have not been entitled to any pension and that he would have been entitled only to the benefits under the Contributory Provident Fund Scheme.

It may be noted that the afore-referred cut-off date with regard to the applicability of the Pension Rules has not been challenged by the petitioner. Even otherwise, the challenge to the afore-referred cut-off date of 11.05.1998 made before this Court was negated by a Division Bench

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of this Court in **Dr. Mrs. Janak Narendra's** case ***(supra)***.

In view of the above, the case of the petitioner would be fully covered against him on both the issues authoritatively settled by the Apex Court in **Dev Dutt Kaushal's** case ***(supra)***.

The judgments cited on behalf of the petitioner also do not further his case. Each of them are being separately dealt with.

In **Ram Sarup's** case ***(supra)***, a perusal of the judgment shows that this case was decided in favour of the respondent therein by following a Division Bench judgment of this Court in the case of **Amarjit Kaur vs. State of Punjab** – **1995 (1) SCT 449**. Amarjit Kaur's case was decided by following the order of the Division Bench of this Court in **LPA No. 1346 of 1991** – **Dev Dutt Kaushal vs. State of Punjab**, decided on **21.10.1993**. As discussed earlier, the order of the Division Bench of this Court in the aforesaid LPA was, on appeal, set aside by the Apex Court in **Dev Dutt Kaushal's** case ***(supra)***. Thus, the relief granted to afore-referred Ram Sarup was in turn on the basis of a judgment, which has been set aside by the Apex Court in appeal. Even otherwise, the case of the petitioner is fully covered against him by the judgment of the Apex Court in **Dev Dutt Kaushal's** case ***(supra)***, which was not considered in either **Ram Sarup's** case ***(supra)*** or in **Amarjit Kaur's** case ***(supra)***.

In **Jawahar Lal Sharma's** case ***(supra)***, which is a Division Bench judgment of Rajasthan High Court, the facts were that the respondent

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therein had been appointed as a Lecturer in a private college at Mathura in the year 1953. In the year 1963, he joined service of Railways Department, where he continued to serve till his date of superannuation, which was 30.06.1989. His pension was fixed without counting his service rendered by him as a Lecturer in the college prior to his joining the Railways Department, against which action he approached the Central Administrative Tribunal, which allowed the Original Application filed by him. The judgment of the Central Administrative Tribunal was challenged by the Union of India before the Rajasthan High Court. The writ petition was dismissed in limine. Neither the judgment of the Apex Court in **Dev Dutt Kaushal's** case ***(supra)*** was considered nor the taking over of the service of the respondent therein was on the basis of any deed governing such take over. The applicable service Pension Rules have also not been discussed.

Charan Singh's case ***(supra)*** is a Division Bench judgment of this Court, wherein the dispute pertained to the State of Punjab and not to the State of Haryana, as in the present case. Even otherwise, the facts of that case were that the petitioner therein was appointed on 04.09.1965 in an aided school as a S.S.Master. He was promoted as a Head Master w.e.f. 01.01.1986 and on 31.08.2000, the Management of the school was taken over by the Government of Punjab. All the employees of the school including the petitioner therein were absorbed in the service of the Government of Punjab. Thereafter, on 30.04.2002, the petitioner therein retired. Through the petition filed before this Court, he had claimed the

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service rendered by him in the private school to be counted as qualifying service towards pension. His plea was allowed primarily on the ground that had he continued to serve in the aided school without the same having been taken over by the Government, his service in the school would have been counted towards pensionable service. In fact, the Division Bench observed that the situation would have been different if the petitioner therein had not been entitled to the grant of pension and retiral benefits for the service while he was under private Management. In the case in hand, if the petitioner would have been continuing to serve under the school, he would have retired on 31.12.1996 and on such retirement, as per the applicable Rules, he could be extended only the benefit of the Contributory Provident Fund Scheme. Para 6 of the judgment, which is relevant, is reproduced below :-

> ***"6.*** *It cannot be denied that the scheme for grant of pension to those teachers serving in privately managed schools receiving Govt. aid are not entitled to grant of pension. Accordingly, even if the management of this school had not been taken over by the Government with effect from 31.8.2000, the petitioner would have received pension and other retiral benefits. Can, in this background, the petitioner be made to loose his entire service rendered prior to taking over*

