

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 237

Civil Writ Petition No.16791 of 2016 (O & M)
Date of Decision: November 09, 2017

Surender Singh Yadav

..... PETITIONER

VERSUS

State of Haryana & others

..... RESPONDENTS

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CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Jai Vir Yadav, Advocate, for the petitioner.

Mr. C.S. Bakshi, Additional Advocate General, Haryana.

Mr. Hitesh Pandit, Advocate, for respondent No.6.

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Jaspal Singh, J

1. Through the instant petition, petitioner – Surender Singh Yadav (Retired Lecturer) seeks benefit of past service towards pensionary benefit which has been declined by the respondents.

2. Undisputed facts are that petitioner worked as Clerk on adhoc basis in the Department of Printing & Stationery, Haryana from June 06, 1978 to October 17, 1979, after being sponsored by the Employment Exchange. Thereafter, petitioner was selected and appointed as Clerk, vide Appointment Letter dated October 03, 1979 in Haryana Dairy Development Cooperative Federation Limited (for short, 'HDDCFL'). Petitioner joined as such after he was relieved by the Controller, Printing & Stationery

Department on October 17, 1979 (AN). He served the HDDCFL on regular basis from October 17, 1979 to March 26, 1996. In the interregnum, on February 22, 1995 posts of Lecturer in Political Science (Secondary School Cadre) were advertised by the Education Department, Haryana and he applied for the same, in BC category, through proper channel while serving in HDDCFL. Petitioner was selected and his name was recommended by the Haryana Subordinate Selection Board to the Education Department, Haryana. He joined as Lecturer (Political Science) on March 27, 1996 (FN) after having been relieved from HDDCFL on March 26, 1996 (AN). Petitioner worked continuously, without any break in the employment, throughout from the Department of Printing & Stationery till the post of Lecturer in Education Department. He retired on attaining the age of superannuation from the Education Department on August 31, 2011 but he was not granted the pensionary benefit of past service rendered by him in the Printing & Stationery Department w.e.f. June 06, 1978 to October 16, 1979 as well as service rendered in HDDCFL from October 17, 1979 to March 26, 1996.

3. Petitioner submitted a representation dated May 17, 2011 (Annexure P-3) and reminder dated May 23, 2011 (Annexure P-4) to the Director, Secondary Education, Haryana which were rejected by respondent No.1 vide order dated January 18, 2012 (Annexure P-5) while relying on Instructions dated January 07, 2002 issued by the Government of Haryana, Finance Department. Dis-satisfied with the aforesaid order, petitioner made another representation dated June 19, 2014 (Annexure P-7) to the Director, Secondary Education, Haryana and yet another representation on August 08, 2014 (Annexure P-8) but vide letter dated June 25, 2015 (Annexure P-9),

Director, Education Department, Haryana intimated him that his claim for counting of past service had already been rejected.

4. Aggrieved by the aforesaid orders dated January 18, 2012 (Annexure P-5) and June 25, 2015 (Annexure P-9), petitioner has approached this Court seeking a writ in the nature of certiorari for setting aside the aforesaid orders as well as a direction to the respondents to count his past service from June 06, 1978 to October 17, 1979 in Printing & Stationery Department, Haryana and from October 17, 1979 to March 26, 1996 in HDDCFL for the purpose of pensionary benefits.

5. Claim of the petitioner is that he is entitled to the benefit of past adhoc service rendered in Printing & Stationery Department as per Instructions dated January 31, 1984 (Annexure P-10) issued by the Government of Haryana as well as to count the regular service rendered in HDDCFL as his case is covered by Clause (7) of Instructions dated January 07, 2002 (Annexure P-6).

6. The respondents have opposed the prayer of petitioner submitting that though petitioner joined the Education Department, Haryana on March 27, 1996 but he claimed the benefit of past service only on June 31, 2014 i.e. after three years of the date of his retirement (August 31, 2011) and thus, he is not entitled to the aforesaid benefit in terms of Clause 7 of Instructions dated January 07, 2002, vide which, petitioner had an option to exercise within six months from the date of appointment on regular basis in the new organization and if no option is exercised within the stipulated period, the employee shall be deemed to have opted to receive and retain CPF benefits.

