

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20100-2014 (O&M)
Date of decision: 17.04.2017

Manphool Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Jaspal Singh Maanipur, Advocate for the petitioner
Mr.Keshav Gupta, AAG Haryana
Ms.Neelam Nehra, Advocate for
Mr.Deepak Balyan, Advocate for respondent nos.3 and 4

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioner, who retired as Clerk from S.D.High School Jind which is government aided privately managed school, seeks writ of mandamus that he should be granted pensionary benefits in terms of Rule 7 of the Haryana Aided Schools (Special Pension & Contributory Provident Fund) Rules, 2001 by considering the post of the petitioner as sanctioned post of Clerk in terms of the instructions dated 12.2.1963 and grant him annual increment in terms of settlement dated 29.5.1997 (Annexure P2) and pension be also granted to him in the revised pay scale applicable on the date of his retirement. He also seeks quashing of the reply dated 28.1.2014 (Annexure P6) submitted by respondent nos.3 and 4 to the legal notice dated 17.12.2013.

Petitioner was appointed as a Clerk by the Secretary of the

respondent school on 1.5.1989. His services were terminated on 28.1.1995. Petitioner raised an industrial dispute. However, settlement was arrived at before Deputy Labour Commissioner, Panipat on 29.5.1997 (Annexure P2) that he will not be entitled to salary from 28.1.1995 to the date of joining i.e. 7.7.1997 but will be entitled to benefit of continuity in service. Petitioner superannuated on 30.6.2009. He was not granted benefit of previous service from 1.5.1989 to 7.7.1997 towards pay fixation and annual increment while in service. Thereafter, the petitioner filed the present writ petition in the year 2014 after about five years, claiming the above noted relief.

Respondent no.4 school in the written statement has taken a stand that the petitioner was posted against un-sanctioned / unaided post from the resources of the school. Therefore, he is not entitled to any retirement benefit under Rule 4 and 7 of Haryana Aided Schools (Special Pension & Contributory Provident Fund) Rules, 2001 as these are not applicable to him. It was stated that the petitioner was appointed as a Clerk by the Secretary of S.D. Senior Secondary School w.e.f. 1.5.1989 by back door entry on purely un-sanctioned/ un-aided post of Clerk in the existing pay scale of Rs.950-1500 and his salary was continuously disbursed from the sources of the school. No grant-in-aid was provided by the Haryana Government for the said post. Petitioner never faced any interview before selection committee. He was never confirmed being working against the un-sanctioned post created by Secretary of the School at his own level.

Respondent nos.1 and 2 in the separate reply has taken a stand that the petitioner was appointed as a Clerk by the Secretary of the S.D. Senior Secondary School, Jind w.e.f. 1.5.1989 by back door entry on purely

un-sanctioned/ un-aided post. No grant-in-aid was provided by the Haryana Government. No advertisement was given nor any requisition was sent to the Employment Exchange, Jind. Petitioner did not face any interview before selection committee. He was never confirmed being working on un-sanctioned post. It was stated that the settlement dated 29.5.1997 before the Labour Court, Panipat was regarding un-sanctioned post. He was not paid any wages for the period of the break i.e. from 28.1.1995 to 6.7.1997. It was further stated that the petitioner was covered by EPF Scheme which is controlled by Employees Provident Fund Commissioner (Pension) Haryana Rohtak. Petitioner is already getting monthly pension under PPO HR/RTK/11908 (P.F. Account No. HR/2580/67) through Punjab National Bank, as communicated by Assistant Provident Fund Commissioner (Pension Rohtak) vide letter dated 21.4.2010 (Annexure P3).

I have heard learned counsel for both the parties and have also carefully perused the record.

The first question would arise for consideration is as to whether the petitioner was working against sanctioned post or un-sanctioned post?

Letter of appointment dated 30.4.1989 (Annexure P1) shows that he was appointed by the Secretary of the School Management. There is nothing on file to show that any advertisement was given in any newspaper or that the applications were invited through the Employment Exchange, Jind. There is also nothing on file to show that school ever moved application to the Haryana Government for getting the said post sanctioned and ever claimed any aid against the said post till the retirement of the petitioner on 30.6.2009. The stand of the school is also that the petitioner was appointed against unaided post and was paid from the resources of the

school. He was covered under the EPF Scheme. He is already getting pension from the Provident Fund Commissioner, since the date of his retirement. After five years of retirement the petitioner has filed the present writ petition.

Learned counsel for the petitioner has heavily relied upon the instructions dated 12.2.1963 (Annexure P7) which provide that one Clerk may be appointed where the school is having enrolment of 1000 students and additional Clerk for next 500 enrolment or part thereof. He has also relied upon information under RTI Act dated 12.5.2014 (Annexure P8) vide which number of posts have been mentioned.

I am of the view that the petitioner is precluded from claiming benefit of instructions (Annexure P7). Annexure P7 is only enabling instructions which do not mean that if any post is filled in by the School that will automatically be against aided post. The information (Annexure P8) is regarding existing post and does not mention that how many posts were sanctioned post and how many posts were un-sanctioned posts. Stand of the school and that of the Government is that the petitioner was appointed against un-sanctioned/ unaided post and was paid from the resources of the school. Since the post of the petitioner was never got sanctioned and it is not proved that he was appointed as per the procedure against aided post and after his retirement he accepted the pension from EPF authorities, therefore, this Court cannot declare that the post of Clerk of the petitioner be treated as sanctioned post. Consequently, the petitioner cannot be granted benefits claimed by him.

Learned counsel for the petitioner has contended that his service from 1.5.1989 to 7.7.1997 should be treated for the grant of EPF

pension by the Provident Fund Commissioner on the basis of the settlement dated 29.5.1997 (Annexure P2).

After going through the pleadings and the prayer clause, I find that it is nowhere pleaded in the pleadings nor in the prayer clause that the said period should be treated for the purpose of grant of pension by the EPF authorities. Learned counsel for the petitioner seeks liberty of this Court to raise the said dispute separately. However, this Court is not inclined to grant said liberty since after his retirement, he filed the present writ petition after five years of retirement and now wants to raise the said dispute nearly after 8 years of his retirement.

Consequently, I do not find any merit in the present writ petition, which is otherwise barred by delay and laches. The same is accordingly dismissed.

17.04.2017*gk*

Whether speaking/ reasoned:

Whether Reportable:

(Kuldip Singh)**Judge**

Yes

No