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management of the school by the Govt. by invoking the terms of gift deed ? <u>Situation may have been different if the petitioner had not been entitled to grant of pension or retiral benefits for service while it was under private management</u>. Justifying the grant of pension and retiral benefits to S/Shri Mohinder Singh, Mohinder Singh Toor, Smt.Prasin Kaur and Ranjan Dass, referred to by the petitioner in his representation Annexure P5, the respondents have stated that these persons had retired from service while the school had not been taken over by the Govt. and was privately managed Government aided institution. The petitioner has lost his entire service merely because the school was gifted and taken over by the Govt. Discrimination here is clear and apparent. Clearly, he would have received pension if he had retired prior to the taking over of the school by Govt. Can't the petitioner now pray for pension for his service rendered in the school prior to it's take over. I think, he can. Merely because the petitioner has retired on a date by which the management of the school had

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gifted the same to the Government cannot lead to a situation so dreadful for the petitioner to disentitle him for pension and retiral benefits. It is conceded position that the service rendered by the petitioner while the school was privately managed and aided one was pensionable. Change of management and taking over of school by the Government cannot lead to changing the nature of the service if it otherwise was countable towards pension. Counsel for the petitioner, in our view, is justified in submitting that the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab v. Dev Dutt Kaushal, 1995(4) SCT 575 : AIR 1996 Supreme Court 85*** *is clearly distinguishable. This was a case where the service rendered in a college under the private management was not counted for the purpose of pension. In this background, it had been provided by the Government that such a teacher where the management of the college had been gifted must serve for 10 years under the Government for becoming entitled to pension. In the present case, the petitioner was entitled to pension even if the*

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school had not been taken over by the Govt. Rather, we find that the case of the petitioner would be covered by the judgment of the Hon'ble Supreme Court in the case of ***Chander Sain v. State of Haryana and others, 1994(2) SCT 102 : AIR 1994 Supreme Court 972.*** *In this case, the appellant before the Supreme Court had joined service as Director of Physical Education in Government aided college, which was subsequently taken over by the State Government and he was absorbed in the service of the Government. The question arose whether gratuity payable to him was required to be counted on the basis of the entire period of service rendered by him while serving in the college privately managed or only by counting his service from the date the college was taken over by the State Government. Hon'ble Supreme Court in this case clearly held as under :-*

> *"The mere fact that the appellant did not retire prior to the take over of the college by the State Government, but retired after it was so taken over, does not mean that he is not entitled to claim gratuity in respect of*

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> *the period of service rendered by him before the college was taken over by the State. If the appellant would have been entitled to payment of gratuity on the basis of the service rendered by him when the college was under private management if he had retired prior to the college being taken over by the State Government, there appears to be no reason, why the said period of service of the appellant while the college was under private management should be ignored for the purpose of computing gratuity payable to him. Merely because he retired after the college had been taken over by the State Government that shall not make any difference."*

To our mind, the present case is fully covered by the above mentioned observations made by the Hon'ble Supreme Court. Since the petitioner was entitled to count his service rendered in the privately managed school prior to take over, he cannot now be held disentitled to count this service for grant of pension and retiral benefits because the school had been taken over by the Government. It cannot be denied that the petitioner can claim pension and other retiral

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benefits for his service rendered in the school while it was under private management and can ask for ignoring his service in the Government. Under such circumstances, he cannot be denied pension merely because the school was taken over by the Govt. The service rendered by a teacher in private school receiving aid is now made pensionable and as such this service cannot be ignored for grant of pension. Accordingly, we allow the present writ petition and direct the respondents to count the entire service rendered by the petitioner in school including the one while it was being privately managed and before it was taken over by the Government in terms of the gift deed. The needful be done within a period of three months from the date of receipt of a copy of this order and all amounts due to the petitioner be released, failing which the petitioner will be entitled to the amount with interest at the rate of 6 % per annum from the date it is due to the date of payment. The writ petition is allowed in the above terms with no order as to costs.

