

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.17571 OF 2011 (O&M)
DECIDED ON: MAY 21, 2018

KUSUM GUPTA

..PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. CM Chopra, Advocate,
for the petitioner.

Mr. RKS Brar, Additional Advocate General, Haryana.

JASPAL SINGH, J.

By virtue of instant petition preferred under Article 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of mandamus directing the respondents to consider and count the period of service from 16.07.1971 to 18.08.1979 in the Government Aided, Hindu Girls College, Jagadhri towards qualifying service for pension and other retiral benefits and further to pay arrears along with interest thereof.

2. Concededly, petitioner was appointed as Lecturer in Political Science against sanctioned post in Hindu Girls College, Jagadhri, a Govt. Aided Private College on 16.07.1971 (P-1) by the duly constituted Selection Committee. Since, the said college was affiliated with Panjab University, Chandigarh, her appointment was also approved as Lecturer in Political Science

up to degree classes vide letter dated 12.10.1971 (P-2). She served in the aforesaid College of Jagadhri for the period 16.07.1971 to 18.08.1979. Subsequent thereto, she applied for the post of Lecturer in Political Science in RKSD College, Kaithal, that too, after obtaining NOC from Hindu Girls College, Jagadhri. She was selected by the duly constituted committee on 07.08.1979 and her appointment was duly recommended by the Kurukshetra University. Since, the aforesaid University recommended the name of petitioner for appointment as Political Science Lecturer vide letter dated 17.08.1979 (P-5), she joined on 20.08.1979 as such.

3. It is also an undisputed fact that petitioner has served sufficient long period in Hindu Girls College, Jagadhri from 16.07.1971 to 18.08.1979 as Lecturer in Political Science, thus, she became entitled to selection grade/senior scale after counting aforesaid past service in RKSD College but the authorities declined the request so made by the petitioner, which necessitated the filing of CWP No.11223 of 1993 before this Court. The said writ petition was allowed vide order dated 20.11.1996 in terms of ***Romila Jain's*** case reported as **1995 (4) SLR 238**. Subsequently, after considering the aforesaid period towards selection grade/senior scale, she was allowed senior scale w.e.f. 01.01.1986 and selection grade w.e.f. 26.07.1987 vide order dated 02.07.1997 (P-9). Though, the aforesaid period has already been taken into consideration and counted towards grant of senior scale and selection grade as referred to above yet the request of petition was rejected for counting the aforesaid period of 16.07.1971 to 18.08.1979 for pension and pensionary benefits for the simple reason that she did not apply for the post of Lecturer Political Science through proper channel

to RKSD College (Govt. Aided), Kaithal and rejected the claim vide letter dated 17.07.2004 (P-10). When the relief sought through the petition was not granted by the respondents for counting past service rendered in Govt. Aided College, Jagadhari from 16.07.1971 to 18.08.1979 towards pension and other retiral benefits, petitioner has approached this Court.

4. In response to the notice of motion, respondents appeared and filed written statement that since petitioner has not been appointed through proper channel against the aided sanctioned posts in RKSD College (Govt. Aided), Kaithal and further that there was not any approval obtained from the Director for continuity of service rendered in Hindu Girls College, Jagadhri, petitioner is not entitled to the benefit of counting of her past service towards pensionary benefits.

5. Now, the question which survives for determination in this petition is whether it is suffice to decline the relief claimed by the petitioner on the ground that she did not apply for fresh appointment in the College of Kaithal through her previous employer at Jagadhari and the answer to this question is in the negative. Such a controversy came before this Court in ***“M.R. Juneja v. State of Punjab, 2004 (3) RSJ 236***. In the said judgment, it was observed that object of Rule 9(2) of Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981, cannot be construed to mean that an appointment of a teacher in another Govt. Aided School will be rendered illegal for the purpose of grant of pension merely because he/she did not apply for the second post in another school through his/her previous employer. The object of this Rule is that the first employer is not taken by surprise if an employee

intends to resign from his/her service so as to take up another assignment. In the absence of any such objection by the previous employer on record, State Government cannot be permitted to take shelter behind this technicality. Aforesaid judgment was approved and followed by the Division Bench of this Court while granting the relief in case ***“Gurmeet Singh v. State of Punjab and others, 2007(3) SLR 858*** categorically observing that service rendered in Govt. Aided School in Privately Managed Recognized Schools is to be counted for retiral benefits particularly when there is no break in his/her service. The said petition was allowed and respondents were directed to count entire service of petitioner as qualifying service for pension. Similar observation was made by the Division Bench of this Court in case ***“Harnandan Singh v. State of Punjab and ors” 2007(2) RSJ 437*** as well as in case ***“Charan Singh v. State of Punjab and others”, 2006(6) SLR 624***. The case of the petitioner is squarely covered in view of the observations made in the above referred authorities. Moreover, in the instant case, no objection has been raised by the Management of Jagadhari at any point of time after her joining in R.K.S.D. College, Kaithal. Rather, during the course of arguments, it has emerged that they had given no objection certificate in this regard besides the issuance of relieving letter dated 25.09.1979 (P-4) specifically stating that *“she is duty-bound lady of high caliber. She is dexterous and intelligent lady”*. Apart from it, it would not be out of place to mention here that after considering and counting the service rendered by her in Hindu Girls College, Jagadhari for the period 16.07.1971 to 18.08.1979, respondents have already granted senior scale as well as selection grade and now, there is no reason to decline or reject the similar claim for the

purpose of pension. An objection, if any, raised in this regard by the respondent is not tenable and is liable to be rejected in view of the aforesaid discussion and the law referred to above.

6. As an upshot of the aforesaid discussion, instant petition is allowed and impugned action/order whereby relief with regard to counting of past service has been declined/rejected is quashed and respondents are directed to release the pension and other pensionary benefits to the petitioner after counting her entire service including service rendered by her in Hindu Girls College, Jagadhari from 16.07.1971 to 18.08.1979. The needful shall be done within a period of three months from the date of receipt of certified copy of this order. In case of non-compliance of aforesaid direction, petitioner shall be entitled to interest @9% per annum from the date of institution of petition till actual payment.

7. No order as to costs.

MAY 21, 2018

sonika

(JASPAL SINGH)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes