

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

**CWP No.4830 of 2016
Date of decision: 30.04.2019**

Ashok Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ramesh Malik, Advocate,
for the petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana.

Ritu Bahri, J.

Petitioners are seeking quashing of the order/letter dated 19.11.2015 (Annexure P-10) and directing the respondents to grant the benefit of past service rendered by them in the aided school for the purpose of pay protection, grant of ACP pay scales and retiral benefits, except seniority, along with interest.

The Saket Council, Haryana, is a registered society having the Governor of Haryana as its Chairman and the Director General of Health Services, Haryana as its Vice Chairman-cum-Director and Secretary. It is totally a State funded Society engaged in up-liftment of children in general and the children with special needs in particular. One of the institutions run by the Saket Council was the Saket High School, Panchkula. This school was an aided school getting the grant in aid from Government of Haryana to the extent of 75% as salary grant. Remaining 25% was being granted as Junior Red Cross fund by the Education Department, Haryana. In this

manner, it was 100% aided school run by the Council under the control of the Education Department, Haryana. Petitioners were appointed as teachers in the Saket High School, Panchkula by Director General of Health Services, Haryana as its Vice Chairman-cum-Director and Secretary.

This school was taken over by Government of Haryana vide letter dated 30.12.2010 (Annexure P-1) along with the staff. All the petitioners were absorbed in the Government service through this letter. This school was further shifted to the new premises in village Ghaggar Bir. Accordingly, the petitioners were issued appointment letters (Annexure P-2 Colly.) stating therein that they will be treated as fresh entrants and their salaries were fixed at the initial of the grade resulting into lowering of the salaries.

Learned counsel for the petitioners has referred to the policy decision dated 10.06.2011 (Annexure P-3), whereby a conscious decision has been taken by the Director, Secondary Education, Haryana, regarding counting of past service rendered in the Government aided schools/colleges before these were taken over or before the appointment of an employee in the Government Establishment in the light of various judgments passed by the Courts for the purpose of pension/gratuity. Thereafter, petitioners made representation dated 08.05.2013 (Annexure P-4) claiming counting of the past services for the purpose of pay protection. Another representation was made on 10.02.2014 (Annexure P-5). The petitioners were granted benefit of counting of past service towards qualifying service for the purpose of calculation of pension vide letters dated 05.08.2014 (Annexure P-6 Colly.). However, their claim for pay protection has been rejected vide letter dated 21.11.2014 (Annexure P-7). The petitioners challenged this order by filing

CWP No.8320 of 2015, which was disposed of vide order dated 30.04.2015 (Annexure P-9) by giving direction to the respondents to consider their claim in the light of the judgment dated 19.01.2010 passed by this Court in CWP No.11390 of 1993, titled as **Mrs. Urmil Devgun and others vs. State of Haryana and others**. Ultimately, vide impugned order dated 19.11.2015 (Annexure P-10), respondent No.2 has dismissed the claim of petitioners.

Learned counsel for the petitioners, while referring to the order dated 19.11.2015 (Annexure P-10) contends that the judgment passed in **Urmil Devgun's** case (supra) is not applicable to the facts of the present case. Petitioners, in that case, were working in the school run by the Red Cross Society namely Red Cross Bal Niketan School, Police Lines, Karnal and the said school was taken over by the Government of Haryana w.e.f. 23.11.1981 and the terms and conditions at the time of taking over of that school were different than that of the present petitioners. In the case of **Urmil Devgun** (supra), as per appointment letters, they were granted the benefit of past service while fixation of pay.

Short question for consideration in this case is, once the petitioners have been granted the benefit of past service towards pension vide letter dated 05.08.2014 (Annexure P-6 Colly.), can they be denied the benefit of pay protection.'

Learned counsel for the petitioners, while referring to the order dated 19.11.2015 (Annexure P-10) further contends that the competent authority has wrongly declined their claim by holding that the judgment passed in **Urmil Devgun's** case (supra) is not applicable to the facts of the present case. Petitioners (in that case) were working in the school run by the Red Cross Society, namely Red Cross Bal Niketan School, Police Lines,

Karnal and the said school was taken over by the Government of Haryana w.e.f. 23.11.1981. While allowing the aforesaid petition, benefit of past service rendered before taking over of the school by the Government was not given while fixing the seniority. However, benefit of higher pay scale on account of higher qualification of B.Ed. was granted. In the case of the present petitioners, benefit of past service towards pension has been granted, but pay protection has been denied.

