

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(251)

CWP No. 17696 of 2017
Date of Decision : 12.12.2019

Smt. Kamla Sharma

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. R.K. Chaudhary, Advocate with
Mr. Pankaj Dhingra, Advocate for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

Harsimran Singh Sethi, J. (Oral)

1. In the present writ petition, the grievance of the petitioner is that the service which she had rendered as a Craft Teacher under the respondent-Zila Parishad/Panchayat Samiti, Panipat from 26.09.1967 till 10.11.1994 has not been taken into consideration as a qualifying service for the grant of pensionary benefits. The prayer of the petitioner is that her service as Craft Teacher is liable to be counted as a qualifying service for computing the pensionary benefits after she retired on attaining the age of superannuation on 28.02.2005.

2. The facts which have been stated in the writ petition are that petitioner was appointed as a Craft Teacher in Zila Parishad/Panchayat

Samiti, Panipat on ad-hoc basis. She continued working as such and

thereafter, the petitioner was appointed on the post of Gram Sewika on 27.04.1995. Petitioner kept on working on the said post, when her services as Gram Sewika were regularized w.e.f. 01.10.2003. Ultimately, the petitioner retired on attaining the age of superannuation on 28.02.2005. After the retirement, petitioner has only been given the benefit of the service, which she had rendered on the post of Gram Sewika from 27.04.1995 till she attained the age of superannuation on 28.02.2005. Petitioner claimed the benefit of her service rendered as a Craft Teacher starting from the year 1967 till 26.04.1995 to be counted as a qualifying service for computing the pensionary benefits. As the said benefit was not being extended to the petitioner, she has approached this Court by filing the present writ petition seeking direction to the respondents to grant her the benefit of total length of service which she had rendered starting from the year 1967 till 28.02.2005 as qualifying service for computing the pensionary benefits.

3. Upon notice of motion, respondents have filed the reply. In the reply, they have stated that petitioner was appointed to the post of Gram Sewika on her own request on 27.04.1995 and in the appointment letter, it was duly mentioned that no benefit of the previous service will be given to the petitioner and, therefore, keeping in view the condition No. 5 of the appointment letter dated 27.04.1995 (Annexure P-5), no benefit of service, which the petitioner rendered as a Craft Teacher, can be extended to her by treating the same as a qualifying service for computing the pensionary benefits.

4. I have heard learned counsel for the parties and have gone

through the record with their able assistance.

5. It is not for the first time that a Craft Teacher, who was absorbed on the post of Gram Sewika, is claiming the benefit of service rendered as a Craft Teacher as a qualifying service for computing the pensionary benefits. A large number of similarly situated employees have already approached this Court and this court has allowed them the benefit of the service, which they have rendered as Craft Teacher, to be treated as a qualifying service for computing the pensionary benefits.

6. First of all, the Division Bench of this Court while deciding CWP No. 10209 of 2004 titled as ***Om Pati Vs. State of Haryana and others***, on 26.09.2006, held that the service, which an employee had rendered before being appointed to the post of Gram Sachiv, is liable to be counted as a qualifying service for computing the pensionary benefits. While passing the order in ***Om Pati's case (supra)***, this Court relied upon the Instructions dated 22.11.1991 (Annexure P-7/A), which have been issued by the Government of Haryana granting the benefits of the previous service rendered in Zila Parishad/Panchayat Samiti to the employees, who were later on absorbed in the Government service.

7. Thereafter, another teacher, who was working as a Sewing Teacher and was later on appointed as a Gram Sewika, was also given the benefit of the previous service by this Court while deciding CWP No. 2951 of 2009, titled as ***Sarla Devi Vs. State of Haryana and others***, on 08.03.2010. The Co-ordinate Bench of this Court while relying upon ***Om Pati's case (supra)*** held that the service rendered as a Craft Teacher is to be taken as a qualifying service for computing the pensionary benefits.

