IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

[1] Letters Patent Appeal No.1318 of 2015 (O&M)
Date of Decision: March 21, 2017

State of Haryana and others ......Appellants

versus

Parkash Chand Sharma and others .....Respondents

[2] Letters Patent Appeal No.1319 of 2015 (O&M)

State of Haryana and others ......Appellants

versus

Ramvir Sharma and others .....Respondents

[3] Letters Patent Appeal No.1320 of 2015 (O&M)

State of Haryana and others ......Appellants

versus

Chet Ram Gaur and others .....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

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Present: Mr.Deepak Balyan, Additional AG,Haryana, for the appellants.
Mr.Anand Bhardwaj, Advocate, for respondent No.1.
Mr.Sharad Aggarwal, Advocate,
for respondent Nos.9 & 10 in LPA No.1319 of 2015 and
for respondent Nos.5 & 6 in LPA No.1320 of 2015.

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Surya Kant, J. (Oral)

This order shall dispose of LPA Nos.1318, 1319 and 1320 of 2015. All these appeals are directed by the State of Haryana against a common order dated 02.09.2014 vide which the learned Single Judge has allowed three writ petitions in part.

For brevity, the facts are being extracted from LPA No.1318 of 2015.

[2] The controversy revolves the question whether the respondent-

writ-petitioners had exercised their option for inclusion of the period of 'probation' towards 'qualifying service' for pension within the stipulated period and had deposited their share of contributory fund in accordance with the Government Notification dated 19.01.2007?

[3] For the proper appreciation of the point in issue, it may be observed that the private-respondents joined Aggarwal Senior Secondary School, Ballabhgarh, district Faridabad as SS Masters/JBT Teachers/Hindi Teachers/Clerks etc. on different dates. The above-stated School is a Government Aided Privately Managed School and receives 95% grant-in-aid from the State of Haryana. The respondent-writ-petitioners were admittedly appointed against the duly sanctioned posts under the grant-in-aid scheme.

[4] State of Haryana has formulated the Haryana School Education Rules, 2003 in exercise of its powers under the Haryana School Education Act, 1995. These rules were further amended vide notification dated 19.01.2007, enacting the Haryana School Education (Amendment) Rules, 2007. Rule 32 of the amendment Rules inserted a proviso below Rule 114 of 2003 Rules to the effect that "**an employee/retiree who has not availed of the option till now, may give fresh option to deposit the subscription of fund alongwith interest at the prevailing rate as worked out by the Director, within 90 days from the date of commencement of these rules**..."

[5] Since the respondent-writ-petitioners were denied the benefit of their 'probation' period towards 'qualifying service' on the assumption that they did not exercise their option within the stipulated time, they approached this Court by way of a writ petition in which additional service

benefit of 'leave encashment' was also sought.

[6] Learned Single Judge vide the order under appeal has held as a matter of fact as follows:-

> "...... It does not appear to be in dispute that the petitioners have exercised their option pursuant to P-1 and also deposited their share of the contributory fund, as required. A reading of the amended provision from the hereinabove reproduced letter (P-1) makes it evident that the real intention of the amendment is to bestow the benefit and time limit of 90 days for exercising the option has been provided for facilitating the finalizing of the claims by the Government. It naturally follows that the retirees, like the petitioners, from the employment of the Private Aided Schools were to be personally intimated so as to enable them to exercise their option and for the delay, if any, no prejudice is being caused to the State as the retirees are already required to deposit their shares towards CPF alongwith 12% interest. It is not the case of the respondent/State that the respondent-Schools and thus the retirees/petitioners were intimated through the District Education Officers in that regard prior to the issuance of letter dated 14.03.2008 (P-1). To the contrary, it is the stand of the respondent-Schools that upon receipt of letter (P-1), the Schools had become aware of the amended provision and thereafter the needful was done by the School Authorities as well as the retirees/petitioners by exercising their option and submitting it to the School Authorities within time......."
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> (emphasis by us)

[7] From the averments made in the written-statement filed by Management of the School also, it can be seen without any doubt that the writ-petitioners had exercised their option within the prescribed time and had also deposited their shares towards Contributory Fund. The mandate of

the rule having been complied with on their part, may be belatedly, learned Single Judge has rightly held them entitled to the counting of their probation period towards 'qualifying service' for pension.

[8] Though learned State counsel has made an attempt to urge that there was delay on the part of the private-respondents in exercising the option, but such a plea could not be substantiated in view of the candid admission made on behalf of the Management under whom the writ-petitioners were serving.

[9] For the reasons afore-stated, we do not find any merit in these appeals which are accordingly dismissed.

[SURYA KANT]
JUDGE

March 21, 2017
mohinder

[SUDIP AHLUWALIA]
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No