209 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22173 of 2014 (O&M)
Date of decision : March 10, 2017

Smt. Pawan Kumari .... Petitioner

Versus

The State of Punjab and others .... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. G.P. Vashisht, Advocate for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

Mr. Sanchit Kundra, Advocate for
Mr. N.P.S. Mann, Advocate for respondent No.5.

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. (ORAL)

The petitioner was initially appointed as Craft Teacher by respondent No.4-Administrator, Panchayat Samiti, Garshankar, District Hoshiarpur, on the temporary basis for 89 days vide appointment letter dated 15.07.1982 (Annexure P-1) and her appointment was duly approved by respondent No.2 vide letter dated 21.01.1983 (Annexure P-2). However, on 06.03.1986, the services of the petitioner were terminated by the Executive Officer, Panchayati Samiti, Garshankar, District Hoshiarpur-respondent No.5, against which the petitioner filed an appeal under Section 116 of the Punjab Samities and Zila Prishads Act, 1961 before the Deputy Commissioner, Hoshiarpur. The petitioner was reinstated vide order dated 26.03.1986 but again vide order dated 11.09.1987, the services of the petitioner were again terminated by respondent No.4-Administrator. This order was challenged before the Civil Court by the petitioner. The Civil

Court decreed the claim of the petitioner vide judgment dated 22.08.1988 and quashed the impugned order of termination. The appeal against the said judgment was dismissed by the appellate court on 04.04.1991. Thereafter, the petitioner was reinstated in service vide order dated 30.03.2001. The services of the petitioner were regularized on the basis of instructions dated 23.01.2001. The petitioner thereafter retired from service on 31.07.2012. Against this background, it is claimed that CPF was deducted from the salary of the petitioner by the employer. It was started deducting w.e.f. April, 2006. When after retirement, the petitioner asked for pension and gratuity but the same was declined to the petitioner vide order 23.07.2014 (Annexure P-5) on the ground that from the date of deduction i.e. April 2006, the qualifying service of the petitioner is 6 years, 4 months and 10 days, which is less than required period of 10 years. Therefore, the petitioner is not entitled to the pension. The petitioner has assailed the said order dated 23.07.2014 (Annexure P-5).

Learned counsel for the petitioner contends that the gratuity has since been released. Now, the only claim pressed is for the pension.

In the reply, the respondents have relied upon the Instructions endorsed on 10.10.2013 (Annexure R-1), wherein it is stated that the qualifying service for pension is to be counted from the first deduction of CPF under Rule 2 K of the Punjab Panchayat Samities and Zila Prishad Employees Pension Rules, 2000. Therefore, it is claimed that since CPF was deducted from April 2006, therefore, qualifying service for the pension shall be counted from the date of regularization of official.

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

Admittedly, the petitioner initially joined his services on 15.07.1982, which was later on regularized. The order of termination of the petitioner was set aside by the competent authority. Therefore, he was on regular service from 15.07.1982.

Now, the legal question would arise as to whether the qualifying service for pension is to be counted from the date when the contribution of the petitioner towards CPF was deducted by the employer for the first time i.e. from April 2006 or from the date of initial appointment?

I am of the view that the Instructions dated 10.10.2013 (Annexure R-1) do not mean that if there is fault on the part of the employer to deduct the CPF at the appropriate time, the qualifying service is to be counted only from the date when the CPF is deducted. The said instructions mean that when the CPF payable is deducted for the first time by the official, the qualifying service starts from the said date.

Under the Employees Provident Fund and Misc. Provisions Act, 1952, it is the duty of the employer to deduct the CPF, therefore, if the employer has failed to do so, the employee cannot be made to suffer for the same.

The matter was considered by a Division Bench of this Court in case of ***"Dharam Pal v The Superintending Engineer, Operation Circle UHBVNL, Karnal and another", 2007(1) S.C.T. 496,*** wherein in case of work-charge employee, where the provident fund was not deducted, this

Court passed the following order:

> *5. Thus, on principle, precedents as well as the rules, the claim of the petitioner deserves to be accepted. Accordingly, we allow the writ petition. The petitioner is held entitled to computation of the work charged service as qualifying service. The employer's contribution in the provident fund drawn by the petitioner shall be adjusted and set off from the arrears which may become payable after the afore-mentioned calculation and computation. The respondents shall undertake the exercise of computation of arrears and complete the same within a period of two months from the date a certified copy of this order is supplied to them. The petitioner shall also be entitled to interest on the arrears after setting off employer's contribution from provident fund @ 8 percent per annum from the date the arrears were payable till the date of payment. However, the arrears resulting from recalculation of pay/pension after adding the aforementioned period of ad hoc service shall be confined only to three years two months preceding the date of filing of the writ petition, which is 19.1.2005."*

The matter regarding the Craft Teacher, who was appointed on adhoc basis by the Panchayat Samiti, Zira was considered by the Single Bench of this Court in case of ***"Sita Devi v State of Punjab and others",*** in CWP No.4378 of 2006, decided on 13.08.2015 and while relying upon the various pronouncements, it was held as under:

> *"It was held in the said judgment that the petitioner was entitled for counting entire service as qualifying service for the purposes of pension and contribution towards Contributory Provident Fund is to be adjusted and deducted from the arrears of her pension. The*

> *respondents were directed to calculate the pension accordingly.*
>
> *In view of the facts as well as law position as discussed above, the present petition is allowed and the petitioner is held entitled for counting of her entire service as qualifying service for the purpose of pension. However, the Contributory Provident Fund of that period will be adjusted and deducted from the arrears of her pension.*

The case of the petitioner is squarely covered by the said authority. Therefore, the entire service of the petitioner is to be treated as qualifying service for the purpose of pension and pensionary benefits. So far as the CPF share is concerned, since the petitioner has already retired from service and might be facing financial hardship, therefore, the respondents are ordered to count the entire service of the petitioner as qualifying service and allow her pension after deducting the contribution of the petitioner towards CPF, along with interest @ 9% per annum and adjust the same against the arrears of pension. The remaining arrears, if not paid, be paid along with pension which shall be released by respondent Nos.4 and 5 to the petitioner within three months from the date of receipt of certified copy of this order after calculating and refixing the pension.

Needless to say that the petitioner shall also be entitled for interest on the arrears of pension, if found payable, starting three months from the date of retirement till its payment.

As such, the present petition is allowed.

(KULDIP SINGH)
JUDGE

March 10, 2017
sarita

Whether speaking / reasoned Yes
Whether Reportable: No