

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

1. CWP No. 8441 of 2015 (O&M)

Devender Pratap Singh and anr. ...Petitioners

versus

State of Haryana and another ..Respondents

2. CWP No. 8442 of 2015

Dr. Sushila Kumari Hooda ...Petitioner

versus

State of Haryana and another ..Respondents

3. CWP No. 8443 of 2015

Dharamveer Yadav and othersPetitioners

versus

State of Haryana and another ..Respondents

Date of decision:-05.01.2016

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Samrat Malik, Advocate
for the petitioner(s).

Mr. Ashok S. Chaudhary, Addl.A.G, Haryana

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

RITU BAHRI , J.

This order shall dispose of the above three petitions as

GAURAV ARORA
05/01/2016
I attest to the accuracy and
integrity of this document

common question of facts are involved in all these petitions . However, for the facility of reference, the facts are being taken from C.W.P No. 8441 of 2015.

The above said petitions have been filed under Article 226 of the Constitution of India for issuing a writ in the nature of certiorari to quash the action of the respondents to the extent that the services rendered by the petitioners prior to the date, the employer has started contribution towards contributory provident fund, shall not be taken into consideration as a qualifying service for the purpose of pension and further directing the respondents that the qualifying service shall be considered from the date of their appointments and pension and gratuity be revised and released accordingly.

The details of the service rendered by the petitioners is as under:-

<i>Name</i>	<i>Date of appointment</i>	<i>Date of Retirement</i>	<i>Date of deduction of CPF</i>
Dharamveer Yadav	02/08/74	31/01/2007	01/04/77
Daleep Singh	10/07/1972	30/06/2002	01/07/75
Rav Avtar Yadav	24/07/1973	30/11/2007	01/04/77
Lal Ram Yadav	23/07/1973	30/06/2004	01/07/75
Dalip Singh Yadav	10/07/72	28/02/2006	01/07/75
Devender Pratap	15/09/75	31/12/07	01/09/77
Kulbhushan Parkash	10/10/77	31/01/09	20.10.1979

The precise grievance of the petitioners before this Court that the employers started to deduct Contributory Provident Fund after many years of their appointment and thereafter they were granted

pension and gratuity considering their qualifying service from the date the employer has started to deduct CPF up to the date of the retirement.

This Court do not feel necessity of going detailed facts because after hearing learned counsel for the parties and purusing the record, the issue raised in the petitions are no more res integra, in as much as, the same has been settled by a Division Bench of this Court in a case of ***Kasturi Lal Khuranna vs. State of Punjab, 2003(4) S.C.T 462*** and two other judgments of this Court rendered in cases of ***M.R. Juneja vs. State of Punjab, 2004 (3) RSJ 236*** and ***Om Parkash v. State of Punjab and others, CWP No. 14891 of 1996, decided on 05.02.2003***. This view has been followed by this Court in ***CWP No. 14051 of 2005, titled as Ram Lubhaya Khanna and others vs. State of Punjab and another, decided on 17.05.2007*** and in a case of ***Gurmeet Singh vs. State of Punjab and others, passed in CWP No. 13831 of 2005***.

This Court while deciding similar controversy in case of ***Mrs. Shakuntala Puri v. State of Punjab and others, CWP No. 19639 of 2005, decided on 14.05.2007*** have considered the judgment of Hon'ble the Supreme Court in case of ***Vasant Gangaramsa Chandan vs. State of Maharashtra, 1996 (4) SCT 403*** wherein clause 23 of Chapter IV of a Pension Scheme of Hyderabad Agricultural

Committee has been considered and observed as under:-

“4. Clause 23 of Chapter VI in the scheme reads as under:

“Qualifying service of a Market Committee employee shall

commence from the date he takes charge of the post to

which he is first appointed or from the date the employer

started deducting the P.F. contribution for the employee

which ever later.” It was held that the provision has to be

read that the clauses of the Scheme have to be read by

keeping in view the fact that pension is not a bounty of

the State and it is earned by employees after rendering

long service to fall back upon after their retirement. The

same cannot be arbitrarily denied. The clause was

accordingly read down to mean that the qualifying service

would commence either from the date of taking charge of

the post to which the employee was first appointed or

from the date he started contributing the Provident Fund

contribution whichever was earlier. The ratio of the above

mentioned judgment would apply to the facts of the

instant case, inasmuch as, the provision made in clause 6

(6) of the 1992 Scheme has to be read down to mean that

qualifying service would commence from the date of

continuous appointment, which is 16.10.1989 in the

present case, or from an earlier date if the employee had started contributing to the Contributory Provident Fund. Therefore, the petitioner would be entitled to counting of her service with effect from the date of her appointment and approval i.e. 16.10.1989.

Reference at this stage can be made to Rule 6 and 8 of the Haryana Affiliated College (Pension and Contributory Fund) Rule, 1999 (for brevity "1999 Rules").

"6. Qualifying Service:- 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 approved post admitted for grant-in-aid.

(ii) The service rendered uptill the attainment of superannuation age of sixty years;

(iii) The leave admissible under the Haryana Affiliated Colleges (Security of Service) Rules, 1979 and under instructions issued by the Government from time to time, excluding the leave without pay and period of suspension, overstay of leave not subsequently regularised and period of break in service.

(iv) Service rendered in one or more private affiliated colleges, receiving grant-in-aid under the same

management.

(v) Service rendered on aided sanctioned post in any aided college in the State of Haryana. Provided that the official has been appointed through proper channel on aided sanctioned post and the approval of continuity of service has been obtained from the Director.

Provided further that the contributory Provident Fund account of the employee in the previous college continued as such in the subsequent college to which he is transferred or appointed and there is no break in service or the service condition as modified by the Government from time to time.”

“8. Entitlement for pension:- An employee shall be entitled for Pension under these rules only after he completes ten years qualifying service.” (emphasis added)

A perusal of Rule 6(iv) & (v) of the Rules would show that service rendered by an employee in one or more private affiliated colleges receiving grant-in-aid under the same management, would be treated as qualifying service. Similarly, service rendered on aided sanctioned post in any aided college in the respondent State is to be treated as qualifying service.

Applying the ratio of judgments mentioned above, impugned orders dated 15.07.2013 and 02.08.2013 in CWP No. 8441 of 2015, impugned

order dated 10.10.2013 (P-4) in CWP No. 8442 of 2015 are set aside and a direction is issued to the respondents to grant to the petitioners benefit of service rendered by them by treating the same as qualifying service for the purposes of pension from the date of their appointments. However, the contribution to the contributory provident fund, which was required to be made by the petitioners, shall be adjusted and deducted from the arrears of their pension. The respondents, are therefore directed to calculate the pension of the petitioners and fix the same within a period of two months from the date of receipt of certified copy of this order. The arrears after calculation in the aforementioned manner be paid to them within a period of three months along with retirement benefits, if any.

The writ petition stands disposed of in the above terms.

(RITU BAHRI)
JUDGE

05.01.2016

G Arora