Petition allowed. ***[Emphasis supplied]"***

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In **<u>Harnandan Singh's</u>** case ***(supra)***, the petitioner therein was appointed as a Master on 25.02.1972 in a school in District Hoshiarpur (Punjab). The said school was taken over by the Government on 06.03.1997. In the year 1992, the State of Punjab published a Pension Scheme, which was to be effective from the year 1987. As per this Scheme, the State of Punjab decided to grant to the employees of privately managed aided institutions benefits like pension and gratuity in lieu of Contributory Provident Fund. **<u>Harnandan Singh's</u>** case ***(supra)*** was allowed after the Division Bench found that in view of the said 1992 Scheme, if the petitioners therein had continued to serve aided school, without the same having been taken over by the Government, they would have been entitled to the grant of pension, by holding as under :-

> ***"12.*** *We have given our thoughtful consideration to the matter.*
>
> *The fact that the petitioners have rendered service in privately managed aided institutions, is not in dispute. Harnandan Singh - petitioner in CWP 11010 of 2005 was appointed as Master on 25.2.1972 at Bharat High School, Tuto Majra. He was promoted to the post of Headmaster on 12.3.1992 w.e.f. 1.10.1992. Smt Devinder Pal - petitioner No. 1 in CWP 11035 of 2005 was appointed as Hindi teacher in the aforesaid*

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Bharat High School, Tuto Majra on 13.5.1974. Manmohan Kaur - petitioner No. 2 in CWP 11035 of 2005 was appointed as JBT teacher on 22.3.1976 in the SHS Khalsa School, Jian Chabbewal. The Schools in which the petitioners were appointed, were Government aided privately managed schools. The petitioners, had, in both the petitions, from the date of their respective appointments, been continuously depositing Contributory Provident Fund. Bharat High School, Tuto Majra was taken over by the Government in pursuance of gift deed dated 6.3.1997 and the SHS Khalsa School, Jian Chabbewal, was taken over vide gift deed dated 10.8.2000. Both the gift deeds contain recital to the effect that Government is under no obligation to take over the establishment of the school. However, the Government would have the discretion to take those employees who fulfil the necessary qualifications under its control. It is further provided that the staff members who fulfil the conditions as contained in the gift deeds would be absorbed in Government service which would

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be considered as a fresh appointment and their seniority fixed according to rules below the last employee. The stand of the petitioners is that had the schools not been taken over, they would be governed by the 1992 Scheme which has retrospective effect and had come into force w.e.f. 1987. It is not in dispute that in terms of the said Scheme, the Punjab Government decided to grant pensionary benefits like pension and gratuity, in lieu of Contributory Provident Fund to the teachers of the privately managed aided schools in the State of Punjab. The aforesaid 1992 Scheme was thus applicable to the teaching employees working against the aided posts. Had the school where the petitioners were working not been taken over by the government, the petitioners would be entitled for the grant of pension, in view of the said 1992 Scheme. Clause 3 of the 1992 Scheme provides for the application of the Scheme and Clause 5 provides for the benefits under the Scheme. Clauses 3 and 5 read as under :-

> ***"3(1) Application*** *: This scheme shall apply to all the employees, excepting those who do*

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not opt in terms of clause 3 (subject to the condition that the Managing Committee of a Privately Managed Recognised Aided School executes an agreement in Form-1 duly supported by a resolution of the Managing Committee to abide by the provisions of this Scheme and instructions, issued by the Department from time to time), who -

(a) *are appointed to the aided posts on or after the fifth day of February, 1987; and*

(b) *were working on aided posts immediately before the fifth day of February, 1987 and continue to work as such after that date :*

Provided that the employees who were appointed to the aided posts -

(i) *before the fifth day of February, 1987 and who have attained or will attain the age of superannuation on or after that date; and*

(ii) *on or after the fifth day of February, 1987 but before the 16th day of January 1991;*

shall have the right to opt within a period of four months from the date of publication of this scheme to be or not to be governed by the provisions of the scheme.

(2) *The scheme shall not apply to -*

(i) *the employees appointed on part time basis against posts;*

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> ***(ii)*** *the employees who retired from the aided posts before the 5th day of February, 1987 and the employees who attained the age of superannuation before the fifth day of February 1987 and were re-employed on aided posts;*
>
> ***(iii)*** *the employees who are governed by the Contributory Provident Fund; and*
>
> ***(iv)*** *the employees employed on a leave gap arrangement on ad hoc basis.*
>
> ***xxx xxxx xxxx***
>
> ***xxx xxxx xxxx***
>
> ***5.*** *Benefits under the Scheme : The following retirement benefits shall be granted under the Scheme, namely :*
>
> *a) Superannuation pension;*
>
> *b) Death-cum-retirement gratuity;*
>
> *c) Family pension;*
>
> *d) Invalid pension;*
>
> *e) Compensation pension;*
>
> *f) Compassionate allowance; and*
>
> *g) Retiring pension.”*

The afore-referred judgment, on facts, has no application to the present case.

