

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

**CWP No.2413 of 2016 (O&M)
Date of decision : April 27, 2017**

Dr. L.S. Yadav

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. K.L. Arora, Advocate for the petitioner.

Mr. Apoorv Garg, DAG, Haryana.

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 has invoked the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India for directing the respondents to count the service rendered by the petitioner in Kamla Nehru College, Jatauli, Hailey Mandi (Gurgaon) and release the pension and pensionary benefits, accordingly. The petitioner has also sought quashing of order dated 04.10.2011 (Annexure P-9) and order dated 10.11.2015 (Annexure P-15), vide which his claim was declined.

It comes out that the petitioner previously worked as Lecturer against an aided post in Kamla Nehru College, Jatauli, Hailey Mandi (Gurgaon) from 15.07.1971 to 02.11.1977. Thereafter, he joined the second college i.e. K.L.P. College, Rewari on 02.11.1977 (afternoon) and retired from service on 31.12.2008.

It also comes out that earlier the service rendered in the

Privately Managed Govt. Aided College was not the pensionable job. However, w.e.f. 11.05.1998, the Rules called Haryana Affiliated Colleges (Pension and Contributory Provident) Rules, 1999 (for short 'Pension Rules 1999') were introduced, whereby the pension was introduced. The petition claims that his previous service in the first college should be counted for grant of pension and pensionary benefits.

The prayer of the petitioner for counting his previous service was rejected vide impugned order dated 04.10.2011 (Annexure P-9) and order dated 10.11.2015 (Annexure P-15).

It also comes out that previously the petitioner had approached this Court by way of filing CWP No.22124 of 2014, titled as ***“L.S. Yadav s State of Haryana and others”*** which was disposed of on 07.09.2015 (Annexure P-13). It was in pursuance to the order dated 07.09.2015 that the impugned order dated 10.11.2015 (Annexure P-15) has been passed.

Respondent No.1 in the reply took the plea that the petitioner was relieved from the first college, which is deemed to be a resignation. The implementation of Pension Rules 1999 were not denied. It was also not denied that if the petitioner had served in one or more Privately Managed Govt. Aided Colleges, the previous service rendered by the petitioner is to be counted, subject to certain conditions. It is stated that CPF was not deducted during his service rendered in the first college. Therefore, his service rendered in the first college is not to be counted.

Vide additional affidavit filed on 18.04.2017 by the Chief Account Officer to Govt. of Haryana Higher Education Department, respondent No.1 has taken the stand that after verification, it is found that

when the petitioner left the service of the first college i.e. Kamla Nehru College, Jatauli, Hailey Mandi, Gurgaon, on 02.11.1977, he made request to withdrawal of the CPF amount and the CPF amount of Rs.7,000/- was withdrawn by him on 16.12.1977, vide cheque No.32481 (Annexure R-III/T). Meaning thereby that CPF was deducted from the salary of the petitioner during the service in the first college.

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

The service of the petitioner shows that even if it is assumed that the petitioner resigned from the first college, it was technical resignation as he had joined in the second college on the same day. It was mentioned in the additional affidavit dated 18.04.2017 that the CPF was deducting from his salary in the first college. At that time, pension scheme was not in force. It was introduced by the Pension Rules 1999. Therefore, the petitioner apparently withdrew his CPF amount. The service rendered by the petitioner under both the colleges was on the aided post and both are the Privately Managed Government Aided Colleges. The Rule 6 of the Pension Rules 1999 laid down as under:

“Rule 6 – Qualifying Service

The service of an employee shall qualify for retiral benefits under these rules as under:-

- (i) The service rendered on attaining the age of 18 years on approved post admitted for grant-in-adi.*
- (ii) The service rendered uptill the attainment of superannuation age of sixty years;*
- (iii) the leave admissible under the Haryana Affiliated Colleges (Security of Service) Rules, 1979 and under instructions issued by the Government from time to time,*

excluding the leave without pay and period of suspension, over stay of leave not subsequently regularized and period of break in service.

(iv) Service rendered in one or more private affiliated colleges, receiving grant-in-aid under the same management.

(v) Service rendered on aided sanctioned post in any aided college in the State of Haryana:

Provided that the official has been appointed through proper channel on aided sanctioned post and the approval of continuity of service has been obtained from the Director:

Provided further that the Contributory Provident Fund account of the employee in the previous college continued as such in the subsequent college to which he is transferred or appointed and there is no break in service of the service condition as modified by the Government from time to time.”

A perusal of above Rules shows that the contributory funds of the employee from the previous college should be transferred to the subsequent college. In the present case, in the year 1977, there was no pension scheme. Therefore, the petitioner withdrew his CPF from the first college. There was admittedly no break in the service of the petitioner. Thus, the service of the petitioner in the first college is to be computed as qualifying service for the purpose of pension and pensionary benefits, subject to the condition that the petitioner deposits the CPF amount of ₹7,000/- along with interest to be calculated by respondent No.1.

It being so, the present petition is allowed with a direction to the petitioner to deposit Rs.7,000/- withdrawn by him from the first college along with interest to be calculated and intimated by respondent No.1 within

two months from the date of receipt of certified copy of this order. Thereafter, the petitioner will deposit the said amount with respondent No.1 and on deposit of the said amount, the previous service of the petitioner shall be treated as qualifying service for the purpose of grant of pension and pensionary benefits and the said benefits shall be released, accordingly, by the respondents within next three months, failing which the interest @ 9% per annum shall be paid to the petitioner. However, since the petitioner has approached this Court after 8 years of his retirement, therefore, he will not be entitled to any interest on the arrears.

(KULDIP SINGH)
JUDGE

April 27, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: No