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

**CWP No. 24756 of 2017(O&M)
Date of Decision : 30.11.2018**

Yogendra Kaushik

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Surinder Mohan Sharma, Advocate for the petitioner.

Mr. Sunil Kumar Vashisht, DAG, Haryana.

Mr. Rajdeep Singh Cheema, Advocate
for respondents No. 3 to 5.

Mr. Prashant Gupta, Advocate for
Mr. Suman Jain, Advocate for respondent No. 6.

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

<u>CM-18136-CWP-2018</u>

The present application has been filed to place on record the replication to the written statement filed on behalf of respondents No. 1 and 2.

The application is allowed and replication is taken on record, subject to all just exceptions.

<u>CWP-24756-2017</u>

The present writ petition has been filed by the petitioner seeking counting of service which the petitioner had rendered from 10.10.1979 till 04.12.1986 in DAV Senior Secondary School, Sector-8C, Chandigarh as a qualifying service for the purpose of fixation of pension and other pensionary benefits.

The petitioner was appointed as a Lecturer in Physics on 10.10.1979 in DAV Senior Secondary School, Sector-8C, Chandigarh. It has been mentioned that the said post was an Aided Post and DAV Senior Secondary School, Sector-8C, Chandigarh is also an Aided School. While working as a Lecturer in DAV Senior Secondary School, Sector-8C, Chandigarh, the petitioner was transferred by respondent No. 3 (the Managing Committee of the DAV Institution) to A.S. Senior Secondary School, Ambala City. The petitioner joined his duty in Ambala on 05.12.1986. There is no gap between the service as the petitioner immediately joined on the transferred post.

It is not disputed that even A.S. Senior Secondary School, Ambala is an Aided School where the petitioner joined and post on which the petitioner joined was an Aided Post. The petitioner continued working as a Head Master in A.S. Senior Secondary School, Amabal City till 30.06.2010, when on attaining the age of superannuation, the petitioner retired from service. Respondent-State of Haryana while fixing the pensionary benefits for which the petitioner was entitled for after his superannuation only took the service which the petitioner rendered from 05.12.1986 onwards. The petitioner started making representations claiming that his service rendered at D.A.V. Senior Secondary School, Sector-8C, Chandigarh from 10.10.1979 till 04.12.1986 should also be taken into consideration while fixing the pensionary benefits but nothing was done. Vide order dated 08.6.2017 (Annexure P-8) the case of the petitioner was rejected for grant of the benefit of computing his service rendered with D.A.V. Senior Secondary School, Sector-8C, Chandigarh. This order is under challenge in the present writ petition.

In the writ petition, the petitioner has stated that all the emoluments, which the petitioner was paid after he was transferred from Chandigarh to Ambala, were deposited by him vide challan No. 57 dated 23.04.2002 with the State of Haryana and the details of the amount so deposited, have been given in para 16 of the writ petition.

The claim which has been made by the petitioner has been controverted by the respondent-State. The first objection taken is that the petitioner had already taken all his dues after he was transferred from Chandigarh to Ambala and, therefore, for the service which the petitioner had rendered in Chandigarh, all the dues have already been paid to him and hence, the said service cannot be taken into consideration while computing the pensionary benefits. The next objection which has been raised by the respondents to deny the benefits is that as per Rule 5 Clause 4(i) of the Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001 (in short 'the Rules of 2001'), the petitioner is not entitled to count the service which he had rendered in Chandigarh Administration and only the service which is rendered in a Government Aided School situated in Haryana, can only be counted.

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

From the averments made in the writ petition, it is an admitted case that the management of both the schools i.e. D.A.V. Senior Secondary School, Sector-8C, Chandigarh and A.S. Senior Secondary School, Ambala City is the same i.e. D.A.V. Management. It is further not disputed by the parties that both the Schools are Aided Schools. It is also an admitted fact that the post on which the petitioner was working in Chandigarh as well as at Ambala, was an Aided Post.

The first objection which the respondents have taken to deny the benefit to the petitioner is that the petitioner had taken all the benefits from D.A.V. Senior Secondary School, Chandigarh after he was transferred. In this regard, the petitioner has submitted in paras 15 and 16 of the writ petition that whatever the benefits the petitioner has been given in the form of CPF, the same have already been deposited with the Treasury in the State of Haryana with interest and even the details of challan slips to that effect have also been mentioned in those paragraphs.

