

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

**CWP-21482-2013 (O&M)  
Date of decision : 07.12.2018**

Paramjit Kaur

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN**

Present: Mr. S.S. Gurna, Advocate for the petitioner(s).

Ms. Bhavna Gupta, DAG, Punjab.

None for respondent Nos.3 and 4.

**JITENDRA CHAUHAN, J.**

Prayer in the instant petition is for quashing order dated 22.04.2013 (Annexure P-12) issued by respondent No.2 denying the claim of the petitioner for counting previous service rendered by her with the U.T. Chandigarh from 24.11.1990 to 17.01.1997 for the purposes of pay protection and retrial benefits.

It is the case of the petitioner that she was appointed as Trained Graduate Teacher vide order dated 21.11.1990(Annexure P-1). Thereafter, vide order dated 17.01.1997 (Annexure P-2), her services were regularized w.e.f. 01.01.1991. The petitioner was sent on deputation to the State of Punjab vide order dated 13.01.1994 (Annexure P-3) and her service report

was sent to the school of her posting in the State of Punjab. While on

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deputation, the petitioner was selected as Art & Craft Teacher in the State of Punjab vide order dated 09.12.1996 (Annexure P-4) and vide order 17.01.1997 (Annexure P-5), passed by Under Secretary Education (S), Chandigarh, she was relieved from duties. On 18.01.1997 (F.N.) (Annexure P-6), the petitioner joined her duties in a school at Hoshiarpur, where she had been already posted on deputation. The services of the petitioner were confirmed vide order dated 27.06.2001 (Annexure P-7).

The grouse of the petitioner is that the service rendered by her with the U.T. Administration is not being counted towards pay protection and retiral benefits on the ground that there is no reciprocal arrangement between the State of Punjab and the U.T. Administration. Cites ***Goa Sampling Employees' Association Vs. General Superintendence Co. of India Pvt. Ltd. and others, AIR 1985 SC 357***, to contend that the reciprocal arrangement between the State of Punjab and the Central Government would *ipso jure* include the Union Territory of Chandigarh.

On the other hand, learned State counsel submits that the State of Punjab does not have any reciprocal arrangement with the Union Territory of Chandigarh for providing proportionate pensionary liabilities for the service rendered by the employee with the respective governments. Cites a decision of this Court rendered in ***Ranjit Nahar Vs. State of Punjab and others***, CWP-7694-1998, decided on 02.08.2000.

Heard.

In ***Goa Sampling's case (supra)***, it has been observed by

Hon'ble apex Court as under:-

*The High Court after referring to the definitions of the aforementioned three expressions as set out and discussed herein first observed that on a careful reading of the definition, it appears 'that in relation to the administration of a Union Territory, the administrator thereof acting within the scope of the authority given to him under [Article 239](#) of the Constitution is the Central Government.'* So far there is no dispute. The High Court then observed that it must follow that the Administrator is the State Government in so far as the Union Territory is concerned, and it is so provided in the definition of the State Government in [Section 3\(60\)](#) of the General Clauses Act.' The High Court fell into an error in interpreting clause (c) of [Section 3\(60\)](#) which upon its true construction would show that in the Union Territory, there is no concept of State Government but wherever the expression 'State Government' is used in relation to the Union Territory, the Central Government would be the State Government. The very concept of State Government in relation to Union Territory is obliterated by the definition. Our attention was, however, drawn to the two decisions of this Court in [Satya Dev Bushahri v. Padam Dev & Ors.](#)(<sup>1</sup>) and the decision of this Court in [The State of Madhya Pradesh v. Shri Moula Bux & Ors.](#)(<sup>2</sup>) in which with reference to Part States, some observations have been made that the authority conferred under [Article 239](#), as it then stood, to administer Part States has (1) [1955] S.C.R. 549. (2) [1962] 2 S.C.R. 794. not effect of converting those States into the Central Government, and that under [Article 239](#) the President occupies in regard to Part States, a position analogous to that of a

