IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 18491 of 2009 (O/M)
Date of decision : 5.4.2017

Pawan Kumar Gupta .... Petitioner (s)

Versus

The Financial Commissioner and Principal Secretary to Government of Haryana, Education Department, Haryana Civil Secretariat, and others
.... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Karanvir Singh Khehar, Advocate, for the petitioner.

Mr. Keshav Gupta, Assistant Advocate General, Haryana.

Mr. Naveen Gupta, Advocate, for respondent No. 3.

Mr. R. Kartikeya, Advocate, for respondent No. 5.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India for issuing a writ in the nature of certiorari, quashing the order dated 16.4.2008 and order dated 25.6.2008 (Annexures-P-11 and P-12 respectively), vide which respondents No. 1 and 2 have denied the retiral benefits i.e. pension, gratuity, provident fund and leave encashment etc. to the petitioner. Further a writ in the nature of mandamus is also sought for directing respondents to pay all the abovenoted retiral benefits alongwith 18% interest to the petitioner.

The short facts, which are required to be noticed for the purpose of the disposal of the present writ petition, are that the petitioner had joined as a Clerk with S.D. Mahila Mahavidyala, Narwana, District Jind (respondent No. 3 herein) on 31.7.1974, against a sanctioned post. The said College was receiving grant-in-aid from the State Government. The petitioner claims that when one Smt. Santosh Sharma became the officiating Principal of the said college, the staff had made some complaints and the management of the said college was taken over by the Government. The order was later on quashed by the competent authority. The Principal of the said college became inimical to him as the petitioner had refused to change/alter the record. The petitioner was suspended from the service on 6.12.1999 and his entry to the said college was banned. However, the Higher Education Commissioner, Haryana, reinstated him on 20.4.2000. The petitioner rejoined on 5.5.2000 and was again suspended on the very next day i.e. 6.5.2000. Thereafter, the petitioner was served with a chargesheet. After the inquiry, vide resolution dated 6.1.2001 (Annexure-P-2), his services were terminated by the management of respondent No. 3 Government College. The said resolution was sent to the Director, Higher Education, Haryana (now Higher Education Commissioner, Haryana-respondent No. 2 herein), as required under Rule 7 of the Haryana Affiliated Colleges (Security of Service) Act, 1979 (in short 'Act of 1979'). Respondent No. 2 set aside the said resolution of the management of respondent No. 3 Government College and reinstated the petitioner with continuity of service and consequential benefits, vide order dated 23.4.2001

(Annexure-P-3). However, in revision, respondent No. 1 i.e. Financial Commissioner and Principal Secretary to Government of Haryana, Education Department, Haryana, approved the said resolution and the services of the petitioner were terminated, vide order dated 22.11.2001 (Annexure-P-4). Thereafter, the petitioner approached this Court by way of filing CWP No. 313 of 2002, titled as Pawan Kumar Gupta Versus Managing Committee of S.D. Mahila Mahavidyalaya, Narwana, District Jind, Haryana through its Secretary and others, which was dismissed by a Division Bench of this Court, vide order dated 11.1.2002 (Annexure-P-5). The Special Leave Petition to Appeal (Civil) No. 6269 of 2002, titled as Pawan Kumar Gupta Versus Managing Committee, S.D. Mahavidyala and others, filed against the judgment passed by the Division Bench of this Court in CWP No. 313 of 2002, was dismissed by the Hon'ble Supreme Court of India in limine, vide order dated 9.7.2002 (Annexure-P-6).

The petitioner claims that despite the termination of his service, he would still be entitled to retiral benefits. It is claimed that he was not dismissed from service, but was removed from the service as in the resolution dated 6.1.2001 (Annexure-P-2), it is stated “Sewa Samapt Ki Jaati Hai”. Had the petitioner been dismissed, then the word used would have been “Barkhast”. It is stated that under Rule 19 of the Haryana Affiliated Colleges (Special Pension and Contributory Fund) Rules, 2001 (in short 'Rules of 2001'), the Director is empowered to withhold or withdraw pension of an employee, if he is guilty of a grave misconduct proved in an inquiry conducted by the Government on or after the retirement. Therefore, he is entitled to all the retiral benefits.

Respondents No. 1 and 2 in the written statement took the plea that the service of the petitioner was terminated by the college management (respondent No. 3 herein) under Section 7 of the Act of 1979 at their own level. It is a dispute entirely between the petitioner and the college management. It was further stated that the pension scheme was introduced for the first time for the employees working on the aided sanctioned post in the Non-Government Private Affiliated Colleges in the State of Haryana with effect from 11.5.1998 in lieu of contributory provident fund. The said pension scheme is compulsory in respect of an employee, retiring after 31.5.1999. The benefit of commutation of pension and leave encashment is specifically denied under the said pension scheme. It is stated that under Rule 2 (1) of the Pension Rules, 1999, the pension is payable and the pension means, *"an amount which an employee shall get as pension including gratuity on attaining the age of superannuation"*. Therefore, a terminated employee is not entitled to pension.

