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

(102)

**CM No.11524 of 2023 in/and
CWP No.39 of 2003 (O&M)
Date of Decision : 25.07.2023**

Phool Chand **...Petitioner**

Versus

State of Haryana and others **...Respondent**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Lipika, Advocate for
Mr. R.S. Mamli, Advocate for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

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<u>Harsimran Singh Sethi J. (Oral)</u>

<u>CM No.11524 of 2023</u>

The present application has been filed for listing the main writ petition for decision as, the same is pending for the last 18 years and relates to the grant of pensionary benefits.

Notice of motion.

Mr. Pankaj Middha, Additional Advocate General, Haryana, who is present in the Court accepts notice and raises no objection for the grant of the prayer as made in the present application.

Keeping in view the joint request of learned counsel for the parties, main case is taken up today for hearing.

<u>CWP No.39 of 2003</u>

1. In the present writ petition, the grievance being raised by the petitioner is that the service which the petitioner has rendered from 01.04.1971

to 02.01.1989 in Haryana State Minor Irrigation and Tubewell Corporation (hereinafter referred as 'HSMITC) has not been taken into account as the qualifying service for computing the pensionary benefits, which action of the respondents is contrary to the Rules governing the service as well as settled principle of law.

2. Certain facts needs to be mentioned for the correction appreciation of the issue in hand.

3. The petitioner was appointed as a Team Mate in the HSMITC on 01.04.1971 and he was promoted as Assistant Driller w.e.f. 16.05.1972. In November 1988, the petitioner was transferred from HSMITC to the Public Works Department, Government of Haryana and he started working there w.e.f. 03.01.1989. Ultimately, the petitioner worked there continuously till he attained the age of superannuation on 31.05.2002 and retired from service as Assistant Driller.

4. After the retirement, the service which the petitioner had rendered from 03.01.1989 till 31.05.2002 was taken into account as a qualifying service for computing the pensionary benefits whereas no benefit of the service which was rendered by the petitioner in HSMITCfrom 01.04.1971 to 02.01.1989 was given while computing the pensionary benefits.

5. As the petitioner was not being given the benefit of the service rendered from 01.04.1971 till 02.01.1989 as a qualifying service for computing the pensionary benefits, the petitioner filed a representation with the respondents for taking into account the said service for computing the pensionary benefits, which representation was rejected by the respondents vide order dated 18.09.2002 (Annexure P-9), which order is under challenge in the present petition.

6. Learned counsel appearing on behalf of the petitioner argues that in the present petition once there was no break in the period of service starting from 01.04.1979 and the petitioner was transferred from HSMITC to PWD (Health), Haryana, on which post the petitioner continuously worked till superannuation, the earlier service rendered by the petitioner with HSMITC was also entitled to be taken into account as a qualifying service for computing the pensionary benefits, which has not been done by the respondents and that too without any valid justification.

7. The claim of the petitioner is being contested by the respondents only on the ground that the CPF which the petitioner got after being transferred from HSMITC to PWD in January, 1989, has not been deposited and secondly, no request was made for counting the said service period, which request could have only been made upto six months prior to the date of retirement hence, at this stage the petitioner cannot be granted the said benefit being claimed in this petition.

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

9. It may noticed that the petitioner was all around ready to deposit the CPF along with the statutory interest of 12% but the same was accepted by the respondents while rejecting his plea. Even as on today, learned counsel for the petitioner has undertaken before this Court that the petitioner will return the CPF along with 12% interest so that, the benefit of service rendered in HSMITC could be taken into account as a qualifying service for computing the pensionary benefits.

10. It is a settled principle of law as settled by the Hon'ble Supreme Court of India in **State of Haryana and another Vs. Deepak Sood and**

others, Civil Appeal No.4446 of 2008, decided on 15.07.2008 that whenever any employee is transferred from a Corporation to the Government or is absorbed, the benefit of previous service cannot be taken away while computing the amount of pensionary benefits. The relevant para is reproduced as under:

> "Therefore, in the series of judgments given by this Court the view has been taken that in case of a transfer/absorption from one department to another or from public sector to State though the benefit of the seniority may be denied to the incumbent but not for other benefits like pay fixation and for the pensionary benefits. Therefore, when the benefit of past service rendered in the parent department was given for fixation of pay and pensionary benefits, there is no reason why the past service should not be counted for grant of ACP Grade. Consequently, we are of the view that the view taken by the Division Bench of the High Court in the impugned judgment and order is correct and there is no ground to interfere in this appeal. Consequently, this appeal is dismissed but with no order as to costs."

11. In the present case, it is a conceded position before this Court that the petitioner is in continuous service right from the day one i.e. 01.04.1971 and there is no gap between the service rendered in HSMITC as well as in PWD and rather, the petitioner was transferred from HSMITC to the Government of Haryana. Under these circumstances, even if the petitioner had not deposited the amount of CPF which he got from HSMITC at the time of joining the PWD, the respondent should have been allowed the benefit once the petitioner had undertaken before the authorities concerned that he will deposit the CPF along with the statutory interest of 12%.

12. Learned counsel for the respondent has not been able to rebut that as per the settled principle of law settled by the Hon'ble Supreme Court of India in **Deepak Sood's case (supra)**, the petitioner is entitled for counting of service rendered in HSMITC for computing the pensionay benefits.

13. Further, it may be noticed that being a Welfare State and the Employer being the Government of Haryana, even if an employee does not know his right, those should have been made known to him/her at the time of the retirement so that, the said employee gets the maximum benefit for which he/she is entitled for after rendering service to the Government of Haryana. Hence, the only objection which has been taken by the learned counsel for the respondents is that the CPF which the petitioner had got from HSMITC before his transfer to government department was not deposited, the same being procedural lapse, which could have been easily rectified at the time of retirement so as to compensate the Government of Haryana if, the said CPF would have been accepted by the Government of Haryana along with the statutory interest as was offered by the petitioner.

