IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9496 of 2014
Date of decision: 22.04.2016

Dalip Singh ....Petitioner(s)

Versus

State of Punjab and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Ms. Alka Chatrath, Advocate,
for the petitioners.

Mr. Anshul Gupta, AAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks consideration for the claim of pension by counting the service rendered in the Punjab Education Department from 23.11.2001 to 31.08.2011 i.e. 9 years, 9 months and 10 days as qualifying service for pension as per Rule 6.1 of the Punjab Civil Service Rules. Reliance has been placed upon the judgment of the Division Bench of this Court in CWP No. 19101 of 2006, Salwinder Singh vs. State of Punjab and others decided on 29.07.2008 (Annexure P-5) and LPA No. 1855 of 2011, Union of India and others vs. Surinder Pal Singh decided on 28.03.2012 (Annexure P-6) wherein, fractions of an year equal to 3 months and above are to be treated as a completed 6 monthly period. In view of the reference made in the index of the present case, the same was ordered to be heard alongwith ***CWP No. 7889 of 2014, Jagtar Singh vs. State of Punjab and others***. As pointed out by the counsel, the said writ petition has been decided in favour of the employee on 11.02.2015 and the benefit of rounding off has been given.

State, in its reply, has taken the defence of the instructions dated 01.08.2005 (Annexure R-1) to contend that the rounding off is only to be given where the employee had completed 10 years of qualifying service.

The said issue has been dealt with in detail in *Jagtar Singh's case (supra)* wherein, the period was of 9 years 9 months and 19 days. The writ petition has been allowed by holding that the petitioner would be deemed to have rendered qualifying service of 10 years. The relevant portion reads thus:-

> *"A combined reading of Rule 6.1. of CSR Vol.II and instructions dated 1.8.2005, reproduced herinabove, would make it crystal clear that the petitioner was entitled for service pension in view of the unambiguous provisions of Rule 6.1 of CSR Vol.II. Petitioner need not to invoke the instructions dated 1.8.2005. Further, once the petitioner is entitled to get pension by rounding off the fraction of more than three months for a complete one half year or by rounding off fraction of more than nine months as a completed year under Rule 6.1 of CSR Vol.II, respondent-State cannot take away the said right of the petitioner under the garb of instructions dated 1.8.2005. It is so said, because it is the settled proposition of law that if there is any conflict between the statutory rules and administrative instructions issued by the State, statutory rules shall prevail, as held by the Hon'ble Supreme Court in* ***C.L.Verma Vs. State of Madhya Pradesh and another 1990 (1) RSJ 38 S.C.***
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> *Further, as observed by the Hon'ble Supreme Court in para 6 of its judgment in Major Sucha Singh Rana's case (supra) that if the employee has completed 10 years of qualifying service, then there would be no occasion to count any fraction of the year. Occasion for*

rounding off the fraction of a year would arise only when an employee has completed less than 10 years of qualifying service.

In view of the observations made by the Hon'ble Supreme Court, instructions dated 1.8.2005 do not convey any purposeful meaning. Since the instructions dated 1.8.2005 run counter to the abovesaid Rule 6.1 of CSR Vol.II, these cannot be read against the employee seeking pension in view of the provisions contained in Rule 6.1 of CSR Vol.II. This seems to be the only constructive and harmonious interpretation of Rule 6.1 of CSR Vol. II. Any contrary interpretation will defeat the very object of Rule 6.1. of CSR Vol.II.

The contentions raised by the learned counsel for the State have been duly considered but none of them has been found worth acceptance, being without any substance. During the course of hearing, when a pointed question was put to the learned counsel for the State as to what purposeful meaning is conveyed by the instructions dated 1.8.2005 or what was the object sought to be achieved by way of these instructions, he had no answer and rightly so, because in the given facts and circumstances of the present case, factually there could not be any answer to the question posed. Having said that, this Court feels no hesitation to conclude that the respondent authorities proceeded on an arbitrary and misconceived approach, while passing the impugned orders, denying the genuine claim of the petitioner, because of which the impugned orders cannot be sustained.

It is a matter of record that the petitioner had rendered service of 9 years, 9 months and 19 days, which clearly falls within the ambit of Rule 6.1. of CSR Vol.II. There is no dispute about the first six months of *the year. The dispute is only about the second half of the 10th year, during which the petitioner had rendered the service of three months and 19 days. Once the petitioner had completed fraction of a year equal to more than three months, the said period has to be treated as complete six months, for the purpose of second half of 10th year. This is what the scope and ambit of Rule 6.1. of CSR Vol.II, which clearly comes to the rescue of the petitioner.*

To test it from a different angle, it can be said that petitioner had rendered service of more than 9 months and it shall be treated to be a completed one year, as held by the Hon'ble Supreme Court in ***Pritam Singh Bedi's case (supra)****. Thus, testing it from any angle, Rule 6.1 of CSR Vol.II protects the right of the petitioner making him entitled for pension. Under these circumstances, it can be safely concluded that the petitioner shall be deemed to have rendered qualifying service of 10 years.*

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that in view of the provisions of Rule 6.1. of CSR Vol.II, petitioner has rendered qualifying service of 10 years. Natural consequences would follow.

Consequently, petitioner is declared entitled for pension. The respondent authorities are directed to calculate the pension of the petitioner. He shall be paid arrears of the pension within a period of two months from the date of receipt of a certified copy of this order. If the needful is not done within the stipulated period, the petitioner shall be entitled for interest @ 9% per annum on the amount of arrears of pension, from the *date when it became due, till the date of actual payment.*

Resultantly, with the abovesaid observations made and directions issued, the instant writ petition stands allowed, however, with no order as to costs."

Accordingly, the present writ petition is also allowed in the same terms.

22.04.2016 (G.S. SANDHAWALIA)
shivani JUDGE