Respondent No. 3 in the reply took the plea that the order of dismissal of the petitioner from service has already become final after the dismissal of the SLP by the Hon'ble Supreme Court of India. It was admitted that there is a pension scheme for the employees of Non Government Private Affiliated Colleges in the State of Haryana with effect from 11.5.1998 under the rules called 'Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999' (in short 'Rules of 1999'). Under the said rules, commutation of pension and leave encashment has been specifically denied. As the services of the petitioner were terminated, therefore, he is not entitled to pension and gratuity. Regarding provident fund, it is submitted that no amount of provident fund is pending with the college management. The college management has deposited the employee's share of provident fund, amounting to Rs. 38,996/-, with the Government, vide Challan No. 39, dated 6.12.1999 in the State Bank of Patiala, Narwana and deposited Rs. 75,369/- on 23.3.2004 in the salary account in the Oriental Bank of Commerce, Narwana. It was further stated that the petitioner has already withdrawn the amount even from the employer's share of contribution accumulated in his provident fund account on different occasions, which has not returned despite several letters.

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

So far as the controversy regarding termination of services of the petitioner is concerned, the order dated 22.11.2001 (Annexure-P-4), passed in the revision by the Commissioner and Secretary to Government of Haryana, Education Department, shows that the termination of services of the petitioner was approved with the result that the petitioner stood terminated. The copy of the judgment (Annexure-P-5), passed by a Division Bench of this Court in CWP No. 313 of 2002, shows that the petitioner had challenged the order of the Commissioner and Secretary to Government of Haryana, Education Department, approving the proposal for termination of his services. The said writ petition was dismissed by a Division Bench of this Court in limine, vide order dated 11.1.2002 (Annexure-P-5). Further, the SLP filed against the said order was dismissed by the Hon'ble Supreme Court of India, vide order dated 9.7.2002 (Annexure-P-6). In this way, the question regarding termination of services of the petitioner has become final and cannot be re-opened to hold that it was not termination of services, but removal from the service. In the order of the Commissioner and Secretary to the Government of Haryana, Education Department dated 22.11.2001 (Annexure-P-4) as well as in the judgment dated 11.1.2002(Annexure-P-5), passed by the Division Bench of this Court in CWP No. 313 of 20012, the word 'termination' is specifically used. Therefore, it has to be taken that the services of the petitioner were terminated.

Now, the question would arise as to whether the petitioner is entitled to pension after the termination of his services ?

The pension is defined in Rule 2(1) of the Rules of 1999, which is reproduced as under :-

> "Rule 2(1) "Pension" means an amount which an employee shall get as pension including gratuity on attaining the age of superannuation."

The definition makes it clear that the pension is payable only on attaining the age of superannuation.

Rule 5 of the Rules of 1999 provides for retirement benefits, which is reproduced as under :-

> "Rule 5 The following retirement benefits shall be admissible under these rules, namely :-
>
> 1. Pension (a) Superannuation Pension
> (b) Invalid Pension
> (c) Compensation Pension ; and
> (d) Voluntary Retirement Pension/
> Compulsory Retirement Pension
> 2. Death-cum-retirement gratuity
> 3. Service gratuity
> 4. Family pension."

Under Rule 8 of the Rules of 1999, the minimum qualifying service for pension is 10 years. The service of the petitioner was admittedly terminated under Section 7 of the Act of 1979. Once, it is found that the services of the petitioner were terminated and he did not superannuate, he is not entitled to the pension under the Rules of 1999.

Now, coming to the question of release of the provident fund, according to the stand of respondent No. 3-college management, the employee's share of provident fund, amounting to Rs. 38,996/-, was deposited by them with the Government, vide Challan No. 39, dated 6.12.1999 in the State Bank of Patiala, Narwana and Rs. 75,369/- was deposited on 23.3.2004 in the salary account in the Oriental Bank of Commerce, Narwana. The provident fund is the property of the petitioner and even after termination of his services, he is entitled to the same. It is also stated in the reply of respondent No. 3-college management that the petitioner has withdrawn some amount from the employer's share of contribution. The copy of the letter dated 8.12.2003 (Annexure-R-3/1) shows that a sum of Rs. 45,713/- was found due against the petitioner, which the petitioner has not deposited. It was further claimed in the said letter that the total recovery against the petitioner is 1,18,401/-, out of which a sum of Rs. 72,688/- is pending in the CPF account. In any case, whatever are the dues on account of provident fund, are payable to the petitioner.

In view of the foregoing discussion, the present writ petition is partly allowed and partly dismissed. It is also held that the petitioner is not entitled to pension and other pensionary benefits, except the provident fund. Respondents No. 1 to 3 are directed to find out the amount lying in the provident fund account either with the Government or in the salary account of the management, as pleaded in the written statement of respondent No. 3-college management, and the amount so found due, be released to the petitioner, within two months from the date of receipt of certified copy of this order, alongwith interest at the rate which might have accrued on the same on account of deposit of the same in the bank.

(KULDIP SINGH)
JUDGE

5.4.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No