In the case of **Tarlok Singh** ***(supra)*** as well, which pertained to the State of Punjab, the petitioners therein were granted relief on the same basis as in **Harnandan Singh's** case ***(supra)***. The relevant paragraphs of the judgment are :-

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"Besides, it may be noticed that in fact the 1992 Scheme was applicable to the teaching employees working against aided posts. Had the school where the petitioners were working not been taken over by the government, the petitioners would still be entitled for the grant of pension, in view of the said 1992 Scheme. Clause 3 of the 1992 Scheme provides for the application of the Scheme and Clause 5 provides for the benefits under the Scheme. Clauses 3 and 5 read as under:-

"3(1) Application : *This scheme shall apply to all the employees, excepting those who do not opt in terms of clause 3 (subject to the condition that the Managing Committee of a Privately Managed Recognised Aided School executes an agreement in Form-1 duly supported by a resolution of the Managing Committee to abide by the provisions of this Scheme and instructions, issued by the Department from time to time), who –*

(a) are appointed to the aided posts on or after the fifth day of February, 1987; and

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(b) were working on aided posts immediately before the fifth day of February, 1987 and continue to work as such after that date;

Provided that the employees who were appointed to the aided posts;

(i) before the fifth day of February, 1987 and who have attained or will attain the age of superannuation on or after that date; and

(ii) on or after the fifth day of February, 1987 but before the 16th day of January 1991; shall have the right to opt within a period of four months from the date of publication of this scheme to be or not to be governed by the provisions of the scheme.

(2) *The scheme shall not apply to –*

(i) the employees appointed on part time basis against posts;

(ii) the employees who retired from the aided posts before the 5 th day of February, 1987 and the employees who 7 CWP 10236 of 2005 attained the age of superannuation before the fifth day of February 1987 and were re-employed on aided posts;

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(iii) the employees who are governed by the Contributory Provident Fund; and

(iv) the employees employed on a leave gap arrangement on ad hoc basis.

xxx xxxx xxxx xxx xxxx xxxx

5. Benefits under the Scheme: *The following retirement benefits shall be granted under the Scheme, namely:*

a) Superannuation pension;

b) Death-cum-retirement gratuity;

c) Family pension;

d) Invalid pension;

e) Compensation pension;

f) Compassionate allowance; and

g) Retiring pension.

The petitioners admittedly comply with the conditions provided for the application of the 1992 Scheme. Therefore, assuming that if the school of the petitioners had not been taken over by the State Government in terms of the gift deed dated 10.1.1997 (Annexure P4), they would still have got the benefits of the 1992 Scheme. "

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In the case above, the issue with regard to terms and conditions in the gift deed were also pleaded on behalf of the State to deny the claim of the petitioners therein. However, the clause of the gift deed in that case was materially different from the one as in the case in hand. The same is reproduced below :-

> *"The members of the staff to whom the government will take over, they will be considered as new appointees in the government service. But the said condition will not apply to the other staff working against grant-in-aid posts. The services of such staff rendered in the aided schools is to be counted for the purpose of pension because they have deposited their share of GP Fund along with interest in the Government Treasury as per government Notification No.GSR 10/PM/RSE(SS)R-81/R- 22-A/92 dated 10.2.1992 and they are to be given the benefit of service rendered in aided school as per the government employees opting for pension as per the above said notification. The other unaided staff will not get any benefit of any time of their previous service and their seniority will be counted as per rules below the old employees (Emphasis added)."*

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Thus, **<u>Tarlok Singh's</u>** case ***(supra)*** also cannot be applied to the facts of the case in hand.

So far as **Risala Ram Saini's** case ***(supra)*** is concerned, a perusal of the judgment shows that **Risala Ram Saini's** case ***(supra)*** was allowed primarily relying on the judgment of this Court in **Ram Sarup's** case ***(supra)***. The relevant portion of the judgment is reproduced below :-

> "*The foremost question to be considered is as to whether the plaintiff is entitled to the grant of pension etc. by counting the service rendered by him in the Private Aided School prior to its being taken over by the State Government. The clincher in this issue would be the case of an employee, who was similarly situated as the plaintiff and who was concededly granted the benefits by the defendants.*
>
> *DW1- Shamsher Singh Jang Bahadur, Head Master, Government High School, Kaul, Kaithal, who was produced as a witness by the defendants, testified that one Ram Sarup, who was similarly placed as the plaintiff, was granted the retiral benefits by counting his service rendered in a Private Aided School and that the matter went up to the Apex Court by way of a Petition for Special Leave to Appeal and the grant*

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of benefits to him was approved by dismissing that petition which was preferred by the State Government.

