

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

CWP-3093-2004(O&M)

Reserved on:-15.11.2021

Date of Pronouncement:-18.11.2021

Prem Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.Harshit Jain, Advocate for
Mr.Amitabh Tewari, Advocate
for the petitioner.

Mr.Rajneesh Chadwal, AAG, Haryana.

Mr.Shreenath A.Khemka, Advocate
for the University – respondents No.2 to 4.

H.S. MADAAN, J.

1. Petitioner Prem Singh son of Sh.Mukhtar Singh working as Librarian with Chaudhary Charan Singh, Haryana Agricultural University, Hisar has filed the instant civil writ petition under Articles 226/227 of the Constitution of India against respondents i.e. State of Haryana through its Secretary, Agriculture Department, Civil Secretariat, Chandigarh,

Chaudhary Charan Singh, Haryana Agricultural University, Hisar (hereinafter referred to as respondent - University), Vice-Chancellor, Chaudhary Charan Singh, Haryana Agricultural University, Hisar, Comptroller, Chaudhary Charan Singh, Haryana Agricultural University, Hisar and University of Delhi through its Registrar, craving for issuance of writ in the nature of mandamus directing the respondents to count the past service rendered by the petitioner with Respondent No.2 - University, University of Delhi, Delhi and Lal Bahadur Shastri National Academy of Administration, Mussoorie (hereinafter referred to as the Academy) for the period from 11.5.1975 to 22.7.1991 by ignoring the letters/orders dated 24.12.2001 (Annexure P17) and dated 16.5.2003 (Annexure P-22), which according to the petitioner are illegal, arbitrary, null and void.

2. The petitioner in addition/in alternative has sought issuance of a writ in the nature of mandamus directing the respondents to permit him to deposit the amount of retiral benefits received by him from universities/institutions with interest up to date in respect of which he had applied for counting of his past service and for directing the respondents to release all the benefits, which accrued to the petitioner after counting his past service.

3. As per the case of the petitioner, he joined Respondent No.2 - University as Senior Library Assistant on 11.5.1975; during the course of his service there, petitioner applied for the post of Professional Junior with University of Delhi through proper channel and he was selected there; the petitioner was relieved from his duties vide order dated 4.6.1979; he was even permitted to retain the lien on the post of Senior

Library Assistant by Respondent No.2 - University vide order/letter dated 6.7.1979, copy Annexure P3; the petitioner had joined as Professional Junior at University of Delhi on 5.6.1979, which was on regular basis and he was permanently absorbed by the University of Delhi; the petitioner sent his resignation to Respondent No.2 - University, which was accepted w.e.f. 8.2.1981 vide order dated 20.1.1981; that in the year 1985, the petitioner was selected for the post of Senior Librarian with the respondent Academy on the recommendations of Union Public Service Commission; the petitioner was permitted to join as Senior Librarian and he was relieved from the official duty w.e.f. 28.2.1986 vide order/letter dated 27.2.1986; he was permitted to serve there for two years, which span of time was to be treated as deputation period; the petitioner worked at the Academy on the post of Senior Librarian from 1.3.1986 to 11.12.1990 while on deputation from University of Delhi; later on he was absorbed in the Respondent Academy as Deputy Director (Library and Information) w.e.f. 12.12.1990 on *ad hoc* basis vide order dated 19.2.1991; the petitioner applied for his resignation from University of Delhi, which was accepted vide order/letter dated 23.8.1991; that while at the Academy, the petitioner applied to various universities for the post of Librarian through proper channel and with the permission of the Academy; the petitioner was selected as Librarian in Respondent No.2 - University and appointment letter dated 26.6.1991 was issued to him; accordingly the petitioner submitted his resignation from the post of Deputy Director (Library and Information), Academy and it was accepted vide order dated 23.7.1991; the petitioner was relieved from his duties; the

