

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

RSA-5751-2014 (O&M)

Date of Decision:15.02.2018

Purshotam Lal

... Appellant

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Ashutosh Kaushik, Advocate
for the appellant.

Mr. G.S. Wasu, Addl. A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant appeal, appellant has assailed the order passed by the trial court and appellate court dated 29.3.2014 and 31.5.2014.

2. Grievance of the appellant is two fold to the extent that he is entitled to 1st ACP and retiral benefits for the service rendered in a aided institute w.e.f. 1.4.1983 is to be taken into consideration. Both the courts below have rejected the claim of the appellant. Hence, the present appeal.

3. Appellant was appointed on 12.4.1979 as a Head Master in the Private School namely Vidya Deep Middle School, Kainthala Khurd, Karnal. State Government passed an order on 11.11.1983 to the effect that aforesaid school would come under the purview of aided institute. In other words, the school would have grant in aid. On 21.12.1986, appellant was posted as SS Master. When things stood thus, State Government has taken over aided schol on 26.3.1990.

4. In this background, whether appellant is entitled to 1st ACP while counting the service w.e.f 11.11.1983 the date on which the school was treated as aided school or not? Under the ACP Rules 1998 for the purpose of extending the benefit of ACP, one must be in a cadre for a

particular period of 10 years of service. 10 years could be counted only from the date when the school is taken over by the State Government on 26.3.1990. Therefore, rightly respondent has extended the benefit of 1st ACP in the year 2000. Appellant is not entitled to count service from 11.11.1983 for the purpose of granting ACP i.e. in the year 1993 or in the year 1996 with reference to his posting as SS Master w.e.f. 21.12.1986. Moreover, ACP Rules are applicable to Government employees and not the private institutions.

5. Second issue is relating to entitlement of pensionary benefits whether service rendered in the aided institute would be counted or not? In this regard, learned counsel for the appellant pointed out from the Government instructions dated 10.6.2011 relating to counting of past service rendered in Government aided school/college. Para 5 to 7 of the instructions reads as under:

“5. The whole issue has been re-examined in the light of above mentioned facts and it has now been decided to allow the benefit of past service rendered by an employee in Government aided establishment before these were taken over or service rendered in aided establishment before appointment in Govt. Institutions. This will be applicable to those who are covered under the Haryana Aided Schools (Pension and Contributory Provident Fund) Rules 1999 and Haryana Affiliated College (Pension and Contributory Provident Fund) Rules, 1999 and entitled to the benefits of pension. This benefit will be subject to the following conditions:

1. That this offer will be optional and applicable only to those employees who agree to refund the Management Share (before the date of taking over of the College/Schools by the State Government alongwith 10% annual compound interest). This amount can be deducted from their gratuity and they will give

an undertaking to this effect that if the amount of Contributory Provident Fund is more than gratuity payable to them, then the pensioners will deposit the excess amount in Govt. Treasury.

2. That if a retired Govt. employee opts for this benefit he shall deposit the share of contribution made by the Management alongwith 10% annual compounded interest (upto the date of depositing) in lump sum in Govt. Treasury.

3. That these benefits will be made effective in respect of the employees of the taken over Colleges/Schools from the date of Pension Scheme made applicable in Private Aided Colleges/Schools i.e. with effect from 11.5.1998.

6. This advise is in supersession of FD's earlier advise issued vide U.O. No.3/76/06-2FD-II/3240 dated 6.6.2007 and in continuance of U.O. No.78/06/2010-3FD-II/2031 dated 15.7.2010 and U.O. No.78/06/2010-3FD-II/3120 dated 19.01.2011.

7. All the cases/representations of the employees may be examined in the light of this advise and the provisions in above mentioned two service rules applicable in the Govt. aided Colleges/Schools and the observation of the Hon'ble High Court in the above mentioned cases. In case, the claim of any employee is not covered in this advise or provision of Service Rules. In that eventuality, the claim of the employee may be rejected by passing a detailed Speaking order. If any employee approaches the Hon'ble Court for claiming any benefit beyond this advise or provisions of Service Rules his case may be contested seriously up to the highest level. If it is found that due to any negligence of any officer/official, the case has been decided against the State Government, in that case, the responsibility under the provision of Rules 7 of the Punishment and Appeal Rules 1987 will be fixed against him and loss to the State Exchequer will be recovered from his pocket.”

Insofar as extending the pensionary benefits are concerned, concerned respondents are hereby directed to consider the appellant's case

with reference to instructions dated 10.06.2011. In this regard, appellant is directed to make appropriate representation within a period of four weeks from today. Concerned respondent is hereby directed to consider appellant's grievance relating to counting of service from 1.4.1983 the date on which the school was declared as aided institute till retirement of the appellant on 31.12.2009 towards grant of retiral benefits and pass a speaking order within a period of three months from the date of receipt of appellant's application or representation. Accordingly, trial and appellate court decisions are modified.

5. With the above observation, appeal stands disposed of.

15.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**