IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21268 of 2015
Date of Decision : 10.12.2018

Sukhdev Singh and others **...Petitioners**

Versus

State of Punjab and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Surinder Garg, Advocate for the petitioners.

Ms. Anju Arora, Additional Advocate General, Punjab.

None for respondents No. 4 and 7.

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<u>Harsimran Singh Sethi, J.(Oral)</u>

1. In the present writ petition, the petitioners have approached this Court with a prayer that their service from their initial appointment till the date of retirement should be taken as a qualifying service for the grant of pension and other pensionary benefits.

2. As per the averments made in the writ petition, the petitioners were appointed on the post of Panchayat Secretary, Peons and Sewing Teacher on different dates starting from the year 1963 till 1974. Only the service for which the contributory provident fund was deducted from the salary of the petitioners, has been taken into consideration to compute the qualifying service for the grant of pension and other pensionary benefits.

3. In case of petitioner No. 1, who was appointed on 08.06.1973, the deductions were started from September, 1982. Similarly in the case of petitioner No. 2, who was appointed on 11.09.1974, the deductions were started from March, 1983. In the case of petitioner No. 3, who was

appointed on 30.08.1974, the deductions were started in July, 1980. In the case of petitioner No. 4, who was appointed on 01.06.1964, the deductions were started from February, 1968. In respect of petitioner No. 5 whose date of appointment is 31.10.1963, the deductions were started from December, 1969. In the case of petitioner No. 6, who was appointed on 13.09.1974, the deductions were started from December, 1980. In the case of petitioner No. 7, who was appointed on 26.09.1974, the deductions were started from December, 1980. In the case of petitioner No. 8, who was appointed on 16.09.1974, the deductions were started from June, 1979 and in the case of petitioner No. 9, date of appointment is 28.08.1974, whereas the deductions were started from the year 1976.

4. As per the allegations in the writ petition, the qualifying service has been counted only from the date when CPF was deducted from the salary of the petitioners and the earlier continuous service rendered by them, has not been counted for computing qualifying service.

5. Notice of motion was issued on 05.10.2015 upon which the respondents appeared and filed their reply. Respondents they have referred to the Punjab Samiti and Zila Parishad Employees Pension and Provident Fund Rules 2000 (hereinafter referred to as 'the Rules of 2000'), which came into operation w.e.f. 01.07.1999 and the Rules were only applicable to the employees, who opt for these Rules. It has been admitted that all the petitioners have opted for these Rules within the stipulated time as envisaged under the Rules of 2000. The respondents have relied upon Rule 2(k) of the Rules of 2000, which gives the definition of qualifying service. The said definition is as under :-

> *"2(k) 'qualifying service' means the service of an employee of a Panchayat Samiti or Zila Parishad, as*

> *the case may be, for which he has made contribution towards the contributory Provident Fund before and after the commencement of these rules."*

6. Learned counsel for the respondents states that once Rule 2(k) is clear to the effect that only the service for which the contribution has been made by an employee after the commencement of these Rules, can be taken as a qualifying service and, therefore, the action of the respondents in not taking into consideration the total length of service of the petitioners is perfectly valid and legal and is in consonance of Rule 2(k) of the Rules of 2000.

7. I have heard learned counsel for the parties and have gone through the case file very carefully.

8. This is not for the first time that the present controversy had come to this Court in respect of interpretation of Rule 2(k) of the Rules of 2000. While deciding CWP No. 9125 of 2011, this Court in detail interpreted Rule 2(k) of the Rules of 2000. After interpreting Rule 2(k) of the Rules of 2000, a Co-ordinate Bench of this Court held that the employee will be entitled to consider full length of service as a qualifying service subject to the condition that the deposit for the period which have not been deducted from his/her salary, will be deposited back with the respondents alongwith interest. The relevant paragraph of order dated 01.04.2013 passed in CWP No. 9125 of 2011 is as under :-

> *"In view of the above, present writ petition is allowed. Direction is issued to respondent No. 3 to consider the claim of the petitioner in the light of the fact that she has already deposited the CPF along with interest with a matching grant with the share deposited by respondent No. 6 and on taking this complete period*

of service which the petitioner had rendered with respondent No. 6 as qualifying service, shall grant the benefit to the petitioner. This exercise be completed within a period of two months from the date of receipt of certified copy of the order."