petitioner accordingly joined with Respondent No.2 - University on 24.7.1991 i.e. on the next day of his being relieved from the Academy; the information regarding joining of the petitioner on 24.7.1991 was sent to the Registrar vide letter dated 1.8.1991; that at the time of joining of the petitioner with the Respondent No.2 - University, the post was not pensionable because the Contributory Provident Fund Scheme was prevalent in the Respondent No.2 - University; thereafter pension scheme was launched; the petitioner applied for the same; his prayer was accepted and he was allotted General Provident Fund No.4670 vide order dated 18.6.1999; that in terms of Clause 3.3 of Chapter VIII-A of the Statutes of the Respondent No.2 - University, any service rendered by the existing employee with the Central Government or State Government or Autonomous body could be counted towards pension subject to fulfillment of certain conditions; the petitioner accordingly applied for counting of past service rendered with the Respondent No.2 - University from 11.5.1975 to 4.6.1979 at University of Delhi from 5.6.1979 to 11.12.1990 and at Academy from 11.12.1990 to 23.7.1991 vide letter dated 4.6.1999; the petitioner was and is still ready to deposit the retiral benefits received by him after his resignation from the earlier universities/institution; though Respondent No.2 - University is an autonomous body, which is supposed to take its own decisions, yet for the reasons best known to respondent No.4, the case was referred to Secretary, Agriculture Department, Government of Haryana for clarification vide letter dated 27.8.1999; the petitioner was also informed in that regard vide letter dated 30.8.1999 along with copy of letter dated

27.8.1999; the petitioner immediately represented to respondent No.4 vide letter dated 2.9.1999 against the reference made by it to the Government; the petitioner met the respondent authorities time and again but to no effect; the petitioner had made another representation dated 2.3.2000 followed by reminders dated 20.6.2000 and 24.10.2000, however in order to prolong the matter, the petitioner was asked to produce certain documents by respondent No.4 for further transmission to respondent No.1 vide letter dated 13.11.2000; the petitioner accordingly did prompt compliance; ultimately the request of the petitioner for counting of his past service was declined by respondent No.1 vide order/letter dated 24.12.2001; it was so done on the basis of instructions regarding counting of past service issued by respondent No.1 vide letter dated 22.8.1988; such letter had been adopted by respondent – University with approval of the Board of Management on 27.1.1992; the petitioner had submitted a representation dated 13.3.2002 to respondent No.3 against illegal rejection of his claim but to no effect; the petitioner even preferred to forego certain period of his service rendered at the Academy vide letter dated 20.12.2002 but to no effect; the petitioner was constrained to approach this Court vide CWP No.2799 of 2003 and this Court vide order dated 20.2.2003 directed respondent No.1 to decide the representation dated 18.10.2002 within a period of three months. However, the petitioner was informed that his representation stood rejected.

4. On notice, the respondents put in appearance. In the joint written statement filed on behalf of respondents No.2 to 4, they have raised preliminary objections to the effect that petitioner has not

challenged Annexure P17 and P22 vide which reasons for rejection of his claim have been given; that application of the petitioner was considered and examined at length by the University/Haryana Government and it was found that he did not fulfil the condition laid down in Haryana Government Finance Department letter dated 22.8.88 and Clause 3.4 of Chapter XII of HAU Act & Statutes; that period of service of the petitioner from 12.12.1990 to 23.7.1991 at Lal Bahadur Shastri Academy of Administration could only be counted towards pensionary benefits if such Institute accepted the pension liability for that period along with up to date interest as per Clause 3.4 of HAU Pension Statutes and Para-4 of Haryana Government Notification No.1/2(77)87-2FRII dated 22.8.1988; this period could not be condoned as interruption in service because the petitioner remained in service with an institute and earned salaries, therefore the Respondent No.2 University was unable to count the past service of the petitioner from 11.5.1975 to 11.12.1990 at Respondent No.2 - University and Delhi University; that orders already issued vide letter dated 24.12.2001 (Annexure P-17) and dated 16.5.2003 (Annexure P-22) are legal, right and valid. On merits the material assertions in the petition were controverted, whereas the pleas taken in the preliminary objections were reiterated. Refuting the remaining assertions, such respondents prayed for dismissal of the writ petition.

