

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

**CWP No.5508 of 2010 (O&M)
Date of decision : April 21, 2017**

Dr. Birendra Singh Kapoor

..... Petitioner

Versus

Chancellor, Punjabi University and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Aman Chaudhary, Advocate for the petitioner.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ajaivir Singh, Advocate for respondent Nos.1 to 3.

Mr. R.S. Pathania, DAG, Punjab.

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 ?

KULDIP SINGH J.

Petitioner, who is a retired Professor from the Department of Social Work in the Punjabi University, Patiala since 31.08.2004, has invoked the writ jurisdiction under Article 226/227 of the Constitution of India for quashing the order dated 30.10.2007 (Annexure P-4) and order dated 08.10.2009 (Annexure P-25 colly), whereby the service rendered by him in the Institute of Medical Sciences (Banaras Hindu University), Varanasi and service rendered by him in Nehru Yuva Kendra, Government of India, Ministry of Sports & Youth Affairs has not been counted for pensionary benefits. Further, the benefits of three years service towards superannuation in view of the Ph. D. qualification at the time of entry in the University Teaching Service has also not been granted.

The petitioner initially joined as a Social Worker in the year 1971 in the Institute of Medical Sciences, Banaras Hindu University, Varanasi (A Central University) and served there till 31.03.1973. Then, after applying through proper channel, he was selected and appointed as Youth Coordinator in Nehru Yuva Kendra in the Department of Education (now Department of Sports and Youth Affairs) under the Central Government. He worked there from 25.05.1973 to 15.02.1979. Again after applying through proper channel, he was appointed as Lecturer in Mahatma Gandhi Kashi Vidyapeeth, Varanasi and was promoted as Reader and served there till 09.10.1996 i.e. 17 years, 7 months and 24 days. Thereafter, after applying through proper channel, he was appointed as Professor in the Department of Social Work by the Punjabi University on 20.09.1996. He joined the services on 10.10.1996 and superannuated as such on 31.08.2004 after rendering service of 7 years, 10 months and 22 days.

The petitioner earlier approached this Court by way of filing CWP No.19886 of 2005 for counting his previous service rendered in Banaras Hindu University, Varanasi, Nehru Yuva Kendra, Government of India for grant of pensionary benefits and also claiming the benefits of three years of service towards superannuation. However, the same was disposed of by this Court vide order dated 20.12.2005(Annexure P-1), directing the respondents to take a decision on the legal notices of the petitioner by passing a speaking order within a period of two months of the receipt of a certified copy of that order. Since, the speaking order was not passed, the petitioner filed a contempt petition bearing COCP No.742 of 2006, wherein this Court, vide order dated 27.09.2007 directed that the petitioner shall file

an affidavit within a week before the University Authorities and the said authorities shall consider his claim for grant of pensionary benefits in the light of said affidavit before the next date of hearing.

In pursuant to the said order, the petitioner filed an affidavit before the University Authorities and thereafter, University Authorities passed the order dated 30.10.2007 (Annexure P-4), whereby the University agreed to count only the service rendered by the petitioner in the Mahatma Gandhi Kashi Vidyapeet, Varanasi for the period from 16.02.1979 to 09.10.1996 i.e. for 17 years, 7 months and 24 days, subject to deposit of pension contribution etc. either from the personal account of the petitioner or from account of Mahatma Gandhi Kashi Vidyapeet, Varanasi. However, his services rendered from 25.05.1973 to 15.02.1979 as a Youth Coordinator in Nehru Yuva Kendra, Government of India, was not counted as qualifying service for pension nor the benefits of leave encashment of 178 days in the said Nehru Yuva Kendra was granted to him.

Petitioner further claims that Mahatma Gandhi Kashi Vidyapeeth, Varansi has already counted the service rendered by petitioner in Nehru Yuva Kendra, Government of India as qualifying service and it also transferred the pro-rata retiral benefits to the Punjabi University, Patiala including the part received from Nehru Yuva Kendra, Government of India amounting to ₹8,72,915/-. Therefore, the objection to the said claim is illegal.

