

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.25011 of 2014 (O & M)

Date of Decision: August 02, 2018

Sukhdev Singh

..... PETITIONER

VERSUS

Punjab School Education Board & another

..... RESPONDENTS

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CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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PRESENT: - Mr. D.S. Brar, Advocate, for the petitioner.

Mr. G.S. Bal, Senior Advocate, with Mr. A.D.S. Bal,
Advocate, for the respondents.

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Jaspal Singh, J

Through the instant writ 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 count the service rendered by him in Government aided school w.e.f. January 03, 1967 to August 18, 1979 for the purpose of qualifying service towards pensionary benefits.

Brief facts of the case are that petitioner earlier filed CWP No.5281 of 2012 seeking issuance of a direction to the respondents to count the service rendered by him in Government aided school on the Government aided post for purpose of qualifying service towards the pensionary benefits

after his retirement, alongwith consequential benefits. The said petition was decided by this Court vide judgment dated July 23, 2012, whereby the petition was disposed of in terms of judgment dated July 05, 2010 rendered in CWP No.1534 of 2010 titled 'Gurdeep Singh & others vs. State of Punjab & another' wherein respondents were directed to count the services rendered by the petitioners in Government Aided Privately managed schools against the posts duly sanctioned under the Grant-in-Aid Scheme, towards their 'qualifying service' for pension subject to certain conditions mentioned therein. Dehors the direction issued by this Court, respondent – Board did not comply the orders. Petitioner preferred COCP No.1420 of 2013 which was disposed of as having become infructuous vide judgment dated January 10, 2014 observing as under:-

“The order dated 23.7.2012, the non-compliance of which has been alleged, required the respondents to count the previous service rendered by the petitioner for service benefits, which has since been done as has been disclosed in the short reply filed by the respondents. No counter affidavit has been filed by the petitioner disputing the stand of the respondents.

In view of the above, the contempt petition is disposed of as having become infructuous.”

While issuing notice of motion vide order dated December 08, 2014, learned counsel for the petitioner raised the following contention:-

“Learned counsel for the petitioner submits that pursuant to the directions issued by this court in CWP No.5281 of 2012, an order dated 21.2.2013 has been passed by respondent No.2 (Annexure P-4), by which benefit of only three years' service

rendered by the petitioner in a Government aided School prior to joining Adarsh Senior Secondary School, Nandgarh, District Bathinda, (which is stated to be a government school), has been granted, despite the fact that he is stated to have served in the said Government aided School from 3.1.1967 to 18.8.1979.

No reasons for denial of about 9 years service have been given in the order passed, which though has not been impugned in the present petition, but is being referred to.

Notice of motion, returnable on 6.3.2015.”

Learned counsel for the respondents has submitted that previous service rendered by an employee before joining the service of the Board, can be counted towards superannuation under the provisions of the Punjab School Education Board Act, 1969 as amended from time to time, under which, service rendered by the petitioner in the Government Aided School for 12 years 7 months and 16 days, 1/4th of the said service could only be counted towards qualifying service for pension which benefit has since been granted to him vide order dated February 21, 2013. Accordingly, instant petition is liable to be dismissed.

This Court has given deep thought to the rival submissions of learned counsel for the parties and scanned the record available but does not find any legal substance in the submissions made by learned counsel for the petitioner.

In the case in hand, petitioner seeks benefits at par with teachers/lecturers who retired from Government service (Education Department, Punjab) and their previous service rendered in Government Aided Schools was ordered to be counted towards ‘qualifying service’ for pension, vide judgments dated July 05, 2010 passed in CWP No.11534 of

2010 titled 'Gurdeep Singh & others vs. State of Punjab & another' which was disposed of in terms of judgment dated March 10, 2010 passed in CWP No.14238 of 1991 titled 'Sukhdev Singh & others vs. State of Punjab & others'.

For adjudication of this writ petition, it would be apt and proper to reproduce the relevant part of judgment dated July 05, 2010 rendered in CWP No.11534 of 2010:-

7. Learned counsel for the petitioners contends that this Court has already dealt with the issue(s) raised in this petition while dealing with ***Civil Writ Petition No.14238 of 1991*** titled '**Sukhdev Singh & Others vs. State of Punjab & Others**' decided on 10.3.2010, and therefore the petitioners are entitled to the same relief as granted by this Court in the said case.

