

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7684-2015 (O&M)
Date of decision: 09.08.2016

Ishwar Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Ram Niwas Sharma, Advocate for the petitioner
Mr.Naveen Sheoran, DAG Haryana

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J.

Petitioner was appointed as a PTI on 18.1.1988 in the Government aided privately managed S.D. High School, Lakhan Majra, Rohtak against a sanctioned post. Petitioner superannuated on 31.10.2011. Petitioner has been allowed pension vide order dated 4.12.2014 (Annexure P1) and his service for the purpose of pensionary benefits has been computed to be 13 years 6 months, whereas he had served for 23 years 9 months and 14 days. It is stated that the government had notified Rules known as Haryana Aided School (Special Pension and Contributory Provided Fund) Rules, 2001 (in short, '2001 Rules') vide notification dated 29.3.2001 (Annexure P2), vide which, the teachers and other staff working in Government aided schools against the sanctioned posts were allowed the pension and pensionary benefits. The retirement age in case of teacher was 58 years and the qualifying service was to be taken into account w.e.f. the date an employee subscribes contribution towards contributory provident fund. It is

stated that later on the government amended the Haryana School Education Rules, 2003 vide notification dated 19.1.2007 vide Haryana School Education (Amendment) Rules, 2007 (in short, '2007 Rules'), whereby an employee / retiree who had not availed the option was allowed to give fresh option to deposit the subscription of fund along with interest at the prevailing rate as worked out by Director within 90 days. In compliance to the notification dated 19.1.2007 and the memos of Commissioner and Director General School Education, Haryana dated 14.3.2008 and dated 5.8.2008, all the DEOs/ DEEOs in the State of Haryana worked out the employer's share of CPF on the basis of approved prevailing rates of the concerned bank/ post office/ RPFC for opted period along with 12% per annum simple interest and deposited the same into the pension head. Amount of late payment of CPF was calculated qua the petitioner and his share came to Rs.62607/-, which was deposited and got verified by Senior Accounts Officer of DEO, Rohtak. Therefore, the qualifying service of the petitioner comes to 23 years 9 months and 14 days. The petitioner prays that the qualifying service be accordingly considered after taking into consideration the service rendered by him from 18.1.1988 to 31.10.2011.

The respondents in the written statement took the plea that as per 2001 Rules, Chapter III, Section 5 Clause 1(ii), the qualifying service is to be taken into account w.e.f. the date an employee subscribed contribution towards contributory fund. It was admitted that the petitioner was appointed as PTI on 18.1.1988 against a sanctioned post in S.D. High School, Lakhna Majra, Rohtak on probation for two years, which was further extendable upto one year. As per Rules, the petitioner was required to subscribe to CPF but the petitioner subscribed the CPF only w.e.f. 1.5.1998, though he completed

the probation on 18.1.1990. Therefore, his qualifying service is treated from the date he subscribed to CPF w.e.f. 1.5.1998. It was further stated that as per Rule 114 of Haryana School Education Rules, 2003, as amended by Rule 32 of 2007 Rules, the petitioner was entitled to exercise the option to subscribe for the probation period only. Therefore, his service from initial appointment till subscription towards CPF is not liable to be counted. The respondents justified the grant of pension as calculated by them.

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

Undoubtedly, the petitioner joined the service on 18.1.1988 and started contributing towards CPF only w.e.f. 1.5.1998. As per 2001 Rules, the qualifying service is defined as under:-

5. **Qualifying service:-** (1) *The Service of an employee shall qualify for retirement benefits under these rules, as under:-*

(i) *The service rendered on attaining the age of 18 years on aided sanctioned post;*

(ii) *The service rendered till the attainment of the age of sixty years in the case of Group-D employee, and in case of others, service rendered till the attainment of the age of fifty-eight years. However, the qualifying service will be taken into account with effect from the date an employee subscribes contribution towards contributory provident fund;*

(2) *The leave admissible under the rules to be framed under the Act and under the instructions Retirement benefits. Qualifying service. Haryana Aided Schools (Special Pension & Contributory Provident Fund) Rules, 2001 142 issued by the Government from time to time, excluding leave without pay and period of suspension overstayed of leave not subsequently regularised under the Act and period of break in service.*

(3) *Service rendered in one or more aided schools under the same Management provided the transfer is made in terms of the*

Act.