In reply to paras 15 and 16, the averments made in the writ petition, have not been denied and hence, it is clear that the benefits which the petitioner got after his transfer from Chandigarh to Ambala, already stand deposited with the State of Haryana and that too with interest.

The next objection which the respondents have taken that the case of the petitioner is not covered under the Rules of 2001, the Rules of 2001 have been reproduced in para 6 of the preliminary submissions of the reply. The same read as under :-

> *"5. The Service of an employee shall qualify for retirement benefits under these rules, as under :-*
> *(i) The service rendered on attaining the age of 18 years on aided sanctioned post;*
> *(ii) The service rendered till the attainment of the age of sixty years in the case of Group-D employee, and in case of others, service rendered till the attainment of the age of fifty-eight years. However, the qualifying service will be taken into account with effect from the date an employee subscribes contribution towards contributory provident fund;*

(2) The leave admissible under the rules to be framed under the Act and under the instructions issued by the Government from time to time, excluding leave without pay and period of suspension overstayal of leave not subsequently regularised under the Act and period of break in service.

(3) Service rendered in one or more aided schools under the same Management provided the transfer is made in terms of the Act.

(4) The service rendered on aided sanctioned post in another aided school in the State of Haryana; Provided that the official has been appointed through proper channel on aided sanctioned post and the approval of continuity of service has been obtained from the Director ;

Provided further that the contributory provident fund account of the employee in the previous school continued as such in the subsequent school to which he is transferred or appointed and there is no break in service."

No doubt, the plain reading of the Rules of 2001 says that only the service rendered in an Aided School in the State of Haryana can be taken into consideration while fixing the pensionary benefits. The same Rule came up for interpretation before this Court in CWP No. 10313 of 2002, decided on 22.09.2005, titled ***Ved Parkash Kaushik Vs. State of Haryana and others.***

In the said case also, the petitioner therein, who was working in D.A.V. High School, Dera Bassi, was transferred to the same school i.e. A.S. Senior Secondary School, Ambala City. On relying upon the Rules of 2001, the benefit was denied to him for computing his service rendered in D.A.V. High School, Dera Bassi.

This Court after considering Rule 5 of the Rules of 2001 held that the service rendered by Sh. Ved Parkash Kaushik in D.A.V. High

School, Dera Bassi has to be counted for the purpose of granting the pensionary benefits. The relevant paragraphs from the said judgment are as under :-

> *"Both the schools are managed by the same Managing Committee i.e. D.A.V. College Managing Committee, Chitra Gupta Road, New Delhi. The contributory Provident Fund account of the petitioner in the previous school continued as such in the new school to which he was transferred and there is no break in service. For reference, the provisions of rule 5(1), (2), (3) and (4) of the Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001, are repoduced as under :-*
>
>> *"5(1). The Service of an employee shall qualify for retirement benefits under these rules, as under :-*
>>
>> *(i) The service rendered on attaining the age of 18 years on aided sanctioned post;*
>>
>> *(ii) The service rendered till the attainment of the age of sixty years in the case of Group-D employee, and in case of others, service rendered till the attainment of the age of fifty-eight years. However, the qualifying service will be taken into account with effect from the date an employee subscribes contribution towards contributory provident fund;*
>>
>> *(2) The leave admissible under the rules to be framed under the Act and under the instructions issued by the Government from time to time, excluding leave without pay and period of suspension overstayal of leave not subsequently regularised under the Act and period of break in service.*
>>
>> *(3) Service rendered in one or more aided schools under the same Management provided the transfer is made in terms of the Act.*
>>
>> *(4) The service rendered on aided sanctioned post in another aided school in the State of Haryana; Provided*

that the official has been appointed through proper channel on aided sanctioned post and the approval of continuity of service has been obtained from the Director;

> *Provided further that the contributory provident fund account of the employee in the previous school continued as such in the subsequent school to which he is transferred or appointed and there is no break in service."*

From the above rule, it is evident that the service rendered by the petitioner in the earlier school shall be counted while computing his pension and other retiral benefits. Clarification in this regard has been issued in the letter dated 27.2.1984 (Annexure P-3) issued by the Financial Commissioner-cum-Secretary, Education Department, Haryana in the case of another employee. The contents of the aforesaid letter are reproduced as under :-

> *"The Government has considered the case with the Finance Department and the following decisions have been taken.*
>
> *(a) That if any school fixes the pay of an employee on the basis of the services rendered by him in another school then that expenditure will be treated as plan expenditure.*
>
> *(b) That if he is transferred to another school under the same management committee then his pay be fixed in the new school on the basis of the past service.*
>
> *(c) The pay of the employee be fixed on the basis of last pay at the time of promotion.*
>
> *(d) If any school is closed then the employees of that school be adjusted in some other schools and their pay be fixed on the basis of past service rendered by them.*

On the basis of above, the pay be increased after giving the benefit of past service but no arrears will be given."

