

In the High Court of Punjab and Haryana at Chandigarh

CWP No.7204 of 1996

Date of decision: November 14, 2018

Kirpal Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr.Ashish Goklaney, Advocate and
Mr. P.K. Goklaney, Advocate for the petitioner.

Mr. H.S. Sullar, Deputy Advopcate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

The present writ petition has been filed by the petitioner with a prayer that the respondents-State be directed to pay the arrears of salary for the period 26.02.1988 till 31.12.1990 along with interest @ 18%.

The facts as stated in the petition are that the petitioner was working as a Peon at Bhai Bura Khalsa Government High School, Mansuran, District Ludhiana. The said school was taken over by the Government vide its letter dated 29.02.1988. The staff which was working in the school except five employees, was taken over by the Government. Despite the fact that the services of the petitioner were

not taken over by the Government, still the petitioner kept on attending the school and ultimately keeping in view the direction issued by the District Education Officer, Ludhiana, the petitioner was allowed to join the school w.e.f. 01.01.1991. The said order was issued by respondent No.3 on 24.11.1990 and the services of the petitioner were taken by the Government w.e.f. 26.02.1988 when the other teachers were absorbed in pursuant to the taking over of this school. The contention of the counsel for the petitioner is that for all intents and purposes, the petitioner is an employee of the State of Punjab w.e.f. 26.02.1988 till 31.12.1990 and hence entitled for the salary for the period 26.02.1988 till 31.12.1990.

In response to the claim made by the petitioner, the State in its reply stated that the services of the petitioner were not taken over when the school was taken over on 26.02.1988 and it was only vide Annexure P-2, dated 24.11.1990 the services of the petitioner were taken over by the Government though with effect from 26.02.1988. The plea has been raised that the petitioner never worked with the Government for the period for which the petitioner is claiming arrears of salary. In reply to paragraph 5, it has been admitted by the State that the attendance of the petitioner was continuously marked by the Manager for the said period on a separate register but the said attendance cannot be taken for the grant of salary to the petitioner and, therefore, the claim of the petitioner as the same was done by the Manager at his own level.

Therefore, the claim of the petitioner for the salary for the period

when he did not work cannot be granted to him.

The petitioner has also attached the order dated 01.08.1990 by which four other employees of the school, whose services were also not taken over on 29.02.1988, when the school was taken over by the Government, were absorbed later with retrospective effect in a similar manner in which the petitioner was absorbed vide Annexure P-2. In order to ascertain the fact as to whether any salary has been paid to those four employees, who were also absorbed in the school with retrospective effect, the State was directed to file a specific affidavit in this regard. In the affidavit which was filed by the District Education Officer, Ludhiana on 06.03.1997, it has been admitted that the four teachers who were also taken over by the Government with retrospective effect by order dated 01.08.1990 (Annexure P-6), were given the arrears of salary. Once again in the affidavit, it was stated by the State that as the petitioner did not work in the school, he was not entitled for the salary for the period till he was absorbed vide order dated 24.11.1990 with retrospective effect.

I have considered the arguments raised by the petitioner that even though there was no formal order of absorption or taking over the services of the petitioner by the State but as a matter of fact the petitioner kept on attending his duty and his attendance was duly being recorded by the Manager on a separate register. Once the State has not disputed the fact that the attendance of the petitioner was being marked regularly and coupled with the fact that vide order dated 24.11.1990, the services of the petitioner have been taken over

with retrospective effect, the petitioner cannot be denied the salary

for the said period.

Ever otherwise, once similarly situated employees, whose services were not taken over in February, 1988 but they were also appointed in November, 1990 with retrospective effect, have been paid the arrears of salary then there is no reason with the State to deny the said benefit to the petitioner.

In these circumstances, the claim of the petitioner for the salary for the period 26.02.1988 till 31.12.1990 is allowed. Let arrears be commuted by the State within three months from the date of receipt of a certified copy of this order and be paid to the petitioner within a period of next one month. In case, the order is not complied with in the above mentioned period, then the petitioner will also be entitled for an interest @ 6% per annum from the date of this order till the payment is actually made to him.

(HARSIMRAN SINGH SETHI)
JUDGE

November 14, 2018

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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No