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In the light of the above, this writ petition is allowed and direction is issued to the petitioner to deposit her share of CPF along with interest to be assessed by respondent No. 7 within a period of six weeks from today. On receipt of the said amount, respondent No. 7, by adding its share of CPF along with interest, shall forward the claim of the petitioner to respondent No. 3-Director Rural Development and Panchayat within a further period of two weeks. On such forwarding of the claim of the petitioner by respondent No. 7, the Director Rural Development and Panchayat-respondent No. 3 shall consider the claim of the petitioner and pass appropriate orders within a further period of four weeks.

It goes without saying that on deposit of the CPF along with interest, the qualifying service of the petitioner shall be taken as the date of initial appointment till the date of her retirement and benefits be released to her within a further period of one month."

9. Against the said order, the State of Punjab preferred an LPA bearing No. 1683 of 2013, which also came to be decided on 29.10.2013. The LPA was dismissed and the judgment delivered by learned Single Judge was upheld. The relevant portion of the order passed by the Division Bench is as under :-

"(1) This order shall dispose of LPA Nos. 1683, 1684 & 1785 of 2013 as common issues are involved.

(2) The question that came up for consideration before the learned Single Judge or which arises in these appeals as well is whether the service rendered by the respondent-employees before they started contributing towards CPF would also reckon for the purpose of retiral benefits including pension?

(3) Learned Single Judge has accepted the employees' claim in the light of their fair stand that they are willing to deposit their share of CPF along with interest to the Block Samiti and Zila Parishad for the period it was not deducted. It was also noticed that similar relief has already been granted by this Court to other employees.

(4) Mr. Bajwa states that in the absence of any interim stay, the directions issued by the learned Single Judge have been complied with and on deposit of due amount towards CPF, the pension and other retiral benefits of the respondents have since been re-fixed and consequential arrears have been deposited in their accounts. Since the view taken by the learned Single Judge is based upon the earlier decision(s) of this Court and is otherwise just, fair and equitable, we are not inclined to interfere with the order under appeal.

(5) Dismissed.

(Surya Kant)
Judge

29.10.2013 ***(Surinder Gupta)***
Judge"

10. After the decision of the LPA, an SLP No. 10388 of 2014 was also filed before Hon'ble the Supreme Court, which the State withdrew with liberty to file a review application. A review application No. RA-28 of 2017 filed for review of the order dated 29.10.2013 was also dismissed on 14.07.2013.

11. Learned counsel for the respondents fairly conceded that even though an objection has been taken by the State for the grant of relief to the petitioners in view of Rule 2(k) of the Rules of 2000 but the claim of the petitioner is squarely covered in their favour by the decision of this Court re-produced above.

12. The present writ petition is allowed in view of the settled proposition of law mentioned above. The respondents are directed to take into account the total service rendered by the petitioners as a qualifying service. The said direction will be subject to the condition that the petitioners shall deposit their CPF share for the period the same was not deducted by the respondents along with interest @ 6%. The said calculation shall be done by the Department within a period of three months from the date of receipt of certified copy of this order and the petitioners shall be informed about the amount to be deposited by them in pursuance to this order. The petitioners shall deposit the said amount alongwith interest @ 6% within period of four weeks from the date they received the information from the respondents.

13. After the amount is deposited by the petitioners along with interest, the pensionary benefits of the petitioners shall be re-fixed and the arrears so calculated on re-fixation, shall also be released to the petitioners within a period of three months thereafter alongwith interest @ 6%.

December 10, 2018 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*