During the course of hearing, learned counsel for the plaintiff produced a copy of judgment dated 20.9.1996 in R.S.A. No.2224 of 1996 which was filed in the case of above said Ram Sarup. While dismissing the aforesaid appeal filed by the State of Haryana, a learned Single Judge placed reliance on the Division Bench judgment in Amarjit Kaur's case (supra) and it was held that the service rendered by an incumbent in a Private Aided School before its take-over by the State Government was to be considered for grant of pensionary benefits.

Therefore, there is little hesitation to hold that the findings recorded by the Courts below on this aspect need to be affirmed. Denial of this benefit to the plaintiff would be perpetuating the discriminatory attitude of the defendants as they can not discriminate between two similarly situated employees. Such an action necessarily has to be held to be hit by Article 14 of

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the Constitution of India.

Since the appeal of the State and its functionaries is confined to this aspect of the matter, the same essentially has to be dismissed."

A perusal of the afore-quoted portion of the judgment in **Risala Ram Saini's** case ***(supra)*** shows that the same has been allowed only by following the judgment of this Court in **Ram Sarup's** case ***(supra)***. It may firstly be noted that the judgment of the Apex Court in **Dev Dutt Kaushal's** case ***(supra)*** was not considered in **Risala Ram Saini's** case ***(supra)***, which, in my opinion, squarely covers the case of the present petitioner against him. This judgment is thus *per incuriam*. Further, in **Risala Ram Saini's** case ***(supra)***, the learned Single Judge solely followed **Ram Sarup's** case ***(supra)***, which, as observed earlier, was based on **Amarjit Kaur's** case ***(supra)***, which judgment in turn followed the order of a Division Bench of this Court in **LPA No. 1346 of 1991** – **Dev Dutt Kaushal vs. State of Punjab**, decided on **21.10.1993**, a judgment which was set aside by the Apex Court in **Dev Dutt Kaushal's** case ***(supra)***.

In the case of **Vijay Singh** ***(supra)***, the petitioner therein was appointed as a Science Master on 21.07.1972 in Jat High School, Hisar, which is an aided school. On 26.09.1989, he was selected and appointed as Head Master in the Haryana Education Department. On 31.03.2006, he retired from service. His case was allowed by the High Court on the ground

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that the petitioner therein continued to serve on the aided post in the private school. He would have been allowed to continue his service for the purpose of pension and other retiral benefits. This was so since the date of his retirement was 31.03.2006 i.e. after the cut-off date 11.05.1998. The relevant portion of the judgment is reproduced below :-

> "*Reference here may be made to a notification issued by the Haryana Government on May 31, 1999, whereby Government has made Rules regulating the pension and contributory fund for the aided schools. These rules are called Haryana Aided Schools (Pension and Contributory Provident Funds) Rules, 1999. As per Rule 3 of the said Rules, these Rules are to apply to all the employees who are appointed on a aided sanctioned post on or after 11th May, 1998 and to those who were working on the aided sanctioned post immediately before 11th day of May, 1998 and continuous to work as such thereafter. Rule 4 provides the nature of retirement benefits that shall be admissible and these are pension, death-cum-retirement gratuity, service gratuity and family pension. The qualifying service for grant of retiral benefits is*

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regulated by Rule 5, which provides that service rendered on attaining the age of 18 years on approved post admitted for grant in aid and the service on an aided sanctioned post on regular basis, the service rendered until the attainment of 60 years in the case of Group D employees and in case of other service rendered until the attainment of 58 years. In short, the service rendered by an employee on the Government aided post has now been made pensionable in terms of these rules. 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."

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The afore-referred judgment, on facts, cannot be applied to the facts of the case in hand.

