

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

CWP-5532-2015

Date of decision: 01.02.2017

Jasvinder Singh

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.K. Chopra, Sr. Advocate, with
Mr. Gaurav Sharma, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

JAISHREE THAKUR, J. (ORAL)

The instant petition has been filed by the petitioner seeking to quash Clause 15 of his appointment letter dated 01.12.2006 (Annexure P-2) which specifies that the services of the petitioner would be governed by the provisions of the new Contributory Pension Scheme and that he would not be entitled to any benefit under the existing Family Pension Scheme with a further prayer that the petitioner may be permitted to join the General Provident Fund Scheme under the Punjab Civil Services Rules.

In brief the facts of the case are that the petitioner was initially appointed as a Social Studies Master in a privately managed Punjab Government aided school on 22.11.2002. The appointment of the petitioner as Social Studies Teacher was duly approved by the Punjab Education Department vide order dated 09.08.2004. The school was given 95% aid by the State Government. Thereafter, posts of Head Masters/Head Mistresses

were advertised in the Punjab Education Department and the petitioner applied for the said post through proper channel. The petitioner came to be appointed to the said post by the District Education Officer (Secondary Education), Ludhiana and was issued an appointment letter dated 01.12.2006. The petitioner filed Civil Writ Petition No. 6166 of 2011 with a prayer that the services rendered by him in a privately aided school prior to his appointment in government service should be counted as qualifying service for pension and other pensionary benefits. The said writ petition was allowed by an order dated 27.02.2013 directing the respondents to count the services rendered by the petitioner in a privately managed, Punjab Government aided school before his induction into the government service as qualifying service for computing retiral benefits.

By way of the present writ petition, the petitioner is seeking to challenge Clause 15 of his appointment letter dated 01.12.2006 which specifies that the services of the petitioner would be governed by the new Contributory Pension Scheme.

Learned counsel appearing on behalf of the petitioner contends that Clause 15 of the appointment letter cannot be made applicable, once this Court had already directed that the benefits of his service in a privately managed Punjab Government aided school is to be counted towards the qualifying service, therefore, in such a situation the rules as applicable for pension at that relevant time would be applicable to him. It is argued that the new Contributory Pension Scheme which came to be introduced in the year 2006 would not be applicable to the petitioner since the length of his

service is to be reckoned from the date he joined the privately managed aided school which was 22.11.2002. Reliance is also place on judgment rendered in ***CWP No 20128 of 2006 Kashmiri Lal vs State of Punjab and others*** decided on 28.11.2013 where similarly situated persons have been granted the necessary relief.

Per contra, learned counsel appearing on behalf of the respondent-State argues that the fresh appointment letter came to be issued to the petitioner in the year 2006 which categorically mentions that the services of the petitioner would be governed by the new Contributory Pension Scheme and after having accepted the said letter of appointment he is now estopped from raising such a plea. Learned counsel for the respondent-State also argued that initially the petitioner was working in a privately managed aided school and it is only in the year 2006 when the Contributory Pension Scheme had been introduced, he was taken into government service. It is also argued that there is inordinate delay in challenging the said Clause since the appointment letter was issued in the year 2006 and the instant petition has now been filed in the year 2015.

I have heard learned counsel for the parties and have perused the record of the case .

The short question for consideration is whether the petitioner would be entitled to the benefits of the old Pension Scheme or the one introduced in the year 2004.

In ***Harbans Lal vs. State of Punjab CWP No 2371 of 2010***

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.”

In ***Kashmiri Lal vs State of Punjab*** (supra) petitioner was one of the persons who had responded to the advertisement for the post of Head Masters and they were aggrieved about the Clause 15 of the Order dated 1.12.2006 which provided that they would be governed by the new contributory pension scheme. A statement was made on the instructions of D.P.I. (SE), Punjab, Mohali, that all the petitioners will be governed through

the Old Pension Scheme only and Clause 15 would not be made applicable against them.

In the instant case, the petitioner herein was serving in a 95% aided school and in response to an advertisement applied and got selected as Head master with the education department. The petitioner then filed a writ petition with a prayer that the service of the petitioner in the aided college be counted towards qualifying pension which was allowed. There had been instructions issued on 24.10.2008 by the State, that the claims of the employees, who were already covered by an Old Pension Scheme as on 31.12.2003, would be continued to be governed by the same, if they were appointed to any other department of the State Government by submitting resignation on technical basis. 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 Old Pension Scheme as held under the instructions dated 24.10.2008.

Looked at from another angle, the claim of the petitioner can not be defeated since the petitioner has a right to be treated on par with other employees appointed along with him. The petitioners in *Kashmiri Lal's* (supra) case, are those employees who were appointed along with the petitioner and who had the same clause in their appointment letter which has since been ignored. Article 14 of the Constitution of India would guarantee equality to all and in the case in hand the petitioner too is entitled

to be treated equally as with the petitioners in ***Kashmiri Lal*** 's (supra) case.

The writ petition is allowed by holding that Clause 15 of the appointment letter would not be applicable to the petitioner and he will be governed through the Old Pension Scheme only.

01.02.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes.

Whether reportable

No.