IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr.No.210

CIVIL WRIT PETITION No.20102 of 2012
DECIDED ON: DECEMBER 05, 2017

SATINDERJIT KAUR

.....PETITIONER..

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Jatinder Jit Kaur, Advocate,
for the petitioner.

Mr. Manoj Bajaj, Additional Advocate General, Punjab.

Mr. Manish Kumar Singla, Advocate,
for respondent No.5.

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JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of certiorari quashing the impugned order dated February 08, 2012 (P-2) passed by respondent No.2, vide which the pensionary benefits have been denied to the petitioner without counting the qualifying service from her initial date of appointment AND further issuance of a writ in the nature of mandamus directing the respondents to calculate the pensionary benefits from the date of initial appointment of the petitioner and release the pensionary benefits along with arrears with interest.

2. The contention of learned counsel for the petitioner is that petitioner joined her services with respondent Department on July 18, 1980 as Bal Sevika and subsequently promoted to the post of Clerk. After having rendered 28 years of service, she sought voluntary retirement, which was accepted by the Panchayat Samiti and she was allowed to voluntarily retired on June 04, 2008. She further submitted that prior to her retirement, though pension papers were submitted to respondent No.2, which were rejected by respondent No.2 vide impugned order dated February 08, 2012 (P-2). Being aggrieved, a challenge has been laid to the aforesaid order dated February 08, 2012 through the instant petition.

3. In response to notice of motion, respondents filed written statement/reply submitting that as far as grant of pension to the petitioner is concerned, her case is not covered in Rule 2 (k) of the Punjab Panchayat Samiti and Zila Parishad Employees Pension and Provident Fund Rules, 2000 (R-1). Learned State counsel further submitted that in the present case, petitioner was appointed as Bal Sevika under ANP Scheme on Ad hoc basis, which was purely temporary. Neither her services were regularized nor she was promoted to the post of Clerk on 23.12.1980. Moreover, deduction of the provident fund was carried out only w.e.f. 01.02.1994. Thus, she has not completed the minimum qualifying service of 20 years, which is a pre-condition for the grant of benefit of pension. Otherwise also, as per

Government Instructions dated 07.06.1978, qualifying service of 20 years is required for voluntary retirement, which is not even prima facie established in this case.

4. At this juncture, learned counsel for the petitioner pointed out that the claim of the petitioner is squarely covered within four corners of the parameters laid down by this Court in case ***Charanjit Singh & ors. vs. Pepsu Road Transport Corporation and anr.***, passed in CWP No.16690 of 2011, decided on 12.03.2012; ***Satish Rani Sood vs. State of Punjab & ors.*** passed in CWP No.9125 of 2011 and CWP No.5131 of 2010 titled as **Sushil Kumari vs. State of Punjab and ors.** decided on 01.04.2013, wherein it has been categorically observed that there appears to be no justification to exclude the service towards qualifying service for pensionary benefits even after the petitioners have not deposited the CPF whereas it was the duty of the employer to deduct the same and especially when petitioners were ready and willing to deposit their contribution along with interest from the date of their appointment. Thus, petitioners being similarly situated are also entitled to the benefit of aforesaid judgments.

5. As far as submission of learned State counsel with regard to qualifying service is concerned for calculating the said period towards Pension, Rule 2(k) of the 2000 Rules is operative which reads as under:-

> 2(k) “qualifying service” means the service of an employee of a Panchayat Samiti or Zila Parishad, as the case may be, for which he has made contribution towards the Contributory Provident Fund before and after the commencement of these rules.”

6. On considering the aforesaid Rule and the legal proposition, it clearly emerges that in a similar set of fact(s) and circumstance(s) where the regulations under which the CPF Scheme was made applicable, is para materia with the wording of Rule 2(k) of the 2000 Rules referred to above.

7. After a deep consideration with regard to aforesaid CPF Scheme as well as 2000 Rules and considering the definition of the qualifying service for the said purpose, this Court observed as under:-

> "*[8] It may be appropriate at this stage to refer Regulation 6 of the PEPSU Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations, 1992, relied upon by the Corporation to count the 'qualifying service' from the date an employee starts contributing towards the Contributory Provident Fund and the same reads as follows:-*
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> > *"6. Qualifying Service: (1) The qualifying service will be taken into account with effect from the date of an existing employee started contributing towards the Contributory Provident Fund.*
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> > *(2) The service of an employee shall not qualify for retirement benefits under the said regulations unless:*
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> > *(i) he attains the age of eighteen years;*
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> > *(ii) (ii) he takes charge of the post to which he is first appointed except for which it is otherwise provident by special rules or contract; and*
> >
> > *(3) The leave admissible under the*

Corporation regulations and under the instructions issued by the Corporation from time to time, shall qualify for pension but leave without pay and period of suspension, overstay of leave not subsequently regularized under the above said regulations and the period of break in service shall not be reckoned as qualifying service.

(4) In a case where the total qualifying service is less than 10 years no pension benefit shall be admissible."

[9] Somewhat similar worded Rule, namely, Rule-6 of the Punjab Privately Managed Recognized Aided Schools Retirement Benefits Scheme, 1992, was considered by a Division Bench of this Court in Ram Lubhaya Khanna and others versus State of Punjab and another (2007 (3) SCT 780 and following the earlier decisions including Kasturi Lal Khurana's case (supra), it was held that "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 or from an earlier date if the employee had started contributing to the Contributory Provident Fund. Therefore, the petitioners would be entitled to counting of their service with effect from the date of their appointment."

[10] The issue was re-agitated before this Court at the instance of the respondent-Corporation in CWP No.19292 of 2010 (Pritam Singh versus Pepsu Road

> *Transport Corporation and others) decided on 23.2.2012 also but its plea was turned down, observing that "the service rendered by the petitioner w.e.f. 6.2.1971 to 1.1.1972 was with the respondent-Corporation only. There appears to be no justification to exclude the said service from 'qualifying service' for the grant of pensionary benefits, though the petitioner shall be required to deposit the arrears of CPF drawn for the said period alongwith interest that may be determined by the Corporation."*
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> *[11] Following the above cited precedents, there can be no other conclusion but to allow the present writ petition subject to the same terms and conditions and the time schedule as has been prescribed in operative part of the order dated 23.2.2012 passed in* ***Pritam Singh's case (supra)***."

8. The judgment ***Satish Rani Sood (Supra)*** squarely covers the controversy in hand and on the basis thereof, petitioner becomes entitled to the relief claimed.

9. In the light of aforesaid discussion, instant petition is allowed and the petitioner is directed to deposit her share of CPF along with interest to be assessed by respondent No.5 within a period of two months from the date of receipt of a certified copy of this order. Respondent No.5 is directed that on receipt of the said amount from the petitioner, by adding Govt. share of CPF along with interest, respondent No.5 shall forward the claim of the petitioner to respondent No.1 – Director, Rural Development and Panchayat Department, Punjab within a further period of two weeks. On such forwarding of the claim of the petitioner by respondent No.5, the Director

Rural Development and Panchayat Department-respondent No.1, shall consider the claim of the petitioner and pass appropriate orders within a further period of one month.

10. It is made clear that on deposit of the CPF along with interest, the qualifying service of the petitioner shall be taken from the date of her initial appointment as Bal Sevika till the date of her retirement for the pensionary benefits. Accordingly, benefits be calculated and released to the petitioner within a period of next one month.

11. In case of non-compliance of the aforesaid direction, petitioner shall be at liberty to approach this Court.

DECEMBER 05, 2017 **(JASPAL SINGH)**
Ankur **JUDGE**

Whether speaking/reasoned ***Yes***

Whether reportable ***Yes/No***