

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 16116 of 2012
DECIDED ON: AUGUST 24, 2017

KUSUM LATA

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Parveen Kumar Garg, Advocate
for the petitioner.

Ms. Sudeepti Sharma, Additional Advocate General, Punjab,
for respondents No. 1 to 3.

Mr. Sarvpreet S. Gurna, Advocate,
for respondent No.4.

JASPAL SINGH, J.

By virtue of instant civil writ petition preferred under Article 226 of the Constitution of India, petitioner has sought issuance of a writ in the nature of certiorari quashing partly reply dated 25.01.2011 (P-4) whereby her representation for counting the period of service w.e.f. 01.12.1977 to 16.02.1987 rendered with respondent No.4-Municipal Committee, Barnala has been declined WITH FURTHER relief commanding the respondents to count the aforesaid period of service rendered by her with Municipal Committee towards qualifying service for the purpose of pension and pensionary benefits.

2. The facts giving rise to the instant petition are that petitioner joined

respondent No.4-Municipal Committee, Barnala as Bal Sewika on 01.12.1977. Subsequently, in the year 1987, she applied for the post of Supervisor in the Women and Child Development Department and was appointed to the aforesaid post and joined as such on 17.02.1987 after relinquished the post of Bal Sewika in the office of respondent No.4 on 16.02.1987. She stood retired on 30.09.2009 from the office of respondent No.2 on attaining the age of superannuation. Even during her service as well as after retirement she made number of representations seeking counting of service rendered by her with respondent No.4 for the period 01.12.1977 to 16.02.1987 but none of the representations brought any fruitful result. Ultimately, she was constrained to seek an information under the provisions of RTI Act, 2005 and vide impugned reply dated 25.01.2011 (P-4), the claim of the petitioner was rejected, which necessitated the filing of instant petition.

3. The contention of learned counsel for the petitioner is that the impugned reply dated 25.01.2011 (P-4) vide which the counting of her service rendered with respondent No.4 towards qualifying service for the grant of pension and pensionary benefits has been declined, is patently illegal, discriminatory, arbitrarily and not only against the Rules but also against the settled principles of law. Relying upon the judgment of this Court rendered in ***“Mohinder Singh v. State of Punjab and others”***, 2008(4) SCT 67, it has been submitted by learned counsel for petitioner that as per provisions of Punjab Municipal Employee Pension and General Provident Fund Rules, 1994 (for short, “Rules 1994”), which were published in the official gazette on 16.03.1994 were made applicable to the employees of Municipal Committee w.e.f.

01.04.1990. According to which, the employees were required to give option in the negative to not to make the said Rules applicable qua him/her. Thus, the absence of the option would automatically make the Rules applicable in case of a concerned employee. Moreover, aforesaid Rules 1994 were never brought to the notice of the petitioner. As such, the respondents cannot be allowed to shield their failure to submit the option. Similarly, while placing reliance upon the judgments of this Court captioned as “*Tirath Singh v. State of Haryana and others*”, 2003(1) SCT 439 and “*Jugal Kishore v. State of Punjab and others*”, 2004(4) SCT 199, it has been submitted by learned counsel for the petitioner that in the identical matters the similar relief as has been prayed through the instant petition has already been granted by the Court. In another case, titled as “*Sukhdev Singh v. State of Punjab and others*”, 2010 (3) SCT 450, this Court has allowed the counting of period rendered by the petitioner in the said petition with privately managed aided school towards qualifying service for the purpose of pension and other pensionary benefits. Thus, the impugned order/letter dated 25.01.2011 (P-4) is not sustainable in the eyes of law and deserves to be quashed to the extent it declines the relief to the petitioner and he deserves issuance of mandamus to the respondents to count the service rendered by her as Bal Sewika with respondent No.4 for the period 01.12.1977 to 16.02.1987.

4. Per contra, learned State counsel has submitted that no doubt, petitioner has served as Bal Sewika with respondent No.4-Municipal Committee, Barnala for the period 01.12.1977 to 16.02.1987 but she is not entitled to the relief claimed through the instant petition particularly for the reason that her case is not covered by the provisions contained in the Rules

1994. No doubt, the said rules were modified on 16.03.1994 but were made applicable to the employees who were in service before or on 01.04.1990 in the service of respondent No.4-Municipal Committee. Petitioner left the service of respondent No.4 on 16.02.1987 and joined the office of respondent No.2 on 17.02.1987. Thus, either before or on 01.04.1990, petitioner was not in service of respondent No.4. As such, she cannot derive any benefit from the various provisions contained in Rules 1994. The respondents have rightly declined the relief vide reply dated 25.01.2011 (P-4). She, accordingly, prayed for dismissal of instant petition with special costs.

5. This Court has weighed the rival contentions put forth by learned counsel for the parties and minutely scanned the various documents available on file and arrives at the considered view that instant petition is merit less and petitioner does not deserve the relief claimed for the reasons recorded hereinafter.

6. Undisputably, petitioner rendered service as Bal Sewika for the period 01.12.1977 to 16.02.1987 and relinquished the post on 16.02.1987 and joined as Supervisor with the Women and Child Development Department. A glance at the Rules 1994 which are applicable to the municipal employees makes it crystal clear that the Rules were applicable only to the employees of the Municipal Committee who are in service before or on 01.04.1990 and the service of the employee should be regular. Petitioner joined the department of Women and Child Development on 17.02.1987 well before the notification and the Rules 1994 which were admittedly made applicable w.e.f. 01.04.1990. Thus, neither the petitioner was entitled to submit any option nor she was covered

under the Rules being not in service of Municipal Committee either prior or after the publication of the aforesaid Rules.

7. As far as the judgments relied upon by learned counsel for the petitioner referred to above are concerned, the same are not attracted in the facts and circumstances of the case in hand particularly on account of the reason that the Rules 1994 are not applicable to petitioner and as such, it cannot be said that the impugned letter/order dated 25.01.2011(P-4) suffers from any infirmity or illegality.

8. As an upshot of the aforesaid discussion, this Court does not find any merit in the instant petition. As such, it stands dismissed but with no order as to costs.

AUGUST 24, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes*

Whether reportable *Yes/No*