8. A similar prayer, as being made by the petitioner in the present writ petition, was also made in CWP No. 17695 of 2011, titled as ***Smt. Dropati Devi Vs. State of Haryana and others***, decided on 27.03.2012, wherein this Court held that the service, which a Gram Sewika has rendered on the post of Craft Teacher, is to be taken into account as a qualifying service for the grant of the pensionary benefits. The relevant paragraph of the said judgment is as under:-

*“2. If the petitioner had been made regular from a particular date through an order and continued in the same department and assigned to a different duty and a different designation, the fact that an undertaking was received cannot be taken to estop the person from contending that the service she has put in the same department in another capacity should be excluded. The issue was answered in a slightly different situation by a Bench of this Court in **Om Pati Versus State of Haryana 2007 1 RSJ 582**. The Bench was considering the issue of counting of service in a Panchayat Samiti for eligibility for family pension for the person that was absorbed in the said service. The Court held that the service rendered in Panchayat Samiti which in terms of Government policy also allowed for absorption in the State service would make the person eligible to count such service in Panchayat Samiti as aggregating to pensionable service. I would apply the same principle and hold that notwithstanding the undertaking given by the petitioner that she would not claim benefit of past service it cannot operate to estop her. The petitioner shall be granted the service period of Craft teacher in the Panchayat Samiti as part of pensionable service and the pension shall be worked on that basis and the arrears be released to her within a period of 12 weeks.*

3. The writ petition is allowed on the above terms.”

The judgment in *Smt. Dropati Devi's case (supra)* was upheld by the Division Bench in LPA No. 1806 of 2012, decided on 07.12.2012.

9. Thereafter, once again CWP No. 4663 of 2011 titled as *Sudesh Kumari Vs. State of Haryana and others* and CWP No. 10284 of 2011 titled as *Avinashwanti Vs. State of Haryana and others*, were decided by this Court on 23.08.2013 again holding that the period rendered by an employee as a Craft Teacher is to be taken into account as a qualifying service for computing the pensionary benefits. The relevant paragraph of the said judgment is as under:-

“The first argument of learned counsel for the petitioner is that the right of the petitioner for regularization crystalized on the date when a person junior to her was regularized and thereafter what the petitioner would be asserting would not be so much a right of regularization but a right of non-discrimination. He has further argued that had the scheme not lapsed and subsequently petitioner's case considered for regularization it would have to be from the date her junior was regularized. In these circumstances as per learned counsel the fact that the scheme lapsed would have no relation to the case of the petitioner for regularization with effect from the date her junior was regularized. He has further relied upon a decision of this Court in CWP No. 17695 of 2011 decision on 27.03.2012, Dropadi Devi v. State of Haryana and has argued that the petitioner therein was one of the persons who were junior to the petitioner and whose case has also similarly not been regularized. In the said case this Court held as follows:-

“ 2. If the petitioner had been made regular from a particular date through an order and continued in the same department and assigned to a different duty and a different designation, the fact that an undertaking was

*received cannot be taken to estop the person from contending that the service she has put in the same department in another capacity should be excluded. The issue was answered in a slightly different situation by a Bench of this Court in **Om Pati Versus State of Haryana 2007 1 RSJ 582**. The Bench was considering the issue of counting of service in a Panchayat Samiti for eligibility for family pension for the person that was absorbed in the said service. The Court held that the service rendered in Panchayat Samiti which in terms of Government policy also allowed for absorption in the State service would make the person eligible to count such service in Panchayat Samiti as aggregating to pensionable service. I would apply the same principle and hold that notwithstanding the undertaking given by the petitioner that she would not claim benefit of past service it cannot operate to estop her. The petitioner shall be granted the service period of Craft teacher in the Panchayat Samiti as part of pensionable service and the pension shall be worked on that basis and the arrears be released to her within a period of 12 weeks.”*

He has further pointed out that this judgment has become final and all the benefits have been released to that petitioner.

In my opinion the argument of learned counsel for the petitioner cannot be brushed aside.