5. The petitioner filed replication to the written statement filed on behalf of respondents No.2 to 4 controverting the allegations made therein and reiterating the stand taken in the petition.

6. I have heard learned counsel for the parties besides going

through the record.

7. The petitioner is said to have since retired from service and now is a senior citizen. The first objection raised by the petitioner is that respondent No.2 is an autonomous body and should take its own decision instead of seeking guidance from the State Government and the instructions issued and advise given by the State Government is not binding upon respondent No.2 - University.

8. Whereas this objection is rebutted by the respondents contending that respondent No.2 – University has adopted may letters/instructions/guidelines issued by the State Government on various subjects with approval of Board of Management, which include the letter in question adopted on 27.1.1992.

9. Here it is found to be appropriate to refer to various documents available on the record, which are as under:

Annexure P10 is letter vide which the petitioner had given his option for counting of past service for retiral benefits.

Annexure P11 is letter written by Delhi University Library System to the petitioner dated 20.5.1999 vide which it was informed that consequent upon the resignation from University of Delhi, the petitioner was paid the contributory fund (University Contribution) inclusive of interest i.e. Rs.43,334/- and Rs.3088/- on account of leave encashment on 14.12.1993.

Annexure P12 is letter written by Lal Bahadur Shastri National Academy of Administration, Mussoorie to the petitioner informing that petitioner had not been paid any terminal benefits like GPF and

gratuity by that institute.

Annexure P13 is office note put to Comptroller of respondent No.2 – University proposing for adjustment of amount of Rs.1,61,074/- from GPF account of petitioner for the past service for availing of retiral benefits informing that since the petitioner did not receive any terminal benefits from the Academy for the period he served there i.e. 12.12.1990 to 13.7.1991, this period may be excluded for the purpose of calculations.

Annexure P14 is communication by Comptroller respondent No.2 – University to Librarian of that University informing that matter had been referred to Government as per orders of Vice-Chancellor of the University and desiring that further information be gathered from the quarters concerned.

Annexure P15 is letter by Comptroller of respondent No.2- University addressed to Commissioner and Secretary, Government of Haryana, Deptt. of Agriculture, Chandigarh dated 27.8.1999 seeking clarification on the following points:

- (i) As per rule 4.23 of CSR Vol.II, interruption in service (either between two spells of permanent, or temporary service) or between a spell of temporary service and permanent service or vice-versa in the case of an officer retiring on or after the 5th Jan.1961, may be condoned.

It is not clear from this rule whether this interruption can also be considered for the period when an employee remained in service or whether this interruption is only for that period

benefit did not remain in service.

(ii) As per Clause 3.3 of Chapter-VIII of HAU Statutes the existing employee who has served the Central Govt. or any State Govt. or Autonomous Body can get the past service counted towards pension if he applies through proper channel and refunds the terminal benefits. Sh.Singh applied through proper channel not to count. He did not apply to HAU through proper channel from Delhi University can be counted by ignoring the service of LBS Academy.

(iii) It may also be clarified whether both the past service at HAU w.e.f. 12.5.75 to 4.6.79 and Delhi w.e.f. 5.6.79 to 11.12.90 can be counted.

Annexure P16 is letter by petitioner to Comptroller of respondent No.2 – University objecting to seeking clarification from the State Government.

Annexure P17 is clarification sent by Financial Commissioner and Secretary to Govt. Haryana Agriculture Department to Comptroller of respondent No.2 – University that in view of Finance Department instructions No.1/2(77) 87-2 FIR II dated 22.8.1988, the petitioner is not entitled to counting of service rendered earlier with respondent No.2 – University and Delhi University as qualifying service for the purpose of pensionary benefits.

