

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 3517 of 2015
Date of Decision:- 04.05.2016

Suba Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Rishabh Gupta, Advocate
for the petitioner.

Mr. Hitesh Pandti, Additional Advocate General, Haryana.

RITU BAHRI, J. (Oral)

Petitioner by way of present petition is seeking quashing of order dated 14.01.2015 (Annexure P-8) and direction to the respondents' authorities to count the service from 22.02.1973 to 28.12.1978 for the purpose of ACP benefits and to grant 3rd ACP benefits along with interest.

Petitioner was appointed as JBT Teacher (Men) through Subordinate Service Selection Board Haryana on 22.02.1973 as per Rules. Petitioner had participated in the interview as per the interview letter dated 16.04.1971 (Annexure P-1). The services of the petitioner were regularized

vide order dated 29.12.1978 (Annexure P-2). The ACP Rules as applicable

w.e.f. 01.01.1996 to the employees of the State of Haryana and according to the said Rules, the employees who had completed 10 years of regular service shall be granted 1st ACP and employees who had completed 20 years of service shall be entitled for 2nd ACP. Similarly, the employees who have completed 30 years of service shall be entitled for 3rd ACP as per rules (Annexure P-3). The petitioner was granted 1st ACP by considering the regular service w.e.f. 29.12.1978 and 2nd ACP after completing 20 years. The petitioner in the present case is claiming that his service w.e.f. 22.02.1973 till 28.12.1978 be counted as qualified service for the purpose of grant of ACP and in this manner he will be entitled for 3rd ACP after completing of 30 years of regular service. A representation in this regard was made by the petitioner on 20.08.2013 (Annexure P-5) and legal notice dated 26.3.2014 (Annexure P-6). The petitioner thereafter filed CWP No.9745 of 2014 before this Court, which was disposed of vide order dated 20.05.2014 (Annexure P-7), by giving direction to respondent No.2 to consider and decide the legal notice dated 26.3.2014 (Annexure P-6), within a period of four months. The claim of the petitioner has been rejected, vide order dated 14.01.2015 (Annexure P-8) on the ground that only regular satisfactory service is to be taken into consideration for the purpose of grant of ACP benefits. The date of regularization is 01.01.1980 and his adhoc service w.e.f. 22.2.1973 to 31.12.1979 cannot be taken into consideration for the purpose grant of 3rd ACP. The petitioner has already been retired on 30.09.2009 on attaining the age of superannuation and the claim being highly belated has been rejected.

The respondent(s) in the written statement has placed on record a judgment of Division Bench of this Court in case **State of Haryana and others** Vs. **Sita Ram and others**, 16 SCC 677 whereby it has been held that work charged service cannot be clubbed with regular service for the purpose of ACP Rules, 1998.

Learned counsel for the petitioner has referred to a judgment of Division Bench of this Court in case **State of Haryana and others** Vs. **Surindra Kumar Mishra and others**, 2012(1) RSJ 510 whereby the petitioners had been appointed on the post of lecturers in pursuant to an advertisement. The mode of recruitment was both by way of inviting direct applications as well as through sponsorship by Employment Exchange. They were selected by duly constituted selection committee against substantive and clear vacancies existed in the cadre. The appointment was on adhoc basis and they were subsequently regularized by the HPSC after coming into force of Haryana Education (College Cadre) Group B Service Rules, 1986. The Division Bench further held that learned Single Judge allowed the writ petition and held that the first entry into the service was legal and valid which commensurate with Article 14 & 16 (1) of the Constitution and hence the consequences of seniority would automatically follow from the initial date. The LPA Bench affirmed the judgment passed by Single Judge and referred to the judgment of Supreme Court in the case of **State of West Bengal** Vs. **Aghore Nath Dey**, 1993(3) SCC 371 and dismissed the appeal filed by State of Haryana.

The respondents in the written statement have not disputed the fact that the appointment of the petitioner on adhoc basis was made by the Education Department through the Subordinate Services Selection Board

on 22.02.1973. Hence, for all intents and purposes, the entry in the service was by way of a proper selection process and the ratio of judgment of the Division Bench of this Court in State of Haryana and others Vs. Surindra Kumar Mishra and others, case (supra) is directly applicable to the present case and the services of the petitioner w.e.f. 22.02.1973 to 28.12.1978 has to be counted for the purpose of seniority or qualifying service for the purpose of ACP scale. Even though the petitioner has retired from service 30.09.2009, his claim cannot be rejected on the ground of delay, as it is a recurring loss of income every month, which would effect part of his pension.

In view of above, the writ petition is allowed. The impugned order dated 14.01.2015 (Annexure P-8) is hereby set aside and directions to the respondents' authorities to count the service period of the petitioner w.e.f. 22.02.1973 to 28.12.1978 for the purpose of ACP benefits and pass appropriate orders for grant of 3rd ACP scale, within a period of three months. Since, the petitioner has retired in the year 2009, therefore, after fixing his pay in the 3rd ACP scale, he shall be held entitled arrears of pension from the date of his retirement i.e. 30.09.2009.

May 04, 2016
naresh.k

(RITU BAHRI)
JUDGE