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

**CWP No.14988 of 2014 (O&M)
Date of Decision: 03.12.2019**

Ushvinder Kaur Popli

... Petitioner

Versus

Punjabi University and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr.Rakesh Gupta, Advocate,
for the petitioner.

Mr.Ajaivir Singh, Advocate,
for respondents no.1 and 2.

ARUN MONGA, J.(ORAL)

By way of issuance of a writ in the nature of certiorari petitioner seeks to quash communication dated 28.02.2013 (Annexure P-1) whereby the amount payable to petitioner on account of pension contribution and gratuity has been retained. Consequential relief for issuance of a writ in the nature of mandamus has also been sought directing the erring respondents No.1 and 2 to comply with the communication dated 10.10.2012 (Annexure P-4) issued by respondent No.3-University and to pay the amount of pensionary benefits requested therein alongwith interest.

2. Succinctly factual narratives:

The petitioner joined as Lecturer on 04.01.1989 in Punjabi University respondent No.1. There was no pension scheme at that time and the petitioner thus opted for Contributory Provident Fund (for brevity, CPF). The said process continued till 1992, when pension scheme was introduced w.e.f., 01.04.1990. The petitioner opted for the pension scheme and was allotted General Provident Fund Account No.1104 and continued to contribute therein until 01.05.2006, when she got a better assignment in Jamia Millia Islamia University (JMI)-respondent No.3 and joined there. At the time of filing of writ petition, the petitioner was serving as Professor in Jamia Millia Islamia University (JMI).

3. The Government of India issued instructions dated 28.10.2009 (Annexure P-15) wherein it was mentioned that the pre-existing arrangement of mobility between State/Central Autonomous Body to Central/State Government and between autonomous bodies that were to govern by old pension scheme in force upto 31.12.2003 and even the instructions dated 29.08.1984 and 07.02.1986 stand restored as per clause 2(c) of Instructions *ibid*. Instructions dated 29.08.1984 and 07.02.1986 have also been produced on file as Annexure P-11 and P-12 respectively.

4. The petitioner moved an application on 03.11.2009 for counting of her past service rendered in Respondent No.1 University for the purpose of pensionary benefits. The said request

was considered by Respondent No.3 JMI University and information was sought from Punjabi University through letter (Annexure P-17). The information was sent by Punjabi University pursuant to letter sent by Jamia Millia Islamia University (JMI). It was specifically mentioned that the Punjabi University is an autonomous body and getting grant in aid from Government. It was also mentioned that the petitioner had also opted for pension and she was enjoying pay scale of Rs.37,400-67000 + Annual Grade Pay (AGP) and she had qualifying service of 14 years 6 months and 26 days. The Jamia Millia Islamia University (JMI) made calculations of the total amount of capitalised value of pension as per calculation sheet and raised a demand of Rs.25,92,287 under that head, contained at Annexure P-5(Colly.) Respondents No.1 and 2 forwarded a cheque of Rs.2,53,608/- only towards pension fund and Rs.3,65,270/- towards gratuity. The detailed calculation was also sent vide Annexure P6(colly). Since, respondent No.1 and 2 were liable to pay a sum of Rs.25,92,287/- towards capitalised value of pension but only sent a sum of Rs.2,53,608/-, leaving a balance of Rs.23,38,679/- under the said head, reminder was again sent by JMI University on 05.02.2013 (Annexure P-7). Even the petitioner also made a request vide letter dated 26.10.2012 (Annexure P-8). On 28.02.2013 vide Annexure P-1 the Punjabi University intimated to JMI University that they had already sent an amount of Rs.2,53,608/- on account of pension contribution and no further money is payable on this count by the University . The petitioner also served legal notice dated 09.05.2014 and the

Punjabi University sent its reply dated 23.06.2014, denying the claim, which are contained at Annexure P-9 (colly). Hence, the present writ petition.

