

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

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CWP-27632-2018

Date of Decision : 04.02.2020

Shashi Sharma

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr.Sajjan Singh, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

NIRMALJIT KAUR, J. (ORAL)

The prayer in the present petition is for setting aside the impugned orders dated 27.04.2015 and 21.08.2015, which are placed on record as Annexures P-7 and P-8 respectively, vide which the respondents have rejected the claim of the petitioner to count the service rendered by her in Arya Girls High School, Mohana, District Sonipat for pension, pensionary benefits and for all other intents and purposes.

Reply has been filed. As per the said reply, the service of the petitioner rendered as Science Mistress in the Government Aided School namely Arya Girls High School, Mohana, District Sonipat from 03.08.1981 to 27.03.1993 on the Government Aided post (aided by Haryana Government) cannot be counted in view of Rule 3.17(A)(D) of CSR Volume-II which shall also entail forfeiture of past service in terms of Rule 4.19A of Punjab Civil Service Rules, Volume-II as the petitioner had

resigned from her services at Arya Girls High School, Mohana, District Sonapat vide resignation letter dated 27.03.1993 (Annexure R-1).

Learned counsel for the parties were heard.

The issue in hand is no more *res-integra*. In view of the settled proposition of law and the judgment rendered in the case of **M.M.Lal Bareja vs. State of Haryana, 1995(2) PLR 75** while holding that the service in a Government undertaking cannot be ignored and has to be considered towards pension as long as the resignation was for joining other service under Central and State Government observed in paras No. 6 and 7 read as under :-

“6. A look at the above-quoted rules shows that the pension is payable even to such an employee who was holding temporary post under the State Government and who may have subsequently resigned from the previous post in order to join another service under the Central or the State Government. These Rules also comprehend the grant of pension to a person who has resigned from service in order to take up another appointment and such resignation is not to be treated as resignation from public service.

7. The facts which have come on record of this case clearly show that the petitioner was permanent employee in the service of the Government of Haryana. He had applied for recruitment as Senior Stenographer in the National Mineral Development Corporation Ltd. through proper channel. After his selection, he resigned from service because the Government declined to give him the benefit of extraordinary

leave. By the time he was relieved after resignation, the petitioner had rendered over 15 years of service with the Government of Haryana. In terms of Rule 4.19(b) read with Rule 3.17 his resignation cannot be treated as a resignation from public service. His service with the National Mineral Development Corporation was a service in an undertaking of Government of India and, therefore, he cannot be deprived of his right to get pension in lieu of service rendered by him under the Government of Haryana. By denying him this benefit, the respondents have clearly violated his legal rights. He is, therefore, entitled to issue a writ of mandamus.”

The abovesaid judgment was followed by the learned Single Bench of this Court in the case of **Satish Kumar vs. State of Haryana and others, CWP No.14014 of 2012, decided on 05.02.2016** wherein almost similar circumstances, the resignation of the petitioner Satish Kumar was accepted by the District and Sessions Judge, Bathinda to enable him to join the service in the office of the District and Sessions Judge, Sirsa.

The controversy involved in the present petition is duly covered by the judgment of this Court in the case of **Sunder Lal vs. State of Haryana and others, CWP No.13579 of 2009, decided on 05.03.2010** which was allowed after relying the judgment rendered by this Court in CWP No. 18544 of 2006, decided on 06.11.2009 by holding thus :-

“The issue raised in the above said three writ petitions already stands adjudicated by this Court in a decision rendered in Civil Writ Petition No.16817 of 2007 (Vijay Singh Vs. State of Haryana and others) decided on July 22, 2009. It

is also noticed that the State has taken a similar stand in response to a notice issued in the said writ petition. Relying upon the ratio laid down in the cases of Harnandan Singh Vs. State of Punjab and others, 2007 (2) RSJ, 437 and Charan Singh Vs. State of Punjab and others, 2006 (6) SLR, 624, decided by two different Division Benches of this Court and a cases titled Union of India and others Vs. Jawahar Lal Sharma, 2003 (3) RSJ, 672, the Court has directed the respondents to count the entire service rendered by the petitioners in a privately managed school and in the Government School for the purpose of pension and retiral benefits. Reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of Chander Sain Vs. State of Haryana and others, A.I.R., 1994, Supreme Court, 972. In all these cases, the Court has held that the service rendered in the aided school was required to be counted for the purpose of pension and retiral benefits.

The issues raised in the writ petitions are covered by the ratio of law laid down in the above said cases. A service rendered in a private school or an aided post, which is receiving grant in aid is also made pensionable and as such, the same is required to be taken into consideration for the purpose of pension and retiral benefits.

All the three writ petitions are accordingly allowed in the above terms. There shall, however, be no order as to costs.”

It is evident that the petitioner herein was appointed as Science Mistress in the Government Aided School on 03.08.1981. She resigned from the said post on 27.03.1993 (Annexure R-1) and she joined the next

service. The experience certificate was also issued to her, which is placed on record as Annexure P-3 and was duly countersigned by District Education Officer (DEO), Sonipat. Moreover, the approach of the respondents is not tenable not only in view of the judgments rendered above but also in view of Rule 4.19 (b) of Haryana Civil Services Rules (Volume II) which is reproduced as under :-

*“**4.19(b):** Resignation of an appointment to take up with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.*

The above Rule is self speaking. Accordingly, the present writ petition is allowed. The respondents are directed to count the service of the petitioner rendered in Arya Girls High School, Mohana, District Sonipat from 03.08.1981 to 27.03.1993 for the purpose of grant of pension. Let the pensionary benefits of the petitioner be determined in accordance with the aforesaid order and released within a period of three months from the date of receipt of the certified copy of this order along with 6% interest from the date it fell due, as expeditiously as possible. In case, the same is not paid within three months, then the same shall be paid @ 12% interest after the expiry of three months.

04.02.2020
anju

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No