7. For proper adjudication of the controversy involved in the petition, Clause 7 of Instructions dated January 07, 2002 can be reproduced:-

“7. On appointment from non-pensionable to Pensionable Organization:

If pension scheme is not in existence in the previous Organization but the same is in existence in the new Organization, in such case on appointment/absorption of an employee of State Autonomous Body in any Department under Haryana Government, he will have the option to get benefit of qualifying service rendered in the previous Organization for the purpose of pension in new Organization by foregoing employer's share of CPF with interest received from the old Organization which will be paid to new Organization. This option will be exercised within six months from the date of appointment on regular basis in the new Organization. If no option is exercised within the stipulated period, the employee shall be deemed to have opted to receive and retain CPF benefits. Option once exercised shall be final”

7. The petitioner could not exercise his option within six months of his joining the respondent – department on March 27, 1996, in terms of clause 7 of Instructions dated January 07, 2002 which were issued about 6 years later. This is not the case of respondents that such option obviously could have been exercised within six months of the issuance of the aforesaid instructions. Moreover, a perusal of the last line of the said instructions dated 07.01.2002 shows that it reads as under:- *“The contents of this Office Memorandum may please be brought to the notice of all concerned”*. It is also not the stand of the respondents that last line of the aforesaid instructions was ever brought to the notice of the employees or petitioner and as such, class III or IV officials could not be expected to know about the same.

8. Thus, the contents of Clause 9 which stipulates that the option of the employee with regard to counting of his service in a Statutory/Autonomous Body is to be exercised within six months, obviously had to be brought to the notice of the employee concerned. Naturally ignorance of law is not an excuse, however, in the entire circumstances of

the present case, where the conditions of a letter issued 6 years after the petitioners' appointment in the respondent department, are being used to deny him the benefit of the same, on the ground that the option stipulated 9 years later should have been exercised 6 years earlier, is too absurd a proposition to even comment further upon, as already observed earlier.

9. Similar question has been dealt with by this Court in **Kanwar Bhan vs. State of Haryana and others**, CWP No.23417 of 2013, decided on November 03, 2014 wherein while relying upon a judgment rendered by the Apex Court in **DHBVNL vs. Bachan Singh, (2009) 14 SCC 793**, it has been observed that pension is not a bounty but a right earned by an employee after long years of service. As such, to deny him the said right on the basis of technicalities obviously cannot stand scrutiny. The relevant part of judgment rendered by the Hon'ble Apex Court in **Bachan Singh's case (supra)** reads as under:-

“16. The High Court in its impugned judgment had categorically observed that the appellants had failed to produce any record showing that the instructions dated 06.08.1993 and 09.08.1994 were actually got noted in writing from the respondent. The appellants had also failed to produce such material from which it can be inferred that the respondent had any knowledge about the options called by the appellants vide instructions dated 06.08.1993 and 09.08.1994. The High Court also observed that in this view of the matter it would be unreasonable to deny pensionary benefits to the respondent and the similarly placed respondents.”

10. With regard to the right of employees to draw equal pension, it was held as under:-

“20. This Court has taken the view that pension is rewarded for long service rendered by the employee and

is not a bounty. The Supreme Court in Subrata Sen & others Vs. Union of India (SCC P.78, para 14) held that:

“14....As observed in Nakara's case, pension is neither a bounty, not a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past services rendered. It is a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch...”

21. The appellants had issued circulars dated 06.08.1993 and 09.08.1994 for giving pensionary benefits to the respondent and similarly placed employees.

22. This Court time and again had observed that the principle underlying the guarantee of Article 14 of the Constitution is that all persons similarly placed shall be treated alike, both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation without any discrimination.”

11. In view of what has been discussed above, this petition is allowed and the impugned orders dated January 18, 2012 (Annexure P-5) and June 25, 2015 (Annexure P-9) are set aside. The respondents are directed to take into account the service rendered by the petitioner from June 06, 1978 to October 17, 1979 in the Department of Printing & Stationery, Haryana and from October 17, 1979 to March 26, 1996 in the HDDCFL, for the purpose of fixing his pension and for grant of other retiral benefits and consequential reliefs. The respondents shall do the needful within a period of three months from the date of receipt of a certified copy of this judgment.

Any retirement benefits already paid to the petitioner in respect of his

service rendered by him in the previous departments shall be adjusted by the respondents commensurately from his retirement benefits. However, if the petitioner still feels aggrieved of any order or action of the respondent(s), he is at liberty to approach this Court.

November 09, 2017
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(Jaspal Singh)
Judge

<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>