*Governor in Part A States and of a Rajpramukh in Part in States.' It was also observed that 'though the Part States are centrally administered under the provisions of [Article 239](#), they do not cease to be States and become merged with the Central Government.' It was then urged that by the amendment to Articles 239 and 240 by the Constitution (Seventh Amendment) Act, 1956 and introduction of [Article 239 A](#) and 239 by the Constitution (Fourteenth Amendment) Act, 1962, only the nomenclature of the Part States has undergone a change, now being described as Union Territory, but the position the Union Territory is the same as it was as Part States and therefore, the view taken in the aforementioned decisions that the administration of Part States could appropriately be described as State Government would mutatis mutandis apply to the administration of Union Territories. In other words, it was said that they can be appropriately described as State Governments for various purposes. Both the decisions were rendered prior to the amendment of Part VIII of the Constitution in 1956 and the insertion of the Articles 239 A and 239 in 1962 and more specifically after the enactment of the 1963 Act. The concept of Union Territory with or without a Legislative Assembly and with or without a Council of Ministers with specified legislative and executive powers have been set out in the 1963 Act. Coupled with this, modifications were made in the definitions of aforementioned three expressions. Therefore, the two decisions are of no assistance in resolution of the present controversy.*

*It was then pointed out that the definition of the expression 'appropriate Government' in [Section](#)*

*2(a)(i) of the Act unless it is shown in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or the enumerated industries or a banking or an insurance company, a mine, an oilfield, a Cantonment Board, or a major port, the appropriate Government will be the Central Government and in any other case a State Government- It was therefore, submitted that unless it is shown that in relation to the industrial dispute raised by the Association, the appropriate Government would be the Central Government, the case would fall under the residuary provision, namely, that in relation to any other industrial dispute, the appropriate Government would be the State Government. The submission does not commend to us because before one can say that the appropriate Government is the State Government in relation to an industrial dispute, there has to be some State Government in which power must be located for making the reference. If there is no State Government but there is some other Government called the Administration of Union Territory, the question would arise whether in such a situation the Administration of Union Territory should be described as State Government for the purpose of [Section 2\(a\)\(i\)](#) read with [Section 10\(1\)](#) ?*

*The High Court clearly fell into an error when it observed that the inclusive definition of the expression 'State Government' does not necessarily enlarge the scope of the expression, but may occasionally point to the contrary. Let us assume it to be so without deciding it. But where the High Court fell into the error was when it held that the President*

*representing the Central Government and the Administrator, and appointee of the President and subject to all orders of the President constitute two different governments for a Union Territory. The position, the power, the duties and functions of the Administrator in relation to the President have been overlooked. On a conspectus of the relevant provisions of the Constitution and the 1963 Act, it clearly transpires that the concept of State Government is foreign to the Administration of Union Territory and [Article 239](#) provides that every Union Territory is to be administered by the President. The President may act through an administrator appointed by him. Administrator is thus the delegate of the President. His position is wholly different from that of a Governor of a State. Administrator can differ with his Minister and he must then obtain the orders of the President meaning thereby of the Central Government. Therefore, at any rate the administrator of Union Territory does not qualify for the description of a State Government, Therefore, the Central Government is the 'appropriate Government'."*

A perusal of the above case law reveals that once there is reciprocal arrangement of the State of Punjab with the Central Government, the benefit thereof cannot be denied to the employees of the U.T. Administration. The ratio of law laid down in ***Ranjit Nahar's case (supra)*** is clearly distinguishable as in the cited case, there was no reciprocal arrangement between the States of Punjab and Haryana.

In this view of the matter, the instant petitions are allowed. The

consequential relief towards pay and pension, be extended to the petitioner within a period of six weeks from the date of receipt of a certified copy of this judgment. However, the arrears, if any, shall be restricted to a maximum of 38 months from the date of filing the instant petition.

Allowed.

**07.12.2018**  
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**(JITENDRA CHAUHAN)**  
**JUDGE**

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