Annexure P18 are such instructions on the subject.

The instructions issued by Government of Haryana with

regard to counting of service for the purpose of pension of the employees of the State Government and State Autonomous Bodies seeking absorption in Central Autonomous Bodies and Central Government/Central Autonomous Bodies, copy Annexure P18 are being reproduced below for ready reference:

(A) *In case past/service is pensionable in the new organisation.*

Where an employee borne on pensionable establishment is allowed to be absorbed in such an organization, the service rendered by him/her shall be allowed to be counted towards pension under the new organization irrespective of the fact whether the employee was temporary or permanent in the old organization. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he/she retires as a temporary employees in the new organization he/she will get germinal benefits as are normally available to temporary employees.

The Government/Autonomous Bodies will discharge go their pension liability by paying in lump-sum as a one-time payment, the proparate pension, service or tuity/terminal gratuity and death cum – retirement gratuity for the service upto the date of absorption in autonomous bodies/Govt. As the case may be, proparate pension will be determined with reference to the communication table in Chapter 11 of the Punjab Civil Services Rules, Vol.II as amended from time to time.

(ii) *An employee with contributory Provident Fund benefits on*

his/her permanent absorption in the new organization against a pensionable post/service will have the option either to receive contributory Provident Fund benefits which have accrued to him from the old organization or choose to count service rendered in the old organization as qualifying service for pension in the new organization for foregoing employer's share of the contributory Provident Fund with interest received from the old organization which will be paid to the latter by former organization. The option shall be exercised within one year from the date of absorption. If no option is exercised within the stipulated period, the employee shall be deemed to have opted to receive Contributory Provident Fund benefits. The option once exercised shall be final.

(B) In case post/service is not pensionable in the new organisation.

A permanent employee borne on pensionable establishment on his/her absorption under such organization will be eligible for proparate retirement benefits admissible under the rules of the old organization. In case of temporary employees, the terminal gratuity as may be admissible under the rules would be actually payable to the individual on the date when proparate retirement benefits to permanent employees become payable.

(ii) In case of absorption of an employee with Contributory Provident Fund benefits in such an organization the amount of his/her subscriptions and the employer's share, if any, together with interest therein shall be transferred to his new Provident Fund

Account with the consent of the new organization.

10. On clarification being sought by respondent - University, the State Government has informed that benefit of service rendered by the petitioner at respondent – University and Delhi University cannot be included towards the pension. The advise given by Government to the University is as per rules and no fault can be found with the same. The case of the petitioner was rightly not found covered under the rules especially rule 3.17 of the Punjab Civil Services Rules (Vol.II), which for ready reference is being reproduced as under:

3.17 In case of an officer retiring on or after 5th January, 1961, if he was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of:-

(i) Period of temporary of officiating service in non-pensionable established;

(ii) (Deleted).

(iii) Period of service paid from contingencies.

Note 1.—In case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, under rule 1.1 (b) of these rules, the term “continuous temporary/officiating service” shall include such service rendered under Central Government.

Note 2.—In case of a purely temporary Central Government

employee who is permanently transferred to Punjab Government and becomes subject to these rules, the term “continuous temporary service” includes the temporary service under the Central Government. The pensionary liability in respect of such cases shall be allocated on the length of service.

Note-3: (a) In respect of temporary employees of the following categories who render service under the Central/State Governments prior to securing posts under the Central/State Governments on their own violation in response to advertisements or circulars, including those by Union/State Public Service Commission and who are eventually confirmed in their new posts, the proportionate pensionary liability in respect of temporary service rendered under the Central/State Governments to the extent such service would have qualified for grant of pension under the rules of the respective Government, will be shared by the concerned Governments on a service share basis:-

(1) Those who having been retrenched from the service of Central/State Governments secured on their own employment under State/Central Government either with or without interruption between the date of retrenchments and date of new appointment.