(4) The service rendered on aided sanctioned post in another aided school in the State of Haryana;

Sub-clause (ii) clearly shows that qualifying service is to be treated from the date the employee subscribed contribution towards contributory provident fund. The petitioner, admittedly, started contributing towards contributory provided fund w.e.f. 1.5.1998. However, it comes out that later on Haryana Government notified the 2007 Rules under the notification dated 14.3.2008 (Annexure P3), issued in pursuance to the amended Rules 2007. It was notified that as per Rule 114 of Haryana School Education Rules, 2003, as amended by Rule 32 of 2007 Rules, an employee/ retiree who has not availed of the option till now, may give fresh option to deposit the subscription fund along with interest at the prevailing rate as worked out by the Director within 90 days. The relevant extract from the said notification is reproduced as under:-

“The employee/ retiree who has not availed of the option till now, may give fresh option to deposit the subscription to fund alongwith interest at the prevailing rate as worked out by Director within 90 days from the date of commencement of these Rules”.

It goes to show that a fresh opportunity was given to the retirees who had not availed the option earlier to deposit the subscription of fund along with interest at the prevailing rate worked out by the Director within 90 days form commencement of the Rules. Further, the letter dated 5.8.2008 (Annexure P4), issued by the Commissioner and Director General School Education, Haryana, Chandigarh, the employee/ retiree who have exercised the option to deposit the subscription to fund under Rule 114 of Haryana School Education Rules, 2003, as amended by Rule 32 of 2007 Rules, may

subscribe his subscription at the prevailing rate of interest of concerned bank at the time in which he subscribed his subscription after completion of probation period and employer's share of CPF may be calculated at the above said prevailing rate for opted period as per option to the date of actual subscription along with 12 % per annum simple interest till date of deposit of employer's share of CPF.....”

The combined reading of notification Annexure P3 and Annexure P4, reproduced above, shows that in case of retirees, they were given opportunity to give fresh option to subscribe to the CPF and pay the subscription along with the prevailing rate of interest.

The controversy in the present case is that the petitioner had already subscribed to CPF w.e.f. 1.5.1998. Now, he changed his option w.e.f. the date he joined the service i.e. 18.1.1988 and accordingly deposited his share of CPF along with interest. In case of the petitioner a sum of Rs.62607/- were deposited as certified by the Head Master, S.D. High School, Lakhan Majra, Rohtak. As per Rule 5 of the Rules 2001, the qualifying service is to be treated from the date an employee subscribes contribution towards contributory fund. Rule 114 of Haryana School Education Rules, 2003, as amended by Rule 32 of 2007 Rules is reproduced as under:-

Rule 114: *The provisions contained in this chapter shall apply to all employees working on the sanctioned aided post in the aided school. The said provisions shall not apply to the employees appointed on probation on permanent post in an aided school unless they complete their probation period successfully. After the completion of the period of probation successfully they shall have the option to subscribe to the fund for the probation period also;*

32. In the said rules in rule 114:-

(i) for sign “.” Existing at the end, the sign “shall be substituted;

(ii) the following proviso shall be added, namely:-

“Provided that the employee/retiree who has not availed of the option till now, may give fresh option to deposit the subscription to fund alongwith interest at the prevailing rate as worked out by Director within 90 days from the date of commencement of these rules.

A perusal of aforesaid Rule shows that the retiree could give fresh option. The Rule reproduced above does not show that if an employee has started contributing towards CPF from a date later than the date of his joining, he is precluded from exercising such option from the date he joined the service and is debarred from depositing the share of CPF along with interest. Once, fresh options are called for, an employee can also change the date of his subscription to the CPF, unless it is specifically barred. In the present case, the petitioner who had already retired exercised an option and deposited the share of CPF along with interest from the date he joined the service on 18.1.1988. Therefore, as per Rule 5 of the 2001 Rules, the qualifying service is to be treated from the date he subscribed towards contributory fund which now has become 18.1.1988. As such, his qualifying service comes to 23 years 9 months and 14 days and he is to be granted pensionary benefits accordingly.

As such, the present writ petition is allowed and a writ of mandamus is issued directing the respondents to compute the qualifying period of the petitioner for pension and pensionary benefits from 18.1.1988 to 31.10.2011 i.e. 23 years 9 months and 14 days and grant the pension and pensionary benefits like pension, gratuity, commutation, leave encashment

accordingly. Arrears shall carry interest @ 9% per annum starting three months after the date he deposited his remaining share of CPF alongwith interest amounting to Rs.62607/-.

09.08.2016
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes/ No

Whether Reportable:

Yes/No