

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

CWP No. 12825 of 2015(O&M)

Date of Decision:13.05.2022

Satya Parkash

.....Petitioner

Versus

Financial Commissioner and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Chanderhas Yadav, Advocate
for the petitioner.

Dr. Kiran Pal Singh, AAG., Haryana.

LISA GILL, J(Oral).

This writ petition has been filed for setting aside order dated 19.11.2013, Annexure P-8, passed by respondent no.3-Director Elementary Education, Haryana, Sikhsa Sadan, whereby petitioner's claim for counting his service as Social Studies Master w.e.f., 18.09.1985 to 27.10.1993 in an aided school qua an aided post prior to his joining in government service for computing his gratuity/pensionary benefits etc., has been rejected.

Brief facts necessary for adjudication of the matter are that petitioner was stated to have been appointed on 18.09.1985 at Adarsh Girls High School, Bawwa (Rewari) as S.S.Master. The said school is stated to be a government aided school which was subsequently acquired by the government and converted into Government High School, Bawwa (Rewari). Petitioner, it is stated worked at the said school till 27.10.1993 regularly before his appointment with the respondent-department. As petitioner's claim for counting his service of eight (08) years on the sanctioned/aided post prior to his joining in government service towards promotion/seniority/

pensionary benefits etc., was not being considered, petitioner filed CWP no. 20572 of 2012, which was disposed of vide order dated 12.10.2012 directing the respondent authorities to consider petitioner's representation. Petitioner's representation was however rejected by the Director General Elementary Education, Haryana, Panchkula, vide impugned order dated 19.11.2013, Annexure P-8, while observing as under:-

“After due consideration, it is the admitted fact that the petitioner had served from 18.09.1985 to 31.08.1993 that the petitioner joined as S.S. Master in Govt. Aided School namely Adarsh Girls High School, Bawwa (Rohtak) now in District Rewari on 18.09.1985 and worked continuously up to 31.08.1993 as per the school record provided by the Headmaster on record as per service book of the petitioner. But, service rendered by Sh. Satya Parkash from 18.09.1985 to 31.08.1993 is not countable towards benefits in Govt. service as cut of date is 11.05.1998 when Special Pension and Contributory Provident Fund, Rules, 1999 was implemented in Haryana Govt., Aided Schools which is only applicable to those employees who were in service on or after 11.05.1998 in Govt. Aided Schools. The case of the petitioner does not covered under the preview of Rules and deserves to be rejected.”

Hence the present writ petition has been filed.

Notice of motion was issued in this writ petition. As per Short Reply dated 10.05.2016, filed on behalf of respondents no.1 to 4, it is admitted that petitioner rendered his services on the sanctioned post of S.S. Master at Adarsh Girls High School, Bawwa (Rewari), a privately managed government aided school from 18.09.1985 to 27.10.1993. Claim of the petitioner is stated to have been reconsidered and re-examined in view of subsequent employees with reference to U.O No. 60/20/10/2FD-11/870-A

dated 31.05.2011, order No. 12/34-2009 Admn. (2) dated Panchkula, issued on 10.06.2011 by the Director Secondary Education, Haryana, Panchkula.

It is further stated that it was decided to allow the benefit of past service rendered by an employee in a government aided establishment before these were taken over or services rendered in aided establishment before appointment in government institutions and the same would be applicable to those covered under the Haryana Aided Schools (Pension and Contributory Provident Fund) Rules 1999 and Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 subject to the following conditions:-

- “1. That this offer will be optional and applicable only to those employees who agree to refund the management share (before the date of taking over of the Colleges/ Schools by the State Government along with 10% annual compound interest). This amount can be deducted from their gratuity and they will give an undertaking to this effect that if the amount of contributory Provident Fund is more than gratuity payable to them, then the pensioners will deposit the excess amount in Govt. Treasury.
2. That if a retired Govt. employee opts for this benefit, he shall deposit the share of contribution made by the management along with 10% annual compound interest (upto the date of depositing) in lump sum in Govt. treasury.
3. That these benefits will be made effective in respect of the employees of the taken over colleges/schools from the date of pension Scheme made applicable in private aided Colleges/Schools i.e., with effect from 11.05.1998.”

