

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

(236)

CWP-19168-2017

Date of Decision: November 21, 2019

Shashi Tejpal

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Sr. Advocate, with
Mr. D.S. Mann, Advocate, for the petitioner.

Mr. Charanjit Singh Bakhshi, Addl. A.G. Haryana.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance of the petitioner is that the petitioner is being denied the benefit of pension only on the ground that the CPF in respect of the petitioner, was never deposited by the management of the institutions with the Government and as per Rule 2 (j) of the Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 (hereinafter referred as '1999 Rules'), only the service for which the contributory provident fund has been deposited, is to be taken as a qualifying service while computing the pensionary benefits.

The facts stated in the writ petition are that the petitioner was initially appointed as Lecturer in Physical Education against an unsanctioned post on 06.09.1993. The said appointment was made by respondent No.3-College in the year 2004. On 01.07.2004, a sanctioned post of Lecturer in Physical Education became available and the petitioner requested that as the petitioner has been working for the last about 9 years, he be adjusted against the said sanctioned post w.e.f. the date it has become available. The request of the petitioner was not accepted and rather the

same was turned down by the respondents vide letter dated 03.08.2007.

Petitioner challenged the said action by filing CWP No.17260 of 2007 titled as Smt. Shashi Tejpal Vs. State of Haryana and others, decided on 11.03.2008, with the prayer that the petitioner be adjusted against the regular sanctioned post and the said request was allowed by this Court on 11.03.2008. The relevant paragraph of the said judgment is as under:-

“Consequently, the present writ petition is allowed. The impugned order Annexure P.10 is quashed. The respondents are directed to treat the post occupied by the petitioner as the post against which the grants-in-aid is payable.”

In pursuance to the said direction by this Court, an order was passed on 02.09.2008 whereby, the petitioner was adjusted against the regular sanctioned post prospectively. Thereafter, petitioner approached the respondents claiming that he is entitled for being adjusted against the regular sanctioned post of Lecturer in Physical Education from the date it had become available. Vide order dated 03.09.2009, the respondent-State adjusted the petitioner against the regular sanctioned post of Lecturer in Physical Education w.e.f. 01.07.2004. Petitioner continued working as such till he attained the age of superannuation on 31.12.2015.

After the retirement, case of the petitioner was sent by the management of the institution i.e respondent No.3 to the Government for the grant of the pensionary benefits to the petitioner. The said request has been declined by the respondent-State vide order dated 02.05.2017 (Annexure P-8) on the ground that petitioner does not have the qualifying service as envisaged under Rule 2 (j) of the 1999 Rules. This rejection of the case of the petitioner for the grant of pensionary benefits is

under challenge in the present writ petition.

Upon notice of motion, the respondents have filed the reply. In the reply, the respondents have stated that under Rule 2(j) of the 1999 Rules, only the period for which the contributory provident fund has been deposited, is to be treated as a qualifying service and in case of the petitioner, no CPF was deposited from 01.07.2005 till 30.04.2011 therefore, petitioner does not have 10 years minimum service required for being considered for grant of pensionary benefits. The relevant portion of the reply is as under:-

“3. That it is submitted that petitioner has retired on 30.12.2015 from the respondent College which is Govt. Aided College to whom State Govt. provide grant-in-aid to its Management as an amount equal to 95% of the salary of the approved staff appointed against the sanction post. Further, it is submitted that pension scheme for the employees working in Govt. Aided Colleges came into existence vide notification G.S.R. 53/HA.15/1979/S.4,5&16/99 dated 31.05.1999. Before this notification there is no provision to give pension to the retirees who retired from the Govt. Aided Colleges. The service of Teaching/Non-Teaching Staff working in the Govt. Aided Colleges are governed under the Haryana Affiliated Colleges (Security of Service) Act, 1979 and Rules, 2006 amended from time to time.

4. That the Hon'ble High Court has already dismissed a writ petition of a similar nature i.e. CWP No.18264 of 2002 titled as 'Bhupinder Singh versus State of Haryana and others' on 10.04.2003 with the following operative directions:-

“ In view of the above, in our opinion the present writ petition filed by the petitioner in this Court is not maintainable and is liable to be dismissed as such, especially when the petitioners are working against un-aided posts. Accordingly, present writ petition is dismissed, relegating the petitioners to

the remedy of filing a civil suit or availing of any other remedy that may be available to them in accordance with law, if so advised.”

That no legal right of the respondent has been infringed by the answering respondents in any manner.

So, in view of the submissions made above, the petitioner has no cause of action against the answering respondent at all and the present writ petition may kindly be dismissed.”

