IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 24265 of 2014
Date of decision : 18.07.2016

Dr. Narendra Nath and others ....Petitioners

versus

State of Haryana and ors. ..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajesh Arora, Advocate
for the petitioners.

Mr. Rajesh Gaur, Addl.A.G. Haryana

Mr. A.S. Virk, Advocate
for respondent No. 3.

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

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RITU BAHRI , J.

Petitioners have approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for setting aside order dated 28.10.2013 (P-11) passed by respondent No. 2 and further prayer is for issuance of direction to the respondents to grant pension to the petitioners retired before 01.04.1995, granting the similar benefits from the same cutoff date.

Petitioners are retirees of the respondents-University and retired before 01.04.1995. Earlier petitioners approached this Court by way of filing CWP No. 9540 of 1997 for issuance of direction to respondent-University for implementation of pension scheme w.e.f 01.01.1992. This writ petition was dismissed by this court on 02.01.2002 and thereafter, LPA Bench affirmed the order passed by the learned Single Judge, vide order dated 16.01.2003. The SLP filed by the petitioners was also dismissed on 08.09.2003 (P-6). However, a liberty was granted to the petitioners to make representation before the State Government to consider their request to implement the pension scheme from the earlier date.

Petitioners made their representation (P-7) to Hon'ble Chief Minister to implement the pension scheme for the employees retired before 01.04.1995. Their representation was not decided and they again approached this Court by way of filing CWP No. 21714 of 2012, which was disposed of by this Court on 06.09.2013 with a direction to the respondents to decide the representation of the petitioner.

Respondents in compliance of the above said order, rejected the claim of the petitioner, vide impugned order dated 28.10.2013.

The precise grievance of the petitioners before this Court is that the executive Council of the respondent-University after scrutinizing the whole matter and examining the option submitted by its employees and assessing the financial liability involved in the pension scheme, vide resolution dated 18.12.1992 accepted to implement the pension scheme. The State Government vide letter dated 12.01.1993 (P-2) addressed to the Comptroller, Haryana Agriculture University agreed to implement the pension scheme w.e.f 01.01.1992, subject to finalization of Rules for implementation of pension scheme w.e.f 01.01.1992. In a meeting held on 28.02.1995 (P-3) of High Powered Council, it was decided that there will be absolutely no financial burden on State Ex-chequer for 15 to 20 years as the CPF contribution of the State University will be sufficient to take care of pension scheme. The respondent University vide letter dated 04.05.1995 (P-

4) informed its employees regarding the cutoff date fixed as 01.01.1992 in harmony with the date fixed by Haryana Agriculture University. However, the State fixed the cutoff date w.e.f 01.04.1995 and informed to the University vide letter dated 21.09.1995 (P-5) whereas the draft rules of the Universities were yet to be finalized.

Learned counsel for the petitioners submits that both Kurukshetra University and Haryana Agriculture University are substantially financed by the Government of Haryana and both have common Chancellor, similar administrative control and procedures in vogue, service rules followed in terms of Haryana Civil Service Rules.

Learned counsel for the petitioners has referred to a case of ***Moti Ram and others vs. NIT, passed in CWP No. 4268 of 2006, decided on 26.03.2012*** wherein this Court was considering a case of retired employees of IT, Kurukshetra observed as under:-

> *I would reject the above argument of the respondents only for the reason that Statutes make a specific reference to employees of the Institute prior to 01.01.2004 as persons to be governed by the Central Civil Services (Pension) Rules, 1972. In respect of such persons, who were contributory to CPF and who have also withdrawn the benefits, they could be given an option to re-deposit the amount drawn by them with interest @ 12% per annum within a specified period and all such persons, who exercise such option shall be admitted to the pension scheme of the Central Civil Services (Pension) Rules, 1972. Since all the persons, who may stand to benefit through this order, may not be before this Court as parties, I would direct the National*

Institute of Technology at Kurukshetra to publish a circular in newspapers as well as by personal communication calling upon all the employees to exercise the option before a particular date to express option for the pension scheme within a period of 3 months and extend the Central Pension Scheme, 1972 to all such persons, who exercise the option."

On notice, respondent Nos. 1 and 2 filed a reply taking a stand that the releasing of amount towards retiral benefits (amount towards pension and gratuity) are not applicable to a daily paid worker.

