IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(202) **CWP No. 5811 of 2004**
Date of Decision : 14.11.2023

Sudarshan Kumari

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Dharmanshu Sharma, Advocate for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

***

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

1. In the present petition, the claim of the petitioner is that her service which she had rendered with the Government of Punjab from 06.05.1970 to 01.09.1974 while working as a Lecturer in Chemistry, has not been taken into account as a qualifying service, which is causing prejudice to her.

2. Learned counsel for the petitioner submits that keeping in view the rules governing the service, the service rendered under the State Government is to be taken as a qualifying service for the purpose of computing the pensionary benefits, hence, the respondents are under obligation to grant the petitioner the benefit of service rendered from 06.05.1970 to 01.09.1974 as a qualifying service for computing the pensionary benefits.

3. Learned State counsel, on the other hand submits that the petitioner was recruited as a direct entrant with the Government of Haryana on which post, the petitioner had joined in the year 1979, hence, the benefit of previous service, which had been rendered with the Government of Punjab, cannot be given to the petitioner for computing her pensionary benefits. Learned counsel for the respondents further submits that the petitioner never claimed the said benefit after entering into service and the present petition was filed only after the retirement.

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

5. It is a matter of conceded fact that the petitioner worked with the Government of Punjab after being appointed through the Punjab Public Service Commission as a Lecturer in Chemistry. The petitioner has discharged the duties on the said post from 06.05.1970 till 01.09.1974. Thereafter, the petitioner worked in the other institution before being appointed with the Government of Haryana on 02.09.1974 as a Lecturer in Chemistry and was continuing when she was again appointed on the same post as a fresh entrant on 14.07.1979 through proper selection. The prayer of the petitioner is only for counting the service which the petitioner had rendered with the State of Punjab from 06.05.1970 till 01.09.1974 as qualifying service to compute her pensionary benefits.

6. To adjudicate the said claim, the rules governing the service needs to be adhered. Rule 3.17 which defined the qualifying service is a

material rule, which is to be taken into consideration to adjudicate the claim of the petitioner as to whether, the benefit of service rendered with the Government of Punjab can be extended to the petitioner or not. The relevant rule is as under :-

> *"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 volition in response to advertisement or circulars including those by Union/State Public Service Commission and who are eventually confirmed in their new posts, the proportionate pensionary liabilities in respect of temporary service rendered under the Central/State Government to the extent such service would have qualified for grant of pension under the rules of respective Government will be shared by the concerned Government on a service share basis -*
>
> *(1) Those who having been retrenched from the service of Central/State Government secured on their own, employment under State/Central Government either with or without interruption between the date of retrenchment and the 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 benefits at the time of retirement.

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

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

7. A bare perusal of the above rule would show that any service which an employee has rendered with the Central/State Governments prior to joining another post in response to an advertisement or circular and the said employee is eventually confirmed on the new post, the service rendered with the Central/State Governments prior to the said confirmation will be treated as a qualifying service but the grant of pension under the rules of the respective Government will be shared by the concerned government on a service share basis. Hence, the service which the petitioner had rendered with the Government of Punjab from 06.05.1970 to 01.09.1974 has already been treated to be a qualifying service by the rules governing the service, therefore, the respondents were under obligation to grant the petitioner the said benefit at the time when she retired on attaining the age of superannuation on 31.08.2003 so

as to compute her qualifying service in order to compute her pensionary benefits.

8. The objection of the learned counsel for the respondents is that the State of Punjab where the petitioner had served, is required to share the pensionary benefits for the period in question, which will be admissible to the petitioner or the petitioner herself should give the said share to the Government of Haryana along with statutory interest of 12.5% so that the petitioner fulfills the requirement of rule before any benefit of the service rendered by the petitioner with the Government of Punjab is to be extended qua to be treated as qualifying service.

9. Learned counsel for the petitioner submits that the petitioner in the present petition has already died and the present petition is being pursued by legal heirs and they will deposit their due share along with the statutory interest with the Government of Haryana before being granted the benefit of the service rendered by the petitioner with the Government of Punjab for the period in question.

10. It is also come in the reply that the benefit which the petitioner is seeking was allowed by the department but was withdrawn by the respondents on the basis of an audit objection. This fact also shows that the respondents were also of the view that keeping in view the rules governing the service the petitioner is entitled for the benefit merely that the ordered objection was raised, the benefit has been withdrawn without looking into the said facts as to whether the order passed granting the benefit to the petitioner was valid or not.

11. Keeping in view the above, the present petition is allowed. The respondents are directed to the grant the petitioner, the benefit of service rendered with the Government of Punjab from 06.05.1970 to 01.09.1974 as a qualifying service. The said direction will be subject to the deposit of the required share either by the Government of Punjab or by the petitioner herself through her legal heirs along with the statutory interest.

12. At this stage, learned counsel for the petitioner submits that whatever the share the petitioner has to deposit in view of Rule 3.17, the same be deducted by the respondents from the arrears, which the petitioner will become entitled for so that the remaining benefit is released to the petitioner in a smooth manner.

13. Learned counsel for the respondents accepts the said prayer that any amount which the petitioner is liable to pay for counting of the service rendered from 06.05.1970 to 01.09.1974 with the Government of Punjab will be deducted from the arrears rendered along with the statutory interest and the remaining amount will be paid to the petitioner.

14. Learned counsel for the petitioner submits that the petitioner has approached this Court in the year 2004 claiming the said benefit and the benefit is now being extended after a period of 19 years, hence, the petitioner is also entitled for interest on the amount which will be released to the petitioner.

15. Learned counsel for the respondents submits that as the entitlement of the petitioner is being decided today, the prayer for the grant of interest may kindly be declined.

16. The petitioner had approached this Court in the year 2004. The rules, which are being relied upon to grant the benefit, existed at the time when the petitioner retired in the year 2003. Non-grant of benefit for 19 years has caused prejudice to the petitioner. Rather she could not avail the benefit in her lifetime and the writ petition is being pursued by her legal heirs, hence, the petitioner is held entitled for the grant of interest.

17. Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*****,** had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

> *"In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which*

rightly belonged to the petitioner was in the custody of the State and was being used by it."

18. Keeping in view the above, the arrears which the petitioner is found entitled for, will also carry interest @ 6% per annum from the date of retirement till the actual release of the same.

19. Apart from this, learned counsel for the petitioner submits that the gratuity amounting to Rs. 70,000/- has also not been released. The respondents are directed to look into the said aspect also and in case, any amount of gratuity has been withheld, the same be also released to the petitioner along with interest @ 6% per annum.

20. Petition is allowed in above terms.

November 14th, 2023 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No