IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.215 **CWP No.10818 of 2013**
Date of Decision: 21.09.2022

Jatinder Sharma .... Petitioner

Versus

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjay Verma, Advocate
for the petitioner.

Mr. S.S.Mann, Addl. A.G.Haryana.

***

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present petition, the grievance of the petitioner is that the service which the petitioner had rendered in a Government Aided Institution on a sanctioned post, the salary of which was being paid to the petitioner, is not being taken into account as qualifying service for computing the pensionary benefits after the petitioner attained the age of superannuation while working with the Department of Education.

The petitioner was appointed as a Science Master in Saket High School, Chandi Mandir, Panchkula on 20.12.1997. The said school is 100% aided school, which aid was being provided by Government of Haryana, which included the post on which the petitioner was working. In 2007, the petitioner was promoted to the post of Headmaster, which was also sanctioned post and the said promotion was effected after taking appropriate approval from the Director School Education, Haryana. While the petitioner was working in the said school, the same was taken over by the government in the year 2010 and the petitioner continued working under the government thereafter. After being absorbed in the government service, the petitioner made a representation that earlier service rendered in a government aided institution be taken into account as qualifying service for the purpose of computing his pensionary benefits. The petitioner relied upon the decisions of this Court where the said question of law was settled that the service rendered on an aided post is taken into account as qualifying service for computing pensionary benefits.

As the said benefit was not extended to the petitioner, the petitioner has filed the present petition.

Learned counsel for the petitioner submits that the petitioner restricts his claim for counting the service rendered in aided institution only for the purpose of computing pensionary benefits.

In the reply filed by the respondents, the respondents have stated that though the institution where the petitioner was working was 100% aided institution and the petitioner was working on an aided post but after the school was taken over, the petitioner had given an undertaking that he will not claim any benefit of the past service and will be treated as a fresh entrant and will be placed at the bottom of the seniority in the cadre of Headmaster and will only be given the benefit from the date the school was taken over i.e.30.12.2010, hence, even for the purpose of computing pensionary benefits, the said service can not be taken into account.

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

The factum that the petitioner was discharging the duties in an aided institution, is a conceded fact. It is also conceded that the petitioner was working on a sanctioned post which was being aided by the government, even upto the date when the institution in question was taken over by the government in the year 2010. The question which arises is whether the period spent by the petitioner in an aided institution for which the petitioner was being paid by the government, is to be treated as a qualifying service for computing the pensionary benefits of the petitioner or not.

The said question is no longer *res integra* as a Coordinate Bench of this Court in ***CWP No.6586 of 2008*** decided on 24.07.2009, titled as ***Shyam Kumar versus State of Haryana and others,*** held that the period spent by an employee on regular basis in an aided institution while working on a duly sanctioned regular post, is to be taken into account as a qualifying service for computing pensionary benefits. Thereafter, the said question was once again answered by this Court while passing order in ***CWP No.4377 of 2007*** decided on 26.08.2009, titled as ***Ramesh Sharma versus State of Haryana and others,*** wherein it was again held that the service rendered in an aided institution is t be taken into account as qualifying service for computing pensionary benefits.

Learned counsel for the respondents has not been able to distinguish the case of the petitioner with that of ***Ramesh Sharma's case (supra)*** as well as ***Shyam Kumar's case (supra).*** That being so, the petitioner's claim for considering the service rendered in an aided institution is to be treated as qualifying service for computing pensionary benefits.

Not only this, the respondents themselves have been giving the benefit to the similarly situated employees. One such order as being relied upon by the petitioner is dated 12.03.2010, a copy of which has been appended as Annexure P-8, passed in the case of one Sushila Khokhar, who was also working as a Headmistress and was allowed the benefit of her previous service rendered in Jawahar Navodya Vidalaya Samiti Titran (Kaithal). The passing of the said order and the grant of said benefit has been conceded by the respondents in their reply. Hence, the case of the petitioner is covered on the ground of parity as well.

Keeping in view the above, the prayer of the petitioner for taking into account the period spent by the petitioner in the aided institution as a qualifying service for computing his pensionary benefits, is accepted.

Respondents are directed to revise the pensionary benefits of the petitioner after granting the benefit to the petitioner of the service rendered in the aided institution.

Learned counsel for the respondents submits that in order to take into account the service rendered by the petitioner in the aided institution, to be a qualifying service, the petitioner needs to deposit contribution for the period it was not deposited along with statutory interest as envisaged under the rules.

Learned counsel for the petitioner submits that the petitioner undertakes to do the same and submits that while computing the arrears of the petitioner, the contribution which the petitioner needs to deposit, be deducted from the arrears and rest of the arrears be extended to the petitioner.

The said proposal of the petitioner finds favour with the learned counsel for the respondents.

Keeping in view the above, let the arrears of petitioner be computed but the same will only be paid to the petitioner either from the date of retirement or from the date of filing of the present petition i.e.14.05.2013, whichever is later.

Petition stands allowed.

(HARSIMRAN SINGH SETHI)
JUDGE

21.09.2022
Maninder

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