The Director, Secondary Education, Haryana, while taking a decision dated 10.06.2011 (Annexure P-3) has denied the benefit of pay protection. Reference has been made to the judgments passed by this Court in **Harnandan Singh vs. State of Punjab and others**, 2007 (2) RSJ 437, **Charan Singh vs. State of Punjab and others**, 2006 (6) SLR 624 and a judgment passed by the Rajasthan High Court in **Union of India and others vs. Jawahar Lal Sharma**, 2003 (3) RSJ 672. In these cases, it has been held that if, a privately aided recognized school has been taken over by the Government, the service rendered in the privately aided recognized school has to be taken into account for the purpose of pension, but not for the purpose of pay protection. Hence, the petitioners are not entitled for benefit of seniority, grant of ACP pay scales and pay fixation. Petitioners are bound by the terms and conditions dated 30.12.2010 (Annexure P-1) when the Saket High School was taken over by the Government. Keeping in view aforesaid three judgments, past service rendered in the previous school has been rightly taken into consideration for the purpose of grant of pensionary benefits. Once, this benefit has been given to the petitioners, they are bound by the terms & conditions of their appointment letters. They cannot be given the benefit of pay protection and grant of ACP scales in respect of the

past services rendered in the school. He further argued that as per ACP Rules, only regular satisfactory service rendered under the Haryana Government has to be counted for eligibility for grant of ACP pay band. The petitioners have rendered the satisfactory service with the Haryana government after the school was taken over by the Government on 30.12.2010. The services rendered before this period cannot be counted for ACP scales.

After hearing learned counsel for the parties, present petition deserves to be dismissed. As regard the prayer for protection of pay is concerned, reference can be made to a Division Bench judgment of this Court in **Satpal Sharma and others vs. State of Haryana and others**, CWP No.1743 of 1992 (decided on 05.09.2001). This was a case where petitioners were appointed as S.S. Masters in the service of C.R. Dass High School, Banyal, District Ambala, a privately managed Government aided school. In the year 1981, the State Government took over the school and absorbed the staff, including the petitioners, in the Government service. The petitioners accepted all the terms and conditions of being absorbed in the Government service and one of the conditions amongst them was that they will not claim benefit of the past service. After about 10 years, the petitioners filed petition seeking a writ in the nature of mandamus to the respondents to count the services rendered by them in C.R. Dass High School, Banyal for fixation of their seniority and grant of other service benefits after absorption in the Government service. The Division Bench of this Court dismissed the writ petition while observing that the petitioners were absorbed in the Government service as a result of take over of the privately managed aided school and they had given an unequivocal

undertaking not to claim the benefit of past service. After having given an unequivocal undertaking not to claim benefit of past service, the petitioners were held to be estopped from seeking a mandamus for counting of past service towards seniority and pay fixation. The petitioners are not entitled for the benefit of seniority keeping in view the judgment passed by Hon'ble the Supreme Court in **State of Haryana and another vs. Deepak Sood and others**, Civil Appeal No.4446 of 2008 (decided on 15.07.2008). For reference, Rules 7 and 8 of the Haryana Civil Services (ACP) Rules, 2008 are reproduced as under:-

“7. Eligibility for Grant of ACP grade Pay under the general ACP scheme:--

(1) Every Government servant covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the first ACP grade pay (given in column 4 of Part II of Schedule I in respect of the functional pay scale or pay structure of his post) if he has completed 10 years of regular satisfactory service and has not got any financial upgradation in these ten years with reference to the functional pay structure of the post to which he was recruited as a direct entrant. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/modification of the pay structure for the same post after 01.01.2006.

(2) xxxxxxxxx

(3) xxxxxxxxx

(4) xxxxxxxxx

Note.- For the purpose of these rules, “regular satisfactory service” means continuous service counting towards seniority under Haryana Government, including continuous service in Punjab Government before re-organization, commencing from the date on which the Government servant joined his service after being recruited through the prescribed procedure or rules etc. for regular recruitment, in the cadre in which he is working at the time of being considered his eligibility for grant of ACP pay band and grade pay under these rules and further fulfilling all the requirements prescribed for determining the suitability of grant of ACP pay structure.”

8. Other general conditions of eligibilities of ACP pay structure:-

The following general conditions shall also be fulfilled by a Government

servant for availing benefit of ACP:-

(a) after completing the respective prescribed period for eligibility for the grant of ACP pay structure the Government servant should be fit to be promoted to the next higher post in the functional hierarchy in his cadre, but could not be functionally promoted due t lack of vacancy in the promotional post in the hierarchy to which he is eligible to be promoted.”

The above said rules make it clear that regular satisfactory service means, “continuous service rendered under the Haryana Government”, which is to be taken into account while granting the benefit of ACP to an employee. In the present case, the school was taken over by the Government in the year 2010 and the petitioners cannot claim seniority of the past service which was rendered before 2010. Hence, the service rendered by the petitioners with the Haryana Government after 2010 can be taken into account for grant of ACP scales as per Rules 7 and 8 of the Haryana Civil Services (ACP) Rules, 2008. Accordingly, their claim for grant of ACP is liable to be rejected.

Keeping in view the above discussion and the law laid down by this Court as well as by Hon'ble the Supreme Court in the above said authorities, no ground is made out to interfere in the impugned order.

No merits.

Dismissed.

(RITU BAHRI)
JUDGE

30.04.2019
ajp

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