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Government through proper channel/with proper permission of the administrative authority concerned.

Explanation:- Where an employee in category (2) is required for

administrative reasons for satisfying technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement, to join, with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement.

The gratuity, if any, received by the Government employee for temporary service under the Central/State Governments will, however, have to be refunded by him to the Government concerned.

(b) Those employees who while holding temporary posts under Central/State Governments apply for post under Central/State Governments direct without permission and resign their previous post to join the new appointment under the Central/State Governments will not be entitled to count their previous service for pension.

3.17-A (a) All service interrupted or continuous followed by confirmation shall be treated as qualifying service; the period of break shall be omitted while working out aggregate service.

(b) Extraordinary leave counted towards increments under rule 4.9 (b)(ii) of Punjab Civil Services Rules, Volume-I, Part-I, will be accounted towards service qualifying for pension.

(c) Periods of suspension, dismissal, removal, compulsory

retirement followed by reinstatement will count for pension to the extent permissible under rule 4.17 of Punjab Civil Services Rules Volume-II read with rule 7.3 of the Punjab Civil Services Rules, Volume-I, Part-I.

(d) Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of rule 4.19(a) of Punjab Civil Service Rules Volume-II.

Annexure P19 is representation by the petitioner addressed to Vice Chancellor of respondent No.2 – University.

Annexure P20 is another representation.

Annexure P21 is the order passed by Division Bench of this Court in CWP No.2799 of 2003 filed by the petitioner against State of Haryana and others disposing of the writ petition directing respondent No.1 to take final decision in the matter.

Annexure P22 is communication by Financial Commissioner & Principal Secretary, Haryana Government, Agriculture Department, Chandigarh addressed to Accounts Controller of Haryana Agriculture University, Hisar informing as under:

The Govt. had already taken a decision with the approval of Finance Department that the benefit of service rendered by Sh.Prem Singh, Librarian at Agriculture University, Hisar and Delhi University can not be included towards his pension and it

was intimated vide Governments reminder No.1338/2/-2001/22039 dated 24.12.2001. Agriculture University, Hisar referred this matter to Government without any new fact vide letter dated 31.1.2003, which is not appropriate. You are therefore, again instructed that decision conveyed by Government vide letter dated 24.12.2001 be considered final and thereafter appropriate further be taken at your own level.

Annexure P23 is settlement of gratuity.

Annexure P24 is the order dated 8.8.2001 passed by Comptroller of respondent No.2 – University, which reads as follows:

In pursuance of the decision of the Board of Management taken vide Item N.C-19 in its 194th meeting held on 28.3.2001, the Vice-Chancellor, CCS HAU, Hisar has allowed Dr.Dharam Singh, Deptt. of Agronomy to count his past service as per details given below for pension purpose as he has already deposited an amount of Rs.30,480/- as terminal benefits with interest upto 30.4.2001 and has withdrawn the Court case, CWP No.14127/97 filed on 25.7.2001:-

2. Vice Chancellor is further pleased to order that as per direction of the Board of Management the period of 13.1.1968 to 16.3.69 may be taken for continuity of service, but not for pension.

11. Learned counsel for the petitioner has argued that petitioner had joined various institutions/organizations as per consent of his concerned employer at that time and there is no break in his service,

which as a matter of fact has been continuous. As a matter of fact, his employment with respondent – University, Delhi University and Academy was continuous and regular with no interruption in between. In a similar case of Dharam Singh, who had served in Public Sector Undertaking similar benefit had been given to him but has been wrongly denied to the petitioner. The respondent – University is an independent entity and should have taken its decision on its own level. The advice given by Haryana Government to the University is wrong and uncalled for and should not be acted upon by respondent – University.