Considering the instructions issued by the Finance Department Haryana vide memo dated 31.05.2011, competent authority vide order dated 28.04.2016 accorded sanction to count past service of the petitioner from

01.01.1989 to 27.10.1993 as qualifying service for pension and gratuity subject to deposit of employer share of CPF with 10% annual compound interest till date of service in Govt. treasury.

Petitioner's claim was accepted partially, wherein period from 01.01.1989 to 27.10.1993 was taken into account as qualifying service, but period from 18.09.1985 to 01.01.1989 was disregarded only on the ground that petitioner became a subscriber towards CPF only w.e.f., 01.01.1989.

Learned counsel for the State is unable to point out any such reason for denial of counting the period right from 18.09.1985 onwards till 27.10.1993 as qualifying service, especially when even as on date the petitioner undertakes to deposit the requisite share along with 10% annual compound interest as is required. In this factual matrix, petitioner having become a subscriber towards CPF on account of coming into force of the Haryana Aided Schools (Pension and Contributory Provident Fund) Rules, 1999, would have no connection with the relief claimed.

While dealing with the question of computing of qualifying service for retiral benefit, a Coordinate Bench of this High Court in **Vijay Singh Vs. State of Haryana and others 2009(6) SLR 707**, has observed as under:-

“8. It is, thus, to be seen whether this service now can be excluded for the purpose of grant of pension. If the petitioner had continued to serve on an aided post in a private school, he would have been entitled to count his service rendered therein for the purpose of pension and other retiral benefits. Would that service be lost to him for the purpose of pension because he has subsequently gone on to join a Government job, which is again a pensionable one? If the result is allowed to operate in this manner, it will be unfair, inequitable and harsh. The ratio

of law as laid down in the case of Harnandan, Singh, Charan Singh and Chander Sain (supra) in this background would apply to the facts of the present case. Similar view has clearly been taken by the Division Bench of Rajasthan High Court in the case of Jawahar Lal Sharma Supra. In fact, the Division Bench of this Court in Charan Singh's case (supra) has observed that service rendered by a teacher in private school receiving aid is made pensionable and as such this service can not be ignored for grant of pension. The same is the situation here. Accordingly, I am of the view that the petitioner has made out a case for counting his service rendered on aided post in a private school for the purpose of pension and retiral benefits.”

Accordingly, the writ petition was allowed in **Vijay Singh's** case (supra) and the respondents were directed to count the entire service rendered by the petitioner in the privately managed school and the government school for the purpose of pension and retiral benefits. Similarly situated employees have been afforded the benefit in **Smt. Usha Rani Thakral Vs. State of Haryana and others, 2019 (2) SCT 609**. Petitioner's case can clearly not be distinguished.

Learned counsel for the respondents is unable to justify the reason for not considering the entire period of service from 18.09.1985 and onwards rendered by the petitioner once it is admitted that the petitioner in-fact rendered service on a sanctioned post of S.S. Master at the privately managed aided school for the period in question, beside the fact that petitioner undertakes to deposit the requisite share along with 10% annual compound interest till the date of deposit.

Accordingly, this writ petition is allowed and the respondents are directed to count the entire period of service rendered by the petitioner

w.e.f., 18.9.1985 to 27.10.1993 instead of 01.01.1989 to 27.10.1993 only towards CPF as qualifying service for pension and gratuity subject to the petitioner depositing the requisite share of CPF with 10% annual compound interest till the date of deposit. Petitioner be informed about the exact amount to be deposited within four weeks and the deposit be made within a week thereafter. Needful be then done by the respondents expeditiously and preferably within six weeks thereafter.

13.05.2022
s.khan

[LISA GILL]
Judge

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