5. That the petitioner (Smt. Shashi Tejpal) has been appointed on unsanctioned post by the management on monthly salary basis. As per Court order dated 11.03.2008, she was adjusted against grant in aid post physical Lecturer on 01.07.2004. The CPF amount of said period after deduction probation period of one year (01.07.2005 to 30.04.2011) not deducted. As per provision in Rule 2 (j) of Aided Colleges pension notification 1999 is as under:-

“ The qualifying service will be taken into account with effect from the date an employee starts contribution towards contributory provident fund”

As well as Rule 8 of Aided Colleges pension notification 1999, an employee shall be entitled for pension under this rules only after he/she completes ten years qualifying service as well as he/she complete the age of 50 years. The period of qualifying service is to be taken from the date of deduction of Contribution Provident Fund. The Contribution Provident Fund of the petitioner has not been deducted from 01.07.2005 to 30.04.2011. Hence, the period from 01.07.2005 to 30.04.2011 is not to be counted as qualifying service for the purpose of pension. The qualifying service of the petitioner is less than ten years i.e. (4 years 07 months) So, there is no provision in pension rule 1999 to provide the pensionary benefits to the petitioner. It is also mentioned here that as per rule 13 of aided pension rule 1999, the petitioner only entitled to service gratuity amount to Rs.2,89,546/- as per calculation made by the department. A copy of the said order is hereby

annexed as annexure R-1.”

Learned senior counsel for the petitioner places reliance upon a letter dated 03.08.2016 (Annexure P-7) written by Management states that the CPF was deducted from 01.07.2005 till 30.04.2017 and the same has already been deposited in the salary account.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

As per Rule 2 (j) of 1999 Rules, only the service for which the contributory provident fund has been deposited, can be treated as a qualifying service. This Court has interpreted the said Rule more than once and recently, the same has been interpreted while deciding **CWP No.5897 of 2003 titled as Prem Chand Tagla and others Vs. State of Haryana and others, decided on 09.01.2019.** This Court has held that in case the contributory provident fund has not been deducted for any reason, the employee should deposit the same alongwith the statutory interest so that requirement of Rule 2(j) of 1999 Rules are fulfilled and after the deposit of the same, the said service shall be considered as qualifying service for the grant of pensionary benefits under 1999 Rules. The relevant portion of the said judgment is as under:-

“It is a matter of fact that the petitioners were appointed on regular basis and they continued working uninterruptedly without any break. The deduction of the contribution was to be done by the employer and there is no role to be played by the employee in this regard. Once, the respondents authorities failed to make deductions, the same act cannot cause prejudice to the claim of the petitioners to claim for treating the total length of service which they have rendered as a qualifying service. This is especially in view of the fact that there has been no opposition from the petitioners to pay the contributory

provident fund for the period the same has not been deducted by the respondents. The Rule only postulates that the service for which the contributory provident fund is deducted, is to be treated as a qualifying service, Rule does not prohibit that in case there is a default by the authorities in deducting the provident fund from the employees, the same cannot be deposited at a later stage so as to fulfill the requirement of the Rule. Further, this aspect has already been considered by this Court more than once.

*A similar Rule, which provides for only taking into account the service in which the contributory provident fund was deposited has been interpreted by this Court in **CWP No.14051 of 2005 titled as Ram Lubhaya Khanna and others Vs. State of Punjab and another, decided on 17.05.2007.** The similar Rule as in Punjab Private Recognized Aided School Retirement Benefit Scheme, 1992, has been interpreted to mean that total service of an employee is to be counted subject to the condition that the employee deposits the contributory provident fund for the period which the same was not deducted by the authorities.*

*The relevant Rule 6 of 1992 Scheme, as interpreted by this Court in **Ram Lubhaya Khanna's case (supra)** is as under:-*

“6. Qualifying service- (1) The service of an employee shall not qualify for retirement benefits under this Scheme unless-

(i) he attains the age of eighteen years;

(ii) he takes charge of the aided post to which he is first appointed except for which it is otherwise provided by special rules or contract; and

(iii) the service is on an aided post on regular basis

xx xx xx

(6) The qualifying service will be taken into account with effect from any employee started contributing towards the Contributory Provident Fund.”

By interpreting the above Rule, which is similar to Rule in the present case, this Court allowed the benefit of counting of total service rendered by an employee subject to the condition that the employee was to deposit the contribution for the period the same was not deducted.

Not only this, this question again came for consideration in CWP No.19292 of 2010 decided on 23.02.2012. The same relates to the employees of the Punjab Roadways Transport Corporation. In the Rules governing the service of the said Corporation, the Rule 6 which was also similar to the Rule in the present case, was interpreted by this Court and the writ petitions were allowed with a direction to treat the total length of service as a qualifying service subject to the condition that the employee will deposit the contribution for which it was not deducted.