5. In the return filed by the respondent-Punjabi University the claim of the petitioner has been resisted ostensibly on the ground that the amount due to the petitioner was calculated as per the gratuity in her pension corpus/University Provident Fund which comes out to Rs.2,53,608/- and in accordance thereof the same has been remitted. As for gratuity the subscription of respondents No.1 and 2 to the fund which is to the extent of 10% of the salary and the same too has been calculated as per Annexure P-6. It is clarified that the provision of 'CPF' has been wrongly mentioned in the calculation sheet at Annexure P-6. In Punjabi University there is no capitalisation of pension account and therefore, the petitioner is not entitled to anything other than the benefit of pension fund to the extent of Rs.2,53,608/- alongwith Rs.3,65,270/- as gratuity. The writ petition is sought to be dismissed stating that notifications of Government of India relied upon by the petitioner are not applicable to Punjabi University.

6. In the affidavit filed by respondent No.3, it is averred that they had written to respondents No.1 and 2 for counting of past service of the petitioner with them, for which capitalised value of pension is required. But the Punjabi University showed its inability to pay the balance amount of Rs.23,18,002/- towards pro rata retirement benefits for the period the petitioner had served with them. As a consequence, in absence of realisation of full amount of

pro rata retirement benefits from previous employer, i.e. respondents No.1 and 2, the past service rendered by the petitioner cannot be counted in JMI University.

7. Rejoinder to the written statement of respondents No.1 and 2 was filed by the petitioner, controverting the averments made therein by respondents No.1 and 2 and reiterating those of the petition.

8. I have heard the rival contentions of the learned counsels and have perused the pleadings alongwith relevant record appended thereto.

9. The questions that emerge for adjudication by this Court are as below:

i. Whether the petitioner is entitled for capitalised value of pension for counting of past services for pensionary benefits while moving from Punjabi University of JMI University and what will be method of calculating the amount to be transferred to JMI University?

ii. Whether the Punjabi University had rightly calculated and transferred the amount of Rs.2,53,608/- and Rs.3,65,270/- towards pensionary benefits and gratuity?

10. Before adverting any further, it is noteworthy that in principle the liability to pay pro rata pension has been admitted in as much as payment of Rs.2,53,608/- has already been remitted as is borne out from Annexure P-7(colly). The said payment was

employer's contribution in the petitioner's contributory fund, as stated in calculation sheet contained at Annexure P-6(colly). Clearly what emerges is that it is not pro rata pension but merely it is what has been contributed by the petitioner.

11. As regards the contention that there is no provision in the respondent-Punjabi University for capitalisation of the pension account, the same is negated by Annexure P-12 and P-15 read with Chapter IV, Para 10 of the University Calendar Volume-I 2006 and Rules 7.25 of Punjab Civil Services Rules Volume-II.

12. Relevant parts of letters dated 07.02.1986 (Annexure P-12) and dated 28.10.2009 (Annexure P-15) issued by the Government of India, *inter-alia* to the Chief Secretaries of all State Governments are extracted here under:

> "2. In the circumstances explained above, it was felt that reciprocal arrangements may be entered into with the various State Governments to the effect that where employees of the State Governments/State Autonomous Bodies/State Statutory Bodies, have been absorbed in the Central Aunonomous Bodies, they may be allowed the same benefits as have been extended to the Central Government servants and vice-versa.
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> 3. The question of extension of various benefits like counting of service etc. in the case of (i) employees of Central Government and State Autonomous Bodies and vice-versa has been considered in the consultation with the State Government. After careful consideration, the President has now b3een pleased to decide that these cases may be decided in accordance with the principles as laid down in the Department of Personnel and Administrative Reforms OM No.28/10/84-Pension Unit dated 29.08.1984 (copy enclosed. The cases of Central Governments servants appointed in the State Governments and vice-versa will continue to be decided as hitherto.
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> 4. Similar orders regarding counting of service of the Central Government employees in the event of their absorption in the State Autonomous Bodies and employees of the Central Autonomous Bodies in the

State Governments, and State Autonomous Bodies as well as orders regarding acceptance of pension liability etc. in respect of State Government and State Autonomous Bodies, employees absorbed in Central Autonomous Bodies and employees of the State Autonomous Bodies absorbed in Central Government will be issued by the respective State Government

5. These orders shall apply to employees of the State Governments and State Autonomous Bodies moving to Central Government/Central Autonomous Bodies in respect of the State Government listed below:

1. Karnatka
2. Madhya Pradesh
3. Punjab
4. Rajasthan
5. Sikkim
6. Tripura
7. West Bengal
8. Uttar Pradesh
9. Bihar
10. Gujrat
11. Aassam
12. Meghalaya
13. Himachal Pradesh

These orders shall be extended to the employees of other State Governments as and when they agree to similar reciprocal arrangements.