Balbir Singh Rathi's case ***(supra)*** and **Davinder Kumar Sanehi's** case ***(supra)*** were disposed of through a common judgment. These two cases shows that they have been decided by a learned Single Judge of this Court on the admission made by the parties. Neither the judgment of the Apex Court in **Dev Dutt Kaushal's** case ***(supra)*** was considered nor any facts or rules discussed. This judgment, therefore, cannot further the case of the petitioner.

The petitioner would not be entitled to relief on other counts as well. It is undisputed that the petitioner, without any protest, accepted from the School the payment of Group Insurance Scheme and the entire amount of Contributory Provident Fund Scheme in the year 1998 and 2000 respectively. It is only after 13 years of acceptance of the Contributory Provident Fund that the present petition was filed by him. In view of these facts, no relief can be granted to the petitioner in view of the judgment of the Apex Court in **Mangal Singh's** case ***(supra)***, in which case, on 30.11.2000, the respondent therein took premature voluntary retirement and on 08.06.2001, he received all the retiral benefits under the Contributory Provident Fund Scheme and gratuity without any protest. He later filed a suit for declaration that he be held entitled to the grant of pension. After considering the entire law on the subject, the Apex Court decided not to grant any relief to the respondent therein inter alia on the ground that the respondent therein had availed the retiral benefits arising out of the

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Contributory Provident Fund Scheme and gratuity without any protest and had made the claim for pensionary benefits only after retirement with an unreasonable delay of more than 08 years. The following paragraphs of the judgment, which are relevant, are reproduced below :-

> ***"51.*** *The common thread which runs through all these appeals canvassed before us is that the respondents have failed to comply with the terms and conditions of the Regulations, which govern the Pension Scheme. We have already considered the nature and effect of the Regulations, which are made under a statute. These statutory Regulations require to be interpreted in the same manner which is adopted while interpreting any other statutory provisions. The Corporation as well as respondents are obliged and bound to comply with its mandatory conditions and requirements. Any action or conduct deviating from these conditions shall render such action illegal and invalid. <u>Moreover, the respondents have availed the retiral benefits arising out of the C.P.F and gratuity without any protest</u>.*
>
> ***52.*** *<u>The respondents in all these appeals,</u>*

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before us, have made a claim for pensionary benefits under the Pension Scheme for the first time only after their retirement with an unreasonable delay of more than 8 years. It is not in dispute, in some appeals, that the respondents never opted for the Pension Scheme for their alleged want of knowledge for non-service of individual notices. In other appeals, although respondents applied for the option of the Pension Scheme but indisputably never fulfilled the quintessential conditions envisaged by the Regulations which are statutory in nature.

53. *The learned counsel for the respondents in support of their contention for want of knowledge of the Pension Scheme due to non-service of individual notices relied on the decision of this Court in Dakshin Haryana Bijli Vitran Nigam v. Bachan Singh, (2009) 14 SCC 793. The said decision is clearly distinguishable on facts. In that case, the appellant, Haryana State Electricity Board, had issued instructions dated 23.06.1993 and circular dated 09.08.1994 in order to provide an option to the employees for*

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pensionary benefits in lieu of their work charged service with an express condition of noting of instructions from all the employees and acknowledging the receipt of the letter. In these appeals, before us, there is no such condition of noting from the employees or serving individual notices in the Pension Scheme or Regulations. Therefore, in our opinion, Bachan Singh's decision will not assist the respondents.

54. *In our view, in the facts and circumstances of the present case and in view of absence of such condition in the scheme, it is not necessary for the Corporation to give an individual notice to respondents for exercising of option for pension Scheme and also for asking respondent to refund the employers contribution of C.P.F. at each stage. Furthermore, when notice or knowledge of the Pension Scheme can be reasonably inferred or gathered from the conduct of the respondents in their ordinary course of business and from surrounding circumstances, then, it will constitute a sufficient notice in the eyes of law.* ***[Emphasis supplied]"***

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In the case in hand, the delay in filing the present petition is 17 years after retirement, 15 years after accepting the amounts under the Group Insurance Scheme from the College and 13 years from having accepted the amounts under the Contributory Provident Fund Scheme from the College. All the afore-referred amounts were accepted by the petitioner without any protest. Filing of representations, not backed by any Statute, would not condone the delay on the part of the petitioner.

In view of the above, I find no merit in the case of the petitioner and resultantly, order dismissal of the same.

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*

(DEEPAK SIBAL)
JUDGE

August 24, 2016
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