Again, this Court while deciding CWP No.24543 of 2016 decided on 27.11.2018 consider the same question of law wherein, the similar Rule as it exist in the present case was pressed into service for denying the benefit. This Court passed an order allowing the said writ petition and again a direction was given to compute total length of service as a qualifying service for computing the pensionary benefits subject to the condition that the petitioner therein to deposit the contribution for the period the same was not deducted.

All the above mentioned cases related to the State of Punjab.

In respect of the State of Haryana also, this Court allowed the writ petition bearing CWP No. 8441 of 2015, decided on 05.01.2016 by giving a direction to treat the total length of service as a qualifying service subject to the condition that the petitioners were required to make good the contributory provident fund for the period when the same was not deducted. The relevant part of the order is as under:-

“Applying the ratio of judgments mentioned above, impugned orders dated 15.07.2013 and 02.08.2013 in CWP

No.8441 of 2015, impugned order dated 10.10.2013 (P-4) in CWP No.8442 of 2015 are set aside and a direction is issued to the respondents to grant to the petitioners benefit of service rendered by them by treating the same as qualifying service for the purposes of pension from the date of their appointments. However, the contribution to the contributory provident fund, which was required to be made by the petitioners, shall be adjusted and deducted from the arrears of their pension. The respondents, are therefore directed to calculate the pension of the petitioners and fix the same within a period of two months from the date of receipt of certified copy of this order. The arrears after calculation in the aforementioned manner be paid to them within a period of three months along with retirement benefits, if any.

The writ petition stands disposed of in the above terms.”

xxx xxx xxx xxx xxx

xxx xxx xxx xxx xxx

In view of the above, the writ petitions are allowed. The respondents are directed to take into consideration the total length of service rendered by the petitioners into consideration as a qualifying service and then compute their pensionary benefits for which they are entitled for. Let the re-fixation of the pensionary benefits of the petitioners as directed above, be done within a period of two months from the receipt of copy of this order. Whatever the contribution is to be made by each petitioner, towards the period for which the contribution was not deducted, will be deducted interest @ 6% and the amount will be released with interest @ 6% from the total arrears to be paid to the petitioners in each case before making the payment.

The arrears for which the petitioners become entitled for ultimately, shall be released within one month after the computation of the same.”

In the present writ petition, there is a dispute as to whether the contributory provident fund for the period starting from 01.07.2005 till 30.04.2011 has been deposited or not.

Learned senior counsel for the petitioner contends that the same has been deposited by the Management whereas, the categorical averment made on behalf of the State is that no such deposit has ever been received and therefore, in the absence of the deposit of the contributory provident fund for the aforesaid, petitioner does not become entitled for benefits under 1999 Rules especially when the petitioner does not have 10 years service excluding the said period.

Learned senior counsel for the petitioner states that the petitioner will deposit contributory provident fund starting from 01.07.2004 onwards till the date it has not been deposited alongwith the statutory interest so that the requirement of Rule 2(j) of 1999 Rules are fulfilled and thereafter, the respondents be directed to consider the claim of the petitioner for the grant of pensionary benefits.

Keeping in view the settled principle of law settled by this Court in **Prem Chand Tagla's case (supra)** wherein, this Court has already allowed the benefit of pension in case an employee deposit the contributory provident fund, for the period it has not not been deducted, along with statutory interest, State has been directed to consider their cases for the grant of pensionary benefits.

Learned counsel for the respondents very fairly states that in case the petitioner deposit the contributory provident fund from 01.07.2004 onwards till 31.12.2015 alongwith statutory interest, the case of the petitioner will be considered for pensionary benefits.

Keeping in view the facts and circumstances narrated above, this writ petition is disposed of with a direction that the petitioner will deposit the amount of the contributory provident fund along with the statutory interest from 01.07.2004 onwards till 31.12.2015 and the respondents will consider the grant of pensionary benefits to the petitioner and release the same. In order to avoid any further controversy, it will be in the interest of justice, in case the respondents compute the amount of pensionary benefits, which the petitioner will be entitled, for the service starting from 01.07.2004 till 31.12.2015 and deduct the amount of contribution to be made by the petitioner alongwith the statutory interest from the said amount and release the remaining to the petitioner. Let this exercise be carried out within a period of three months from the receipt of certified copy of this order.

It will be open to the petitioner to satisfy the respondents-State that the contribution was deposited by the management with the respondent-State and in case, the petitioner is able to satisfy, the amount so received, already will also be adjusted.

(HARSIMRAN SINGH SETHI)
JUDGE

November 21, 2019
harsha

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No