Reference at this stage can be made to a judgment passed by this Court in a case of ***Ramesh Kumar Aggarwal v. Haryana Diary Dev. Co-op Fed. Ltd and anr, 2014 (2) RSJ 432*** whereby it has been held that once the termination of the petitioner was held to be illegal and he was reinstated in service with continuity of service, he cannot be denied the benefit of this period for the purpose of calculation of gratuity payable to him on retirement. In para 5 of the judgment, it has been observed as under:-

"5. Once Hon'ble the Supreme Court had granted the petitioner continuity of service and even directed for computing all the increments by treating the petitioner to have been appointed in regular time scale, he cannot be denied the benefit of this period for the purpose of calculation of gratuity payable to him on the retirement. Merely because Hon'ble the Supreme Court did not direct for payment of entire backwages, it will not wipe off the period for which continuity of service was granted for the purpose of all other benefits. That service has to be counted for the purpose of calculation of gratuity payable to the petitioner."

Learned counsel for the petitioner has made reference to a meeting held on 28.02.1995 (P-3) of High Powered Council wherein it was decided ***that there will be absolutely no financial burden on State Ex-chequer for 15 to 20 years as the CPF contribution of the State University will be sufficient to take care of pension scheme.*** Further while introducing the pension scheme in the Punjab University, no such discrimination was made, the benefit of pension scheme was granted to all the retired employees by giving them opportunity to deposit the benefit of CPF along with interest, which they had taken at the time of their retirement. The claim of the petitioner has wrongly been rejected as the pension scheme was introduced for the larger benefit of employees retired from an institution.

After hearing the learned counsel for the parties, going through the record, this Court is of the considered view that the petitioner cannot take any benefit of the meeting held on 28.02.1995 (Annexure P-3) of the High Powered Council to the effect that there was no financial burden on State Ex-chequer for 15 to 20 years. Kurukshetra University and MDU, Rohtak have been established under the State Acts. The scheme was introduced w.e.f. 01.04.1995 to all the employees of Kurukshetra University and MDU, Rohtak by the competent authority i.e. the Director Higher Education. The Chaudhary Charan Singh University has been established under the Central Act and the petitioner cannot take any benefit from the letter dated 12.01.1993 (Annexure P-2), which has been issued by the Commissioner-cum-Secretary, Haryana Government, Agriculture Department to the Comptroller, CCS, Haryana Agriculture University, Hisar for implementation of the pension scheme w.e.f. 01.01.1992. The scheme has been introduced in the Kurukshetra University with the approval of the State Government w.e.f.

01.04.1995 as per letter dated 22.09.1995 (Annexure R-3/1) issued by the Financial Commissioner & Secretary to Govt. Haryana, Education Department to the Director, Haryana Education, Haryana. The petitioner cannot claim parity at par with the Agriculture University in which pension scheme was introduced as per letter dated 12.01.1993 (Annexure P-2). After the letter dated 22.09.1995 (Annexure R-3/1) the Kurukshetra University, vide resolution No.51 in its meeting held on 04.11.1997 (Annexure R-3/2) made it applicable to its existing employees who had retired on or after 01.04.1995. The representation sent by the petitioners to claim the benefit of pension scheme at par with Haryana Agriculture University dated 31.01.2012, which has now been filed as per the information sent by the Director Higher Education dated 08.05.2012 (Annexure R-3/4). The benefit of pension was extended even to MDU, Rohtak w.e.f. 01.04.1995. The same was subject matter of challenge in case **Dr. Padaman Singh and others Vs. State of Haryana and others, passed in CWP No. 5770 of 1999**, which was dismissed on 12.01.2010 (Annexure R-1) and has been placed on record along with affidavit dated 24.04.2015. The fixed cut off dated 01.04.1995 in the MDU has been upheld and the writ petition was dismissed. After the dismissal of the writ petition, no SLP has been filed and thus, the judgment had attained finality.

In the case of the petitioners, the cut-off date has been upheld as well while dismissing CWP 14245 of 1997 Dr. ***Bani Singh Vs. Kurukshetra University*** (Annexure P-14) and the judgment of Single Bench was upheld by the LPA Bench, vide judgment dated 16.01.2003 (Annexure P-16). The SLP against the above said judgment has been dismissed and the only liberty was granted to the petitioner to make representation. Keeping in view that the competent authority for fixing the cut-off date in the case of KUK and MDU was Director Higher Education and in the case of Haryana Agriculture University, the recommendation for pension scheme was set up by the Central Government and the petitioners cannot claim any parity with the Haryana Agriculture University. Mere exercising no option in favour of the pension scheme will not get them a right for quashing the cut-off dated 01.04.1995 as fixed by the Central Government.

In view of the above, the present writ petition deserves no merit and the same is hereby dismissed.

(RITU BAHRI)
JUDGE

18.07.2016
G Arora