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9. In ***Sukhdev Singh's case (supra)***, the following issue was framed for consideration:-

“The issue that arises for consideration is as to whether the service rendered by a Teacher/Master in a Government Aided Privately Managed School, is countable towards the pensionary benefits on his retirement from the Government service?”

10. Operative part of the judgment reads as under:-

“For the reasons afore-stated, the writ petitions are allowed and the respondents are directed to count the services rendered by the petitioners in Government Aided Privately Managed Schools against the posts duly sanctioned under the Grant-in-Aid Scheme, towards their

`qualifying service' for pension subject to , however, following conditions:-

1) The respondents shall call upon the petitioners to furnish their exact service particulars in respect of the service rendered by them in the Government Aided Privately Managed Schools. Such an information shall be called within a period of two months from the date of receiving a certified copy of this order and the petitioners shall furnish the same within one month thereafter;

2) The respondents shall also call upon the records of the Government Aided Privately Managed Schools and verify as to whether or not the petitioners have served in such Government Aided Schools against the posts duly sanctioned;

3) The respondents shall be at liberty to ascertain as to whether or not the petitioners had resigned from the Government Aided Privately Managed Schools to enable them to join the Government service;

4) The insignificant or small break between the two services shall be condoned in terms of Rule 7.5 (3) of CSR (Volume-I);

5) The benefit of service rendered in Government Aided Privately Managed Schools shall be extended strictly as per the terms and conditions contained in `the Pension Scheme 1992';

6) If some of the petitioners who are still in service are found to be not entitled to the benefit of their

previous service in Government Aided Schools, necessary speaking orders to this effect shall be passed by the respondents;

7) This order shall not be construed to mean acceptance of claim of the petitioners to count the service rendered by them in Government Aided Privately Managed Schools, towards their seniority, proficiency step-up or ACP etc. as the claim in the present writ petitions is confined qua pensionary benefits only;

8) The entire exercise including the payment of consequential arrears shall be completed as early as possible, preferably within a period of one year from the date of receiving a certified copy of this order.”

Admittedly, earlier writ petition preferred by the petitioner was disposed of in terms of CWP No.11534 of 2010, decided on July 05, 2010. In the above referred judgment, the question for determination was, “whether the service rendered by a Teacher/Master in a Government Aided Privately Managed School, is countable towards the pensionary benefits on his retirement from the Government service?” It is clear that petitioners in the above mentioned writ petitions were retired from Government Service which is governed by Punjab Civil Service Rules whereunder the benefit of service rendered in Government Aided Privately Managed Schools shall be extended strictly as per the terms and conditions contained in ‘the Pension Scheme 1992’. However, in the present case, services of petitioner are governed under Punjab School Education Board Act, 1969 as amended from time to time.

Now, the question for determination in this case is whether the aforementioned judgments based on rules governed by the Punjab Civil Services Rules should prevail or rules enshrined in Punjab School Education Board, 1969?

Here, it would be appropriate to refer to Rule 6 of the Act *ibid* which is reproduced hereunder:-

“6 (i) An employee shall be eligible to add to his service qualifying for superannuation pension (but not for any other pension) the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded thirty five years or a period of five years, whichever is less, if the post to which he is appointed is one:-

(a) for which postgraduate research or specialized qualifications or experience in scientific, technological or professional field is essential;

(b) to which candidates of more than thirty five years of age are normally recruited;

Provided that this concession shall not be admissible to an employee unless his actual qualifying service at the time of retirement is not less than 10 years.

(c) for which special qualification and experience is required at the time of recruitment. The experience so prescribed shall be counted in full towards qualifying service.”

From the above extracted provision, it is apparent that though petitioner rendered 12 years 7 months and 16 days service in Government Aided School but only 1/4th of said service can be counted towards qualifying service for pension, which has already been granted vide

order dated February 21, 2013. Thus, this Court is of the considered view that above referred judgments are distinguishable and are not applicable in the case of petitioner.

In the light of what has been discussed above, there is no merit in the instant petition and same is accordingly dismissed with no order as to costs.

August 02, 2018
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No