In the circumstances the aforesaid writ petitions are allowed and the respondents are directed to grant to the petitioner/s the same benefits as have been granted to the said Dropadi Devi. Let the necessary exercise of working the same out and releasing them be carried out within a period of three months from the date of receipt of a certified copy of this order failing which the petitioner would be entitled to claim the same

with interest at the rate of 8% p.a. from the date of her retirement till the date of payment.”

10. Thereafter, Smt. Munni Bai, who was also similarly situated as the present petitioner, filed CWP No. 22597 of 2013 titled as ***Smt. Munni Bai Vs. State of Haryana and others***, claiming the benefit of service rendered as a Craft Teacher to be treated as a qualifying service for computing the pensionary benefits. The said writ petition was decided on 11.02.2014 keeping in view the order passed by this Court in ***Ompati's case (supra)*** and ***Smt. Dropti's case (supra)***. The order dated 11.02.2014 passed in ***Smt. Munni Bai's case (supra)***, is as under:-

*“Counsel for the petitioner contends that the claim of the petitioner is identical on facts and on law while referring to the order dated 08.03.2010 passed in CWP No. 2951 of 2009 titled as **Sarla Devi vs. State of Haryana and others** (Annexure P-15). Submission has been made that the Letters Patent Appeal filed against the said order stands dismissed and the judgment has attained finality. Reliance has also been placed upon a Division Bench judgment of this Court in the case of **Om Pati vs. State of Haryana and others**, 2007 (1) RSJ 582 (Annexure P-16) as also judgment in CWP No. 17695 of 2011 titled as **Smt. Dropati Devi vs. State of Haryana and others**, decided on 27.03.2012 (Annexure P-17). Counsel contends that Letters Patent Appeal preferred against this order has also been dismissed.*

On going through the judgments referred to above, I am of the considered view that the claim of the petitioner is covered, on all fours, by the judgment in Sarla Devi's case (supra).

The present writ petition is allowed in same terms.”

Thereafter, once again, this Court while deciding CWP No.

9372 of 2013 titled as *Smt. Savitri Devi Vs. State of Haryana and others*, on 06.02.2015, allowed the similar claim.

11. Learned counsel for the respondents is not able to rebut the fact that the persons similarly situated as the petitioner have already been allowed the same benefit by this Court as being claimed by the petitioner in this writ petition. The law has already attained the finality that the service, which a Gram Sewika has rendered on the post of Craft Teacher, is liable to be taken into account as a qualifying service for computing the pensionary benefits. Once, the benefit has already been extended to the similarly situated employees by this Court, it was the duty of the respondents to grant the same benefit to the petitioner.

12. A Division Bench of this Court while deciding CWP No. 4382 of 2002 titled as *Satbir Singh Vs. State of Haryana*, decided on 21.03.2002 held that once a question of law has been settled, the same should be applied upon all the similarly situated employees and the similarly situated employees should not be forced to approach the Court seeking the same relief.

13. A bare perusal of the above would show that this Court has already granted the relief of counting the service rendered by an employee as a Craft Teacher as a qualifying service for computing the pensionary benefits but still, the respondents have forced the petitioner to approach this Court. This Court had granted the benefit to a similarly situated employee in the year 2006 and number of times thereafter till 2017, when the petitioner was forced to approach this Court. This is not expected from a Welfare State. Welfare State should treat all the similarly situated

employees as one and, therefore, the respondents should have granted the benefit as extended to the similarly situated employees, rather than forcing the petitioner to approach this Court.

14. Keeping in view the above, the claim of the petitioner is allowed. The service, which the petitioner has rendered as a Craft Teacher prior to her appointment as a Gram Sewika, is liable to be counted as a qualifying service for computing the pensionary benefits. Let the pensionary benefits of the petitioner be re-calculated in terms of this order and the difference/arrears of the pensionary benefits be released to the petitioner within a period of two months from the date of receipt of certified copy of this order.

Writ petition is allowed in above terms.

December 12, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*