

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-21258-2012

Date of decision : 24.07.2017

Naveen Kumar Monga

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Ramesh Hooda, Advocate
for the petitioner.

Mr. R.K.Doan, AAG, Haryana.

AMOL RATTAN SINGH, J.(ORAL)

In this petition, the petitioner is seeking the benefit of past service rendered by him as a Data Entry Operator in the Guru Jambheshwar University of Science and Technology, Hisar, where he was appointed as such on 08.04.1997 vide the appointment letter, Annexure P-1.

While working in the said University in the same capacity, he applied for the post of a Junior Engineer in the Department of Irrigation Haryana, through proper channel, the application duly forwarded by the Assistant Registrar, (Establishment) of the University, to the Secretary Haryana Staff Selection Commission on 05.06.2006, as per Annexure P-2.

Thereafter the petitioner was selected and appointed as a Junior Engineer in the Irrigation Department, vide his appointment letter dated 18.10.2006, Annexure P-3.

After his stint with the Irrigation Department, the petitioner is stated to have applied to the Department of Higher Education, Government of Haryana, for the post of an Assistant Professor, whereto he was selected

and appointed w.e.f. 18.02.2013, vide an appointment letter, Annexure P-14.

It is also contended by Mr. Hooda, learned counsel for the petitioner, pointing to paragraph 16 of the amended writ petition, that even as regards his appointment in the Department of Higher Education, the petitioner had applied through proper channel from the Department of Irrigation.

In the said appointment letter, a condition had been imposed at Clause no.12, which reads as follows:-

“12. You will be governed by the “New defined contribution pension scheme” as per Haryana Government Finance Department notification No.1/1/2004-I Pension dated 28.10.2005.”

However, Mr.Hooda points to a letter issued by the Financial Commissioner and Principal Secretary, Government of Haryana, Department of Finance, on 12.10.2010 (Annexure P-6), addressed to all Heads of Department in Haryana, and to Commissioners of Divisions, Deputy Commissioners etc.

Clause 3 of the said letter reads as follows:-

“In this connection it is clarified that such cases, where an employee who was eligible for the benefit of OM dated 7.1.2002 is re-appointed on or after 1.1.2006 in the Government Department, will be covered under Punjab CSR Volume-II (Old Pension Scheme) which is applicable to Government employees who joined Government service prior to 1.1.2006 provided he had applied through proper channel and who was governed under the old non-contributory pension scheme of his previous organization. Para 7 of the OM No.1/2(4) 96-2FR-II, dated 7.1.2002 may be treated as deleted w.e.f.

1.1.2006 and Para-9 stands modified to the extent that employees coming from non pensionable organization will no longer have option to avail pensionary benefits for past service.”

Thus the contention is that the petitioner being on a pensionable post in the Guru Jambheshwar University, is entitled to count such past service in the department that he is presently working, i.e. the Department of Higher Education, Government of Haryana, as Assistant Professor w.e.f. 18.02.2013.

It is seen that a written statement was filed on behalf of respondents no.1 to 3 to the unamended writ petition, with that written statement not substituted after the writ petition was allowed to be amended vide an order dated 28.01.2014.

Hence, though the specific contention with regard to the post presently held by the petitioner having been obtained by him after applying through proper channel has not been replied to by respondents no.1 to 3, however, pursuant to an order dated 10.05.2017, Mr. Doon, learned AAG, Haryana, has filed in Court today an affidavit of Shri A.Sreenivas, Director Higher Education, Haryana, in paragraph 2 (ii) of which it is specifically stated that the petitioner applied for the post of Assistant Professor (college cadre) through proper channel, upon which he was selected and joined service on 18.06.2013.

Mr. Hooda, learned counsel for the petitioner, has also produced in Court today an order of the Director General Higher Education, Haryana, dated 06.06.2014, wherein the benefit of past service as a Data Entry Operator in the Guru Jambheshwar University of Sciences and Technology, Hisar, was granted to one Smt.Seema Rani, upon her joining as

an Assistant Professor in Computer Sciences in the Department of Higher Education. Thus she was continued in service in the Department of Higher Education, under the old pension scheme which was in force at the time that she had joined the Guru Jambheshwar University of Science and Technology, Hisar.

The Director General in his affidavit filed in Court today, has stated in paragraph 3 thereof that had respondents no.2 & 3, i.e. the Department of Irrigation, Government of Haryana, decided the case of the petitioner in the light of the Finance Department instructions dated 12.10.2010, by giving him the benefit of the old pension scheme, his case would also have been decided accordingly in the Department of Higher Education.

In the reply filed on behalf of respondents no.1 to 3, in reply to paragraph 6 of the petition (where the reference to the aforesaid instructions of the Finance Department have been made), the contents of paragraphs 2 to 6 have been admitted, meaning thereby that with regard to the petitioner having applied through proper channel from the Guru Jambheshwar University of Science and Technology, for joining the Department of Irrigation and his selection thereto, have all been admitted.

In paragraph 6 of the preliminary objections, it has been stated that the petitioner is seeking the benefit of past service by relying upon instructions / clarifications issued by the Finance Department, Haryana, with the Finance Department not having been impleaded as a respondent in the present writ petition.

Upon a pointed query to learned State counsel as to whether the Department of Irrigation is also included as one of the departments in the

Government of Haryana, the heads of which all were addressed in the aforesaid instructions, naturally he could not deny the obvious.

Taking into account all the aforesaid facts, as also that in the case of an identically placed employee, i.e. Smt. Seema Rani, who also joined as a Data Entry Operator in the Guru Jambheshwar University one day after the petitioner, (she having joined on 09.04.2017), the benefit has also been extended by the respondent-State, this petition is allowed and the respondents are directed to grant the benefit of the old pension scheme to the petitioner also, in the same terms as has been granted to Smt. Seema Rani.

Costs of Rs.10,000/- shall also be paid to the petitioner by the concerned officers of the Department of Irrigation, who have wonderfully stated in their reply that the case of the petitioner is not covered by the instructions issued by the Department of Finance because the said Department has not been impleaded as a respondent specifically in this writ petition. As to how a State Government department can even take such a stand is wholly unimaginable. It is made clear that the cost of Rs.10,000/- shall be realised from the person who had refused the benefit to the petitioner.

The aforesaid directions shall be carried out within 3 months from the date of receipt of a certified copy of this order.

(AMOL RATTAN SINGH)
JUDGE

July 24, 2017.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No