12. On the other hand learned counsel representing the respondent – University has contended that the service as contemplated by relevant Clause 3.3 does not contemplate multiple services. The period of employment of petitioner with Academy does not come within purview of Rule 4.23 since it was voluntarily chosen by the petitioner. The Academy had not accepted pensionary liability under Clause 3.4 and Governments instructions dated 22.8.1988 are binding upon respondent – University under Clause 1.7 read with Clause 1.10 of Chapter XII of the Statutes of University.

13. After hearing the rival contentions, I find that the contentions put forward by learned counsel for the petitioner do not have any element of merit. Clause 3.3 of Chapter VIII-A of the Statutes of the respondent – University though provides that any service rendered by existing employee with Central Government or State Government or Autonomous body can be counted towards pension but that is subject to fulfilment of certain conditions one of which being if the employee refunds the terminal

retirement benefits received, if any, by him from such Government/Autonomous Body for the service rendered there, to the University along with interest thereon at the rate of 6% per annum from the date of receipt of those benefits till the date of deposit with University. The explanation rendered by respondents No.2 to 4 for not counting the service of petitioner from 12.12.1990 to 23.7.1991 at the Academy and it is to be taken as interruption in service since such organization is an institute and it had not paid any terminal benefit to the petitioner since he had worked their on *ad hoc* basis. Further no fault can be found with such respondents in not counting the past service of petitioner from 11.5.1975 to 11.12.1990 at respondent – University and Delhi University. Furthermore, as per the case of answering respondents, the respondent – University is an autonomous body but in light of Clause 1.7 of Chapter XII of its Act and Statutes, all the matters pertaining to grant of pension to the retirees of the University (except those which have been specifically provided for in the pension statutes) would be regulated in accordance with the corresponding provisions of of Punjab Civil Services Rule (Volume II) as applicable to Haryana Government employees as amended from time to time or as modified by the Board of Management consistent with the provisions of the Act or keeping in view the activity/character of the university, therefore provisions of Punjab Civil Services Rule (Volume II) and State Government instructions/Notification dated 22.8.1988 on the subject of counting of past service adopted by the university are applicable in this case. It is specific case of answering respondents that petitioner has not given the details of the period for

which he has got benefits from various employers as well as the amounts with reference to the category under which he had got the same and Academy has not remitted any terminal benefits for the period from 12.12.1990 to 22.7.1991 and it had not accepted to meet the liability on that account. Therefore, the period is to be shown as interruption in service unless the terminal benefits for this period are accepted by the institution concerned, therefore period cannot be counted for benefit of past service towards pensionary benefits. Similarly, the past service of respondent – University and Delhi University could be counted towards pensionary benefits only if the petitioner had joined respondent – University after service with Delhi University and had got respondent – University service counted in Delhi University by depositing terminal benefits received from respondent – University with Delhi University. Therefore, the interruption in service cannot be said to have been caused by reasons beyond the control of employee concerned, which is requirement of Rule 4.23 of Punjab Civil Services Rules(Vol.II). The petitioner while serving the Academy had earned salaries and had applied from there for service with respondent – University. The interruption cannot be condoned on account of having been caused by reasons beyond the control of employee concerned.

14. With regard to the case of Dharam Singh, it is contended that Dharam Singh was previously working with Punjab Government and his service had been transferred to Punjab Agricultural University and thereafter to Haryana Agricultural University under Clause 22 and 25 of the Act, 1961, therefore it was taken to be one service in terms of Clause

3.3 of Chapter XII of the Statutes. Whereas in case of the petitioner, he was having two services one with respondent – University and the other with Delhi University and there is no provision in the Statute for allowing benefit of past service in two institutions. Therefore, the case of Dharam Singh was quite distinct from that of petitioner and he cannot claim parity with him.

15. As it transpires from the record, the petitioner did not fulfil the requisite conditions for counting his past service for the purpose of grant of pension. Therefore, the claim of the petitioner has been rightly rejected and no fault can be found with such action of respondents.

16. The instant writ petition is dismissed accordingly.

18.11.2021

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No