

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 11526 of 2016 (O&M)

Date of Decision: 09.02.2018

Rajeev Kumar

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Arora, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG Haryana.

RAJIV NARAIN RAINA, J. (Oral)

The services rendered by the petitioner as a Fee Clerk from 11.04.1999 till his regular appointment on 27.07.2013 in Arya Kanya Mahavidyalya, Shahbad Markanda, District Kurukshetra (Haryana) brought home to him a consolidated salary of Rs. 2,000/- per month which was increased later on. He was recruited through the employment exchange. There was no public advertisement calling candidates from the open market, since the selection process was restricted to the names sponsored by the local employment exchange. Those services cannot be treated as regular services or services qualifying for pension. It is not the case that as a Fee Clerk his services were regularized on 27.07.2013 which may have lent modicum of continuity and possibly brought the case within the ratio of Kesar Chand Vs. State of Punjab and others,

AIR 1988 P & H 265. The appointment letter is most certainly a fresh

one which puts him on probation for two years extendable for such period as the competent authority under the rules may determine.

In this petition, the claim for pension is made by counting previous services in the same institution as qualifying service. The appointment as Fee Clerk was never approved by the competent authority. When the petitioner was appointed, there was ban on recruitment imposed by the State Government by a policy decision dated 02.04.1999 and hence the respondents may not be unjustified in contending that the appointment from the inception was illegal.

In view of this, it cannot be said that the petitioner was appointed as Fee Clerk in the year 1999 against a sanctioned post to be paid from grant-in-aid. At best, the appointment of the petitioner as Fee Clerk in the year 1999 was a personal arrangement of the employer. Since the appointment was a fresh one Condition 9 would apply to the petitioner and would bring him under the New Defined Contributory Pension Scheme applicable to those who are appointed to service after 01.01.2006. Merely because the Arya Kanya Mahavidyalya started the CPF Scheme for the petitioner in the year 2003 would not relate back the fresh appointment order to give the petitioner a right to pension under the Old Pension Scheme. Moreover, the petitioner will be seen as accepting the terms and conditions of the appointment letter following regular recruitment and by act of joining he is seen as having waived his rights, if any. In the new dispensation, he has secured permanent

employment for himself.

Accordingly and as a result I find no force in the contention of learned counsel for the petitioner that the services should be clubbed and I am unable to bring relief to his client for counting the previous services as a Fee Clerk with the regular service.

Therefore, the writ is declined and the petition dismissed.

(RAJIV NARAIN RAINA)
JUDGE

09.02.2018
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Whether speaking/reasoned : *Yes*
Whether reportable : *No*