6. These orders will apply to the employees of the Central Government moving in State Autonomous Bodies and employees of Central Autonomous Bodies to the State Government and their Autonomous Bodies mentioned in para 5 above and vice-versa who are in service on the date of issue of these orders, irrespective of the date of their absorption."

(extract from letters dated
07.02.1986 (Annexure P-12)

"2. The position has been further reviewed by the Government of India and it has been decided to continue mobility of Government servants/Autonomous body employees appointed on or before 31.12.2003 and who were governed under the old non-contributory Pension Scheme of their respective Governments/organisation in order to provide for the continuance of Pensionary benefits based on combined service in accordance with the CCS(Pension)Rules, 1972 as under:

a. been the Central Govt. departments covered under CCS (Pension) Rules 1972; and Railway Pension Rules, 1993 or other similar non-contributory pensionable establishments of Central Govt. covered by old pension Rules other than CCS (Pension) Rules 1972;

b. between State and Central Govt.provided the employees were appointed in the State Govt.(s) on or before 31.12.2003 and covered under old pension scheme similar to CCS(Pension) Rules, 1972.

c. the pre-existing arrangement of mobility between State/Central Autonomous body to Central/State Govt.and between autonomous bodies that were governed by old pension schemes in force upto 31.12.2003 vide No.28/10/84-P&PW dated 7/2/1986 and OM No.28/10/84-Pension Unit dated 29/8/1984 stand restored although those under CPF etc.will not be allowed entry into the old pension scheme on appointment from 1/1/2004.

3. These instructions modify/supersede provisions in the OM of even number dated 26/7/2005 to the extent as indicated above and take effect from 01.01.2004."

(extract from letter dated 28.10.2009
(Annexure P-15)

13. Chapter IV, Para 10 of the University Calendar Volume-I 2006 reads as under:

"*10. Subject to the statues above the rules framed by the Punjab Government relating to Pension Scheme for their employees including Commuted Pension, Premature Retirement Pension, Family Pension, etc., along with amendments made from time to time be adopted, in so far as the same are not inconsistent with the above statutes."*

Rule 7.25 of Punjab Civil Services Rules, Volume II is reproduced as under:

"7.25. For the purpose of rules 7.23 and 7.24, the capital or present value of a pension shall be calculated in accordance with the Tables under the rules in Chapter XI."

14. Combined perusal thereof would reveal that the employer-Punjabi University is obligated to pay capitalised value of pension for the service rendered by the petitioner. As regards the calculations contained at Annexure P-5, a perusal thereof makes it evident that the same alongwith total thereof are in consonance with Rule 7.25 of Punjab Civil Services Rules, Volume II in as much as the same are based on capitalised pension alongwith gratuity.

15. What has to be borne in mind is that the death-cum-retirement gratuity is also a retiral benefit as much as like the pension. The principles of law applicable on pro rata pension would apply qua gratuity with equal vigour. There is no doubt that calculation of gratuity contained at Annexure P-5 is as per the prescribed formula under Punjab Civil Services Rules *ibid*. The petition therefore, deserves to be allowed.

16. In view of the discussion above and the reasoning contained therein the impugned letter dated 28.02.2013 (Annexure P-1) is quashed. Respondent No.1 Punjabi University is directed to remit to respondent no.3 (JMI) the capitalised value of the pension alongwith gratuity, as provided in the calculation sheet contained at Annexure P-5, of course after adjusting the amount already paid on this account to respondent No.3, alongwith interest at the rate of 8% per annum from the date of first communication dated 10.10.2012 (Annexure P-4) sent by Jamia Millia Islamia University (JMI) to respondents No.1 and 2 demanding/requesting for the remittance, until the actual date of disbursement. Needful be done

within a period of three months from receipt of copy of the order. On such remittance, respondent No.3 shall further pay/release the said amount to the petitioner.

Allowed in the aforesaid terms.

(ARUN MONGA)
December 03, 2019 **JUDGE**

dharamvir

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No