

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. C.W.P. No. 8766 of 2016 (O&M)
Date of decision: 21.11.2018

Monika .. Petitioner
vs.

Union of India and others .. Respondents

2. C.W.P. No.17891 of 2018(O&M)

Darshan Singh .. Petitioner
vs.

Chandigarh Administration and others .. Respondents

Coram: Hon'ble Mr. Justice Rajeev Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. J.R. Syal, Advocate
for the petitioner in CWP No.8766 of 2016

Mr. Rajesh K. Dadwal, Advocate
for the petitioner in CWP No.17891 of 2018

Mrs. Deepali Puri, Advocate
for respondent Nos.2 to 5.

Mr. A.K. Sharma, Advocate
Mr. S. Basra, Advocate
for Chandigarh Administration.

Mr. I.S. Sidhu, Advocate
for respondent No.3 in CWP No.17891 of 2018.

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Rajeev Sharma, J.

Since common questions of law and facts are involved in both these writ petitions, therefore, both the petitions have been taken up together for disposal. However, the facts are being taken from CWP No.8766 of 2016.

The petitioner has sought judicial review of the orders dated 05.04.2016 rendered by Central Administrative Tribunal, Chandigarh Bench

(hereinafter referred to as 'the Tribunal') passed in OA No. 060/01033-CH of 2015 and 15.01.2018 passed in OA No.60/691/2015.

Brief facts necessary for the disposal of the present petition are that the petitioner was appointed as ETT Teacher in Vedic Girls High School, Manimajra, UT Chandigarh on 28.10.2002. The petitioner applied for the post of JBT or TGT (Science) Teacher under Chandigarh Administration. She was issued 'NOC' by the previous employer. Thereafter, she was selected and appointed as regular ETT Teacher vide letter dated 30.11.2009. She joined her duty on 04.12.2009. The petitioner made a representation to count her previous service which she has rendered in the Government aided school w.e.f. 14.11.2002 to 4.12.2009 i.e. 07 years and 20 days. The claim of the petitioner was rejected on 19.03.2015. It is in these circumstances that the petitioner filed above mentioned Original Application, which was dismissed on 05.04.2016.

The attention of the Court has been drawn, during the course of hearing, to the Union Territories Government Aided Schools Teachers Contributory Provident Fund-cum-Insurance-cum-Pension Rules, 1965 which came into force on 1.04.1965 (hereinafter referred to as the Rules). Rule 19 reads as under:-

“Rates of Gratuity and Pension:

The amount of gratuity and pension shall be regularised as follows:-

(i) Gratuity: On retirement or discharge of a teacher as per rules and orders, if the qualifying service falls short of 10 years but not less than 5 years, a gratuity equal to one eight of a month's emoluments for each completed six monthly period of service shall be paid.

(ii) Pension: (a) A teacher shall be eligible for pension if he has rendered a total qualifying service of 10 years or more, and discharged or retired as per rules and orders.

(b) The pension shall be calculated at $1/240^{\text{th}}$ of the average emoluments drawn by a teacher during the last three years of his service, multiplied by the number of completed half yearly periods of service, subject to a maximum of $60/240^{\text{th}}$ of such average emoluments."

According to Rule 19 (ii), a teacher shall be eligible for pension if he has rendered a total qualifying service of 10 years or more and discharged or retired as per Rules and Orders.

The petitioner had rendered 07 years and 20 days of service. However, the respondent-Administration being a model employer in the case of gratuity has decided that if the qualifying service falls short of 10 years but not less than 5 years, the gratuity equal to $1/8^{\text{th}}$ of a month's emoluments for each completed six monthly period of service shall be paid. In case, service of five years be counted for gratuity, the same principle should apply for counting the service for pension as well.

We have gone through Rule 22, it reads as under:-

"22. Relaxation of the Provisions of the Rules in individual cases.

When the Administrator is satisfied that the operation of any of these rules causes or is likely to cause undue hardship to a subscriber, he may, notwithstanding anything contained in those rules deal with the case of such subscriber in such a manner as may appear to him to be just and equitable"

Learned counsel appearing for Chandigarh Administration has argued that new scheme came into force w.e.f. 01.01.2004. Since the petitioners were appointed before the cut off date i.e. 1.1.2004, the new scheme would not be applicable qua them. Now the issue is whether the service rendered by the petitioner w.e.f. 14.11.2002 to 4.12.2009 i.e. 07 years and 20 days is counted towards pension or not. The pension is a property within the meaning of Article 300-A of the Constitution of India. The decision is required to be taken by the Administration in a just and equitable manner.

Accordingly, writ petitions are allowed. The impugned orders dated 05.04.2016 and 15.01.2018 are set aside. The respondents are directed to consider the case of the petitioners in view of the Rule 22 for counting the service rendered by her w.e.f. 14.11.2002 to 4.12.2009 and 04.05.1967 to 11.08.1973 qua Darshan Singh for the purposes of pay fixation and other benefits to make them eligible for pension within a period of six months from the date of receipt of certified copy of this order.

(Rajeev Sharma)
Judge

(Harinder Singh Sidhu)
Judge

21.11.2018
Atul/dinesh

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No