14. As per the settled principle of law in case an employee has not deposited the CPF or the employer has not deducted the CPF for a particular period, and the employee is ready to deposit the same along with statutory interest, the period of service for which the CPF has not been deposited is liable to be taken into account for computing the pensionary benefits. The said question of law has already been decided by this Court in CWP No.4271 of 2015, titled as **Usha Wadhwa Vs. State of Haryana and others,** decided on 14.11.2019. The relevant paras of the same are reproduced as under:

> 9. This question was again decided by this Court while deciding CWP No. 5897 of 2003 alongwith other connected cases, titled as Prem Chand Tagla and others v. State of Haryana and others, on 09.01.2019. This Court again reiterated that once an employee deposit the provident fund for the period it was not deducted alongwith statutory interest, no prejudice will be suffered by the State but the employee will get the benefit of total length of service as a qualifying service for computing the pensionary benefits. The relevant portion of the said judgment is as under:-
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> "A similar Rule, which provides for only taking into account the service in which the contributory provident fund was deposited has been interpreted by

this Court in CWP No.14051 of 2005 titled as Ram Lubhaya Khanna and others v. State of Punjab and another, decided on 17.05.2007. The similar Rule as in Punjab Private Recognized Aided School Retirement Benefit Scheme, 1992, has been interpreted to mean that total service of an employee is to be counted subject to the condition that the employee deposits the contributory provident fund for the period which the same was not deducted by the authorities.

The relevant Rule 6 of 1992 Scheme, as interpreted by this Court in Ram Lubhaya Khanna's case (supra) is as under:-

"6. Qualifying service-(1) The service of an employee shall not qualify for retirement benefits under this Scheme unless-

(i) he attains the age of eighteen years;

(ii) he takes charge of the aided post to which he is first appointed except for which it is otherwise provided by special rules or contract; and

(iii) the service is on an aided post on regular basis

xx xx xx

(6) The qualifying service will be taken into account with effect from any employee started contributing towards the Contributory Provident Fund."

By interpreting the above Rule, which is similar to Rule in the present case, this Court allowed the benefit of counting of total service rendered by an employee subject to the condition that the employee was to deposit the contribution for the period the same was not deducted.

Not only this, this question again came for consideration in CWP No.19292 of 2010 decided on 23.02.2012. The same relates to the employees of the Punjab Roadways Transport Corporation. In the Rules governing the service of the said Corporation, the Rule 6 which was also similar to the Rule in the present case, was interpreted by this Court and the writ petitions were allowed with a direction to treat the total length of service as a qualifying service subject to the condition that the employee will deposit the contribution for which it was not deducted.

Again, this Court while deciding CWP No.24543 of 2016 decided on 27.11.2018 consider the same question of law wherein, the similar Rule as it exist in the present case was pressed into service for denying the benefit. This Court passed an order allowing the said writ petition and again a direction was given to compute total length of service as a qualifying service for computing the pensionary benefits subject to the condition that the petitioner therein to deposit the contribution for the period the same was not deducted.

All the above mentioned cases related to the State of Punjab.

In respect of the State of Haryana also, this Court allowed the writ petition bearing CWP No. 8441 of 2015, decided on 05.01.2016 by giving a direction to treat the total length of service as a qualifying service subject to the condition that the petitioners were required to make good the contributory provident fund for the period when the same was not deducted.

The relevant part of the order is as under:-

"Applying the ratio of judgments mentioned above, impugned orders dated 15.07.2013 and 02.08.2013 in CWP No.8441 of 2015, impugned order dated 10.10.2013 (P-4) in CWP No. 8442 of 2015 are set aside and a direction is issued to the respondents to grant to the petitioners benefit of service rendered by them by treating the same as qualifying service for the purposes of pension from the date of their appointments. However, the contribution to the contributory provident fund, which was required to be made by the petitioners, shall be adjusted and deducted from the arrears of their pension. The respondents, are therefore directed to calculated the pension of the petitioners and fix the same within a period of two months from the date of receipt of certified copy of this order. The arrears after calculation in the aforementioned manner be paid to them within a period of three month along with retiral benefits, if any. The writ petition stands disposed of in the above terms."

12. In the present writ petitions, the petitioners have already offered to deposit the contribution for the period it was not deducted alongwith the statutory interest and, therefore, the respondents, keeping in view the settled principle of law noticed above, are under obligation to treat the total length of service as a qualifying service for computing their pensionary benefits.

15. Once, the option was filled up by the petitioner and was duly submitted with the employer, no fault can be attributed to the petitioner in this regard, though, it is being disputed by the respondents-State now, that the School Authorities never forwarded the option of the petitioner. Once the petitioner had submitted her option, a legitimate benefit for which she is entitled, cannot be denied due to lapse on part of the School authorities."

15. Keeping in view the above, the present petition is allowed. The petitioner is directed to deposit the CPF which he has got from HSMITC along with 12% interest with the respondents. The respondents are directed to calculate the amount of CPF along with interest to be deposited by the petitioner in this regard and inform the petitioner about the total amount to be deposited, which the petitioner undertakes to deposit within a period of six weeks from the said date he is informed about the total payment to be deposited. After the deposit of the CPF amount along with 12% interest by the

petitioner, the benefit of service which the petitioner had rendered in HSMITC be taken into account as a qualifying service for computing the pensionary benefits and the pensionary benefits be recalculated and the arrears for which the petitioner becomes entitled for, be also released including the arrears of pension within a period of two months from the date of deposit of the CPF along with 12% interest by the petitioner.

July 25, 2023 **(HARSIMRAN SINGH SETHI)**
jt **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No