In the written statement, the respondent Nos.2 and 3-University have not denied the previous litigation. It is stated that all the retiral benefits have been released to the petitioner. The pension after commutation

amounting to ₹21,429/- per month is also being paid to the petitioner. It is also stated that the service of the petitioner rendered in Mahatma Gandhi Kashi Vidyapeeth, Varansi from 16.02.1979 to 09.10.1996 i.e. 17 years, 7 months and 24 days has been counted for pensionary benefits. It is also stated that only the service rendered in the Indian Statutory University is to be counted provided that service is for a period of minimum three years. The service rendered by the petitioner in Nehru Yuva Kendra, Government of India, is not considered as qualifying service as it is not an Indian Statutory University. Regarding grant of three years service benefits on account of Ph.D qualification, it is stated that the University has not adopted the Notification of University Grant Commission. The receipt of ₹8,72,915/- from Mahatma Gandhi Kashi Vidyapeeth, Varansi, is not denied.

However, it was reiterated that service rendered in Nehru Yuva Kendra, Government of India is not countable for grant of pension.

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

During the course of arguments, learned counsel for the petitioner does not press the relief regarding three years benefit on account of Ph.D qualification. He also does not claim any benefit regarding the service rendered as Social Worker in Banaras Hindu University from 1971 to 1973.

Learned counsel for the petitioner restricts his claim to count the service rendered by the petitioner in Nehru Yuva Kendra under the Government of India from 25.05.1973 to 15.02.1979. It has been argued that when the petitioner applied through proper channel in Mahatma Gandhi

Kashi Vidyapeeth, Varansi, his previous service rendered in Nehru Yuva Kendra under the Government of India was counted by the said Mahatma Gandhi Kashi Vidyapeeth, Varansi. Nehru Yuva Kendra under the Government of India had sent its part of pro-rata pension to the Mahatma Gandhi Kashi Vidyapeeth, Varansi and now the entire amount of Rs.8,72,915/- has been sent to the Punjabi University, Patiala.

A perusal of the correspondence between the Punjabi University and Mahatma Gandhi Kashi Vidyapeeth, Varansi shows that vide letter dated 11.07.2008 (Annexure P-11), Punjabi University addressed a communication to the Finance Officer, Mahatma Gandhi Kashi Vidyapeeth, Varansi for transfer of the amount of pension contribution and gratuity in respect of the petitioner, stating that he has served in Mahtma Gandhi Kashi Vidyapeeth from 16.02.1979 to 09.10.1996 i.e. 17 years, 7 months and 24 days. Therefore, the pension contribution amounting to Rs.4,98,989/- and the amount of gratuity of ₹1,16,865/- are payable to the petitioner regarding the service rendered by him in the Mahatma Gandhi Kashi Vidyapeeth, Varansi, be transferred to them.

It comes out that vide letter dated 18.12.2009 (Annexure P-9), the said Vidyapeeth transmitted the pro-rata pension amounting to ₹8,72,915/- through demand draft bearing No.649624 dated 10.12.2009 to the Punjabi University, Patiala. Vide letter dated 30.06.2009 (Annexure P-10), split of the amount was also given showing that the said amount is for the service of 23 years, 6 months, apparently including the service rendered by the petitioner in Nehru Yuva Kendra under the Government of India. Further, the extract from the service of the petitioner (Annexure P-6) shows

that the service rendered by the petitioner in Nehru Yuva Kendra under the Government of India was counted for pension, gratuity and other retiral benefits by the Mahatma Gandhi Kashi Vidyapeeth, Varansi. Therefore, the question would arise as to whether after receiving the pro-rata pension of ₹8,72,915/-, Punjabi University is bound to treat the service of the petitioner under Nehru Yuva Kendra under the Government of India as qualifying service for the purpose of pension and pensionary benefits?

Learned counsel for the petitioner has placed reliance upon the Instructions of the Government dated 14.05.1986 (Annexure P-14), which, *inter alia*, for counting of the service rendered in the Central Government/Central Autonomous Bodies and in the State Autonomous Bodies/State Government on fulfilling certain conditions.

