

CWP No. 9848 of 2014
DECIDED ON: AUGUST 06, 2018

....PETITIONER

.....RESPONDENTS

By virtue of instant petition, petitioner has preferred a writ under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari to quash the impugned order dated 08.05.2013 (P-7) whereby, his claim for the grant of pension from the date he has been appointed i.e. year 1978 with respondent No.3 has been rejected by respondent No.1 as well as for the issuance of a writ in the nature of mandamus directing the

respondents No.1 and 2 to grant him all pensionary benefits from the date of his initial appointment in respondent's department with all the consequential benefits.

2. The facts in brief leading to the instant petition are that petitioner joined as Lecturer in Sociology in Chhotu Ram Kisan College, Jind, Haryana in pursuance of letter dated 21.07.1978 and joined as such on the next day i.e. 22.07.1978. Consequently, vide letter dated 23.08.1978, Registrar of Kurukshetra University, Kurukshetra approved his appointment as Lecturer in Sociology. His services were confirmed vide letter dated 21.07.1979. Subsequently, the petitioner was selected through proper channel to the post of Lecturer in the Department of Sociology at Kurukshetra University, Kurukshetra vide appointment letter dated 31.07.1998 (P-4). The no objection certificate was also issued by the College enabling him to join new assignment and he joined as such on 03.08.1998. He stood retired on attaining the age of superannuation on from the University on 31.12.2009. Since the petitioner was denied the benefit of counting of his previous service towards qualifying service for the grant of pension and other benefits, he approached this Court vide CWP No. 14596 of 2003, which was disposed of vide order dated 24.02.2012. LPA preferred against the afore-said order was disposed of vide order dated 22.11.2012, wherein, petitioner was granted liberty to move representation to respondent No.1 and in compliance thereof, he moved representation dated 17.12.2012. The representation so moved by the petitioner was declined simply on the ground that petitioner has not exercise the option within six months of his appointment or within six months of issuance of O.M. Dated 07.01.2002 and it

was presumed that petitioner is not interested in availing the benefit of past service for the purpose of pensionary benefits, vide impugned order dated 08.05.2013 (P-7). Aggrieved against the said impugned order, petitioner preferred the instant petition.

3. A close scrutiny of the afore-said facts and circumstances as well as impugned order dated 08.05.2013 (P-7), transpires that the benefit claimed through the instant petition has simply been declined on the ground that petitioner has not exercised his option within stipulated period of six months but this ground taken by the respondents for the rejection of the claim of the petitioner is neither factually nor legally justified, in view of the fact that earlier there was no provision for counting of past service prior to the joining in the University towards pensionary benefits. However, on the recommendations of the Committee constituted by the Vice Chancellor in terms of the letter dated 26.05.2008 of Higher Education Commissioner, Haryana regarding counting of past service towards pension, Executive Council in its meeting held on 11.10.2008 vide Resolution No.53 approved the recommendations and clause 4(7) of the Pension Rules was amended, whereby it was provided to grant benefit of past qualifying service towards pension to the University Employees coming from Government or Autonomous Bodies (both under Government of Haryana), Central Govt. or Central Autonomous Bodies and vice versa will be regulated as per the provisions contained in office letters No.1/2(77)-87-2FR-II dated 22.08.1988 and No. ½ (4)-96-2FR II, dated 07.01.2002 issued by the Govt. of Haryana, Finance Department or any other instructions issued in this regard by the State Government from time to time and adopted by the University.

4. No doubt, petitioner was required to exercise his option within six months but there is nothing on record to suggest or establish that any communication to the petitioner in this regard soon after the rules were amended and adopted was made to him. In the absence of such communication, petitioner cannot be denied the benefit of pay fixation in terms of rules adopted by the University. Since, there is no material to show that amended instructions were brought to the notice of petitioner, he cannot be denied the benefits. To buttress this observation, we can have the reference of the judgment of Hon'ble Division Bench of this Court rendered in the case of **O.P. Garg vs. State of Punjab and others; 2013 (4) SCT 837** as well as judgments of this Court rendered in the case of **Chander Bhan Singh Rana vs. State of Haryana and another; 2014 (1) SCT 485; Ami Chand vs. Union of India and others; 2016 (1) SCT 253** and **Karamvir Singh vs. State of Haryana; 2017 (3) SCT 280**. Otherwise, also it was not possible to exercise the option when petitioner was not made aware by the University in respect of the fact that instructions issued by the Government dated 07.01.2002 were adopted by the University on 11.10.2008.

5. Accordingly, instant petition is allowed and impugned order dated 08.05.2013 (P-7) stands quashed. Petitioner is directed to exercise his option or submit a fresh option with the University within a period of one month from the date of receipt of certified copy of this order and on receipt thereof, respondent-University is directed to release the difference of pensionary benefits from the date of initial appointment of the petitioner and to re-fix his pay and pension in terms of option submitted considering the same within time and pay arrears

within next two months.

6. In case of non-compliance of afore-said directions, petitioner shall be at liberty to have recourse to other remedies available under the law as well as to approach this Court.

AUGUST 06, 2018
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(JASPAL SINGH)
JUDGE

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