7. In view of the above, we are of the considered opinion that service of the petitioner rendered in D.A.V. High School, Derabassi has to be counted for the purpose of granting pensionary benefits. The impugned order re-fixing his pay after about 18 years is illegal and arbitrary as his pay could not be fixed at the initial stage on transfer from the school at Derabassi as he rendered the service under the same management firstly in the State of Punjab and then in the State of Haryana. Therefore, the benefits of previous service have to be taken into consideration and grant-in-aid shall be paid by the concerned department(s) on the basis of the pay already fixed. The petitioner is, therefore, entitled to gratuity calculated on the basis of his entire service including the service rendered by him in D.A.V. High School, Derabassi, as his transfer was duly ratified by Management and Education Department had been giving grant-in-aid and arrears were also paid by the Haryana Government on the basis of revised pay scales. The State of Punjab has taken the plea that as per rule 22-A of the Punjab Privately Managed Recognized Schools Employees (Security of Service) Rules 1981, the pension scheme would apply only to those employees who were appointed to the aided posts after 5th day of February, 1987. Since the petitioner was not in service of the aided school in the State of Punjab, he is not entitled to the benefit of pension scheme. This argument of learned counsel for the State of Punjab is without any basis. Admittedly, the petitioner had worked in D.A.V. High School, Derabassi upto 15.8.1982 and he was a member of the contributory provident fund scheme. At the time of drawal of grant-in-aid by the Managing

Committee, the share of the Managing Committee towards pension and death-cum-retirement gratuity benefits in respect of each is liable to be recovered from the grant-in-aid amount through book transfer in the concerned treasury. Since the petitioner worked in the aided school in the State of Punjab managed by D.A.V. College Managing Committee, Chitra Gupta Road, New Delhi, he can claim the reimbursement of share in respect of retiral benefits for his entire length of service from the concerned States, which at the first instance, can be paid by the common Managing Committee of both the schools were he served from 27.5.1970 to 31.3.1999 to avoid him undue hardship. The Managing Committee would, however, be entitled to reimburse its share on account of retiral benefits paid to the petitioner from the concerned Government(s).

8. In view of the aforesaid discussion, the writ petition is allowed. The order/memo dated 23.10.2001 (Annexure P-4) is hereby quashed and the respondents are directed to take into consideration the service rendered by the petitioner in the D.A.V. High School, Derabassi and re-fix his salary from the date of his initial appointment till retirement and accordingly, grant him the consequential benefits along with interest @ 9% per annum within a period of two months from the date of receipt of a certified copy of this order."

Keeping in view the above rule which is being pressed by the respondents to deny the benefit of counting the service of the petitioner rendered with D.A.V. School, Sector-8C, Chandigarh, has already been interpreted by this Court and benefit has already been granted to a similarly situated person. The objections taken by the respondents-State to deny the benefits to the petitioner is contrary to the law laid down by the Division Bench of this Court in ***Ved Parkash Kaushik's case (supra).***

In view of the above, order dated 08.06.2017 (Annexure P-8) is hereby set-aside. The respondents are directed to take into consideration the service which the petitioner had rendered with D.A.V. Senior Secondary School, Sector-8C, Chandigarh from 10.10.1979 till 04.12.1986 while calculating the pensionary benefits. Let the calculations be done again and the pensionary benefits of the petitioner be recalculated again within a period of three months from the date of receipt of certified copy of this order. The difference of monetary benefits for which the petitioner will be entitled for on the re-fixation of his pensionary benefits, shall also be paid to him within a period of three months after the calculations are done.

It is, however, made clear that in case any amount needs to be returned by the petitioner in respect of the service which he had rendered with D.A.V. Senior Secondary School, Sector-8C, Chandigarh which he had already taken after his posting to Ambala, the same shall be informed to the petitioner after passing the order re-fixing the pensionary benefits of the petitioner.

The petitioner is directed to make good the deficiency within four weeks.

The writ petition is allowed in the above terms.

November 30, 2018 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

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