The Punjabi University has relied upon its Calendar (Annexure P-13) of 1997, which was amended by the University Calendar of the year 2006. It is to be noted that at the time of retirement of the petitioner in the year 2004, the University Calendar of 1997 was applicable and amended Calendar of 2006 became applicable from the year 2006.

A perusal of University Calendar of 1997 (Annexure P-13) shows that regarding the pension scheme, only the previous service rendered in any Punjab Government Department/Government College in Punjab is to be calculated as qualifying service for the purpose of pensionary benefits.

However, in the Calendar of 2006, the service rendered in Indian Statutory University can be counted for the pension, provided that he had rendered three years minimum service in the Indian Statutory

University.

First of all, it is to be noticed that as per Calendar of 1997, which was applicable at the time of retirement of the petitioner, only service rendered in any Punjab Government Department/ Government College in Punjab was to be counted as qualifying service for the purpose of pension. However, the University is always at liberty to relax the same. The University can apply the Calendar of 2006, wherein the service rendered in the Indian Statutory University can be counted for the pension, provided that he had rendered three years minimum service in the Indian Statutory University. Therefore, applying the said Calendar of 2006, the service rendered by the petitioner in Mahatma Gandhi Kashi Vidyapeeth, Varansi, which is an Indian Statutory University, was counted for grant of pensionary benefits. The University was not bound to relax the rule to count the said service rendered by the petitioner in Mahatma Gandhi Kashi Vidyapeeth, Varansi. However, it applied the amended Calendar of 2006 while passing the impugned order dated 08.10.2009 (Annexure P-25 colly).

Now, the question is as to whether the Instructions of the Government dated 14.05.1986 (Annexure P-14) are applicable or the provisions of University Calendar will apply?

The University Calendar (Annexure P-13) is the basic statute governing the service conditions. Rule 10 of the said statute is reproduced as under”

“10. Subject to the Statutes above the rules framed by the Punjab Government relating to Pension Scheme for their employees including Commuted Pension, Premature Retirement Pension, Family Pension etc.,

alongwith amendments made from time to time be adopted, in so far as the same are not inconsistent with the above statutes.”

Therefore, Rule 10 of the University Calendar of 1997 (Annexure P-13) shows that Rules framed by the Punjab Government in relation to pension scheme so far as not inconsistent with the abovenoted statutes are applicable. The University Calendar earlier provided for computing the service rendered in Punjab Government Department/ Government College in Punjab as qualifying service for pension.

However, now the service rendered in Indian Statutory University is to be counted as qualifying service. Therefore, the University Calendar will have overriding effect on the Instructions of the Government dated 14.05.1986 (Annexure P-14).

Since, the service rendered in Nehru Yuva Kendra under the Government of India is neither a service under the Punjab Government or the Government College of Punjab nor under Nehru Yuva Kendra is an Indian Statutory University, therefore, the Punjabi University has rightly rejected the claim of the petitioner for treating the said service as qualifying service for pension.

A perusal of the correspondence between the Punjabi University and the Mahatma Gandhi Kashi Vidyapeeth, Varansi shows that the Punjabi University never asked the said Mahatma Gandhi Kashi Vidyapeeth, Varansi to remit pro-rata pension regarding service rendered by the petitioner in Nehru Yuva Kendra under the Government of India. It only asked for sending pro-rata pension and gratuity for the period he served under the Mahatma Gandhi Kashi Vidyapeeth, Varansi. However, the said

Vidyapeeth sent the entire contribution on account of the fact that it had counted the service of the petitioner rendered in Nehru Yuva Kendra under the Government of India as qualifying service for pension. However, the statutes of the Mahatma Gandhi Kashi Vidyapeeth, Varansi are different from the statutes of Punjabi University.

Therefore, merely sending the pro-rata pension for the period the petitioner served in Nehru Yuva Kendra under the Government of India will not confer a vested right upon the petitioner for counting his service rendered in Nehru Yuva Kendra under the Government of India as qualifying service for pension under the Punjabi University, Patiala. Consequently, there is no illegality or infirmity in the impugned orders dated 30.10.2007 (Annexure P-4) and order dated 08.10.2009 (Annexure P-25 colly).

Therefore, the present petition is dismissed.

(KULDIP SINGH)
JUDGE

April 21, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes