

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

CWP No. 3023 of 2015 (O&M)
Date of decision: 17.4.2017

Abub Shah

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sapan Dhir, Advocate,
for the petitioner.

Mr. Rupam Aggarwal, DAG,. Punjab.

JAISHREE THAKUR, J.

1. The petitioner herein is seeking a writ of Mandamus directing the respondents to treat the services rendered by him in a Privately Managed Government Aided School to be taken into consideration for counting service period towards qualifying service for purposes of pensionary benefits etc and allocation of GPF no.

2. Mr. Sapan Dhir, learned counsel appearing on behalf of the petitioner, submits that the petitioner had initially joined as JBT teacher in a government aided school on 07.12.2002. The District Education Officer, Bhatinda, approved the appointment of the petitioner under the Grant-in-aid Scheme. In 2010, the petitioner applied for a regular teaching fellow with the Education Department and after qualifying the same came to be selected on merit. He issued 3 months advance notice to the Managing Committee of

the school for leaving the job in order to join the new assignment by letter dated 30.4.2010. Appointment letter dated 28.07.2010 was issued by the office of the District Education Officer, Bhatinda, and by a letter dated 29.07.2010 the office of the District Education Officer, Bhatinda, asked the petitioner to join as ETT teacher in Government Elementary School Kotra Kaura Block Mandi Phul (West), District Bhatinda within 7 days. On receipt of such letter, the petitioner again requested the school for relieving him in order to join the selected post of Teaching Fellow by letter dated 30.7.2010. Relieving letter dated 02.08.2010 was issued and on that very day itself the petitioner joined as ETT teacher at Government Elementary School Kotra Kaura. The petitioner having worked in a Government Aided Privately Managed School seeks counting of that service towards the pensionary benefits on his retirement from government service as well as to be considered in the Old Pension Scheme and allocation of GPF account number.

3. It is a pleaded case of the petitioner that since he was appointed against posts duly sanctioned under the Grant-in-aid Scheme before he joined government service, the same should be counted for the purpose of qualifying service towards pension and pensionary benefits. It is also submitted that since he was appointed against the post duly sanctioned under the Grant-in-aid Scheme, he would have been entitled to be in the old pension scheme and a GPF number should be allotted to him.

4. Per contra, learned counsel appearing on behalf of the respondent State submits that the petitioner though appointed in a privately managed school under the Grant-in-aid Scheme would not be entitled to get

any benefit as claimed since there was no continuity in service. The petitioner resigned from the privately managed school in order to join the government service, therefore, the service rendered in such school could not be counted towards qualifying service in government service. Moreover, since the appointment was made only in the year 2010, the petitioner would be under the Contributory Pension Scheme and GPF number can not be allotted to him.

5. I have heard both the counsel for the parties and with their resistance have gone through the record of the case.

6. This issue is no longer res integra. This Court in Civil Writ Petition No. 14238 of 1991 titled Sukhdev Singh and others Versus State of Punjab and others, decided on 10.3.2010, after noting several judgments, held that service rendered in Privately Managed Government Aided Schools was to be counted and treated as qualifying service for the purpose of pension and other retrial benefits. It was also held that as per Rule 7.5 (2) of the Punjab Civil Service Rules 1959, resignation does not entail forfeiture of past service, provided that such resignation is necessitated to enable the incumbent to join another appointment, temporary or permanent, for which he had applied through and with proper permission. Even an interruption in service on account of such resignation can be formally condoned by treating the period of leave of kind due to him. The writ petition was allowed with the following conditions:-

“1) The respondents shall call upon the petitioners to furnish their exact service particulars in respect of the service rendered by them in the Government Aided Privately Managed

Schools. Such an information shall be called within a period of two months from the date of receiving a certified copy of this order and the petitioners shall furnish the same within one month thereafter;

2) The respondents shall also call upon the records of the Government Aided Privately Managed Schools and verify as to whether or not the petitioners have served in such Government Aided Schools against the posts duly sanctioned;

3) The respondents shall be at liberty to ascertain as to whether or not the petitioners had resigned from the Government Aided Privately Managed Schools to enable them to join the Government service;

4) The insignificant or small break between the two services shall be condoned in terms of Rule 7.5 (3) of CSR (Volume-I);

5) The benefit of service rendered in Government Aided Privately Managed Schools shall be extended strictly as per the terms and conditions contained in 'the Pension Scheme 1992';

6) If some of the petitioners who are still in service are found to be not entitled to the benefit of their previous service in Government Aided Schools, necessary speaking orders to this effect shall be passed by the respondents;

7) This order shall not be construed to mean acceptance of claim of the petitioners to count the service rendered by them in Government Aided Privately Managed Schools, towards their seniority, proficiency step-up or ACP etc. as the claim in the

present writ petitions is confined qua pensionary benefits only;

8) The entire exercise including the payment of consequential arrears shall be completed as early as possible, preferably within a period of one year from the date of receiving a certified copy of this order.”

7. In the instant case, the petitioner having worked in the grant-in-aid school applied through proper channel for the post of fellow teacher and it is only on appointment that resignation was submitted. There is no gap or delay in the instant case in joining service. Resignation was accepted on 2.8.2010 and immediately in the afternoon joining report was submitted. Therefore, the contention raised that there is no continuity in service is unsustainable.

8. In CWP No 2371 of 2010 titled Harbans Lal vs. State of Punjab and others decided on 31.8.2010, the petitioner who had been appointed as a daily wager prayed for issuance of a writ of mandamus for re-fixation of the date of his regular appointment by counting daily wage service towards qualifying service for pension and that he may be permitted to continue with the GPF Scheme and entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Government Service prior to 01.01.2004, the Division Bench allowed the writ petition while holding:-

“From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 1.1.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been

introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing clarification /instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 1.1.2004.”

9. Therefore, in view of the discussion above, it is held that the petitioner would be entitled to the benefit of service rendered in the Government Aided Privately Managed School to be counted towards his qualifying service rendered in government service. Once length of service of the petitioner rendered in a 95% aided school is to be taken into consideration for the purposes of pension and petitioner was in service prior to the introduction of the New Pension Scheme, as a necessary corollary he would be entitled to the benefits of the GPF. In order to avoid any difficulty to release the benefits as claimed in the writ petition, it is directed that:

“1) The respondents shall call upon the petitioner to furnish his exact service particulars in respect of the service rendered by him in the Government Aided Privately Managed Schools. Such an information shall be called within a period of two months from the date of receiving a certified copy of this order and the petitioner shall furnish the same within one month thereafter;

2) The respondents shall also call upon the records of the Government Aided Privately Managed Schools and verify as to whether or not the petitioner has served in such Government

Aided Schools against the post duly sanctioned and thereafter the respondents shall be at liberty to ascertain as to whether or not the petitioner had resigned from the Government Aided Privately Managed Schools to enable them to join the Government service;

3) If the petitioner is found to be not entitled to the benefit of his previous service in Government Aided Schools, necessary speaking orders to this effect shall be passed by the respondents;

4) The entire exercise including the payment of consequential arrears shall be completed as early as possible, preferably within a period of six months from the date of receiving a certified copy of this order.”

10. Any contributions made by the petitioners towards CPF while rendering service shall be refunded to him.

11. Writ petition stands allowed on the aforementioned terms.

17.4.2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No