

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

Reserved on 11.04.2023

**CWP No.6088 of 2011(O&M)
Date of Decision: 16.05.2023**

Saroj Verma

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Promila Nain, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of mandamus, directing the respondents to release the monthly pension and other service benefits of the husband of the petitioner in lieu of services rendered by her husband for 13 years, 7 months and 6 days w.e.f. 25.05.1971 to 31.12.1984 in Haryana Agriculture

Department.

[2]. The husband of the petitioner died on 06.03.2006. Late Sh. Bali Singh Verma husband of the petitioner had served with the Agriculture Department as Agriculture Development Officer from 25.05.1971 to 31.12.1984. He was sent on deputation from Agriculture Department to Haryana State Seed Certification Agency vide letter dated 29.12.1976 and thereafter, he was selected as Chief Seed Certification Officer in Haryana State Seed Certification Agency vide order dated 19.10.1982 and joined on 30.11.1982. The husband of the petitioner was absorbed in the Haryana State Seed Certification Agency w.e.f. 01.01.1985. The formal letter to this effect was issued only on 05.08.1998. The lien of the petitioner as Agriculture Development Officer in Haryana Agriculture Department was terminated only on 05.02.1999. Before issuance of formal letter of absorption on 05.08.1998 and termination of lien vide letter memo dated 05.02.1999, the petitioner has represented to the Director Haryana Seed Certificate Agency, Chandigarh, requesting that the Department of Agriculture be informed in view of services rendered by him in Agriculture Department for 13 years, 7 months and 6 days so that benefits of pension and gratuity can be granted to him. The said representation was made on 31.05.1989 vide letter No.Spl 4 dated 31.05.1989 addressed to the Director Haryana Seed Certificate Agency,

Chandigarh i.e. between the issuance of letter of termination dated 05.08.1998 and date of termination of lien vide letter dated 05.02.1999. The said representation was never adverted to by the authorities. The lien of the husband of the petitioner on the post of Agriculture Development Officer remained intact till 05.02.1999 and that was so even after absorption of the husband of the petitioner in the Haryana State Seed Certification Agency on 05.08.1988 w.e.f. 01.01.1985. The husband of the petitioner also moved representation before the Director Agriculture, Haryana for grant of pension and gratuity on the basis of total services rendered by him in the Agriculture Department, which was for 13 years, 7 months and 6 days and according to Haryana Government Instructions, he was entitled for the pension, gratuity and other services benefits.

[3]. The husband of the petitioner had retired at the age of 58 years w.e.f. 31.10.2005 and before that, he made number of communications to the Director Agriculture, Haryana as well as the Director Haryana Seed Certification Agency. The husband of the petitioner ultimately died on 06.03.2006 after retirement on 31.10.2005. The petitioner got issued legal notice to the competent authority for considering the claim of her husband for grant of pension, gratuity and other benefits on the basis of services rendered by him for a period of 13 years, 7 months and 6 days in Haryana Agriculture Department. The case of the

husband of the petitioner was not considered.

[4]. The present writ petition was filed in the month of March, 2011. It is relevant to state herein that the parent department i.e. Agriculture Department of the petitioner was having pensionable avenues, whereas subsequent organization i.e. Haryana State Seed Certification Agency is non-pensionable organization.

[5]. The stand of the respondents is that as per Government instructions dated 22.08.1988, if an employee appointed from pensionable services to an organization where the pension scheme is not in existence, then such employee will be eligible for pro-rata retirement benefits as admissible under the Rules of the old organization/department. The respondent-department claims to have paid one time pro rata pension amounting to Rs.45,994/- to the petitioner, whereas the petitioner is claiming monthly pension and gratuity on the basis of services rendered by her husband for the period of 13 years, 7 months and 6 days in Agriculture Department.

[6]. As per stand of the respondents, the respondents have paid the entire claims against the services rendered by the husband of the petitioner.

[7]. Vide order dated 28.03.2019, learned State counsel was directed to ascertain as to whether benefits were extended to the husband of the petitioner after his retirement from

Haryana State Seed Certification Agency and whether while extending the benefits, if any, the period of services rendered by the husband of the petitioner in the Agriculture Department w.e.f. 25.05.1971 to 31.12.1984 was also included or not.

[8]. In compliance of order dated 28.03.2019, an affidavit of Sh. Kuldhir Singh, Additional Director (Admn), Agriculture and Farmers Welfare Department, Haryana was filed. Para Nos.2 to 4 of the said affidavit are reproduced hereasunder:-

2. That in compliance of the above orders of this Hon'ble Court, the Department on 19.11.2019 wrote a letter to the Director, Haryana State Certification Agency, Panchkula to provide the information as to what retiral benefits have been granted to Late. Bali Singh Verma, Deputy Director for the services rendered by him in the Haryana State Certification agency. It is submitted that Haryana State Seed Certification Agency vide letter dated 20.11.2019 intimated to the Department that payment of Rs.2,45,030/- as Leave Encashment on account of equivalent of leave salary of 300 days are admissible to Sh.Bali Singh Verma, Deputy Director who retired on 31.10.2005 and the same has been paid. The copy of the above letter is annexed as Annexure R-1 for the kind perusal of this Hon'ble Court. It is further submitted that the above Agency intimated that the Gratuity amounting to Rs. 2,81,785/- has been paid. The copy of the above letter is annexed as Annexure R-2 for the kind perusal of this Hon'ble Court. In this way, the above Agency made the payment of Leave Encashment and Gratuity to the

husband of the petitioner which are admissible as per rules.

3. That the husband of the petitioner rendered service in Agriculture Department from 25.05.1971 to 31.12.1984. It is submitted that in this regard the above Agency vide letter dated 16.04.2019 intimated to the Department that the retiral benefits have been granted to Late. Bali Singh Verma, Deputy Director for the services rendered by him in Haryana State Seed Certification Agency only not for the services rendered by him in Agriculture Department. The copy of the above letter is annexed as Annexure R-3 for the kind perusal of this Hon'ble Court. Hence, from the above it depicts that the service rendered by the husband of petitioner in Agriculture Department is not counted for granting retiral benefits by the above Agency.

4. That the Government of Haryana, Finance Department issued instructions dated 07.01.2002 wherein, it is clearly mentioned that on taking up an appointment by a Government employee in any State Autonomus Body or vice versa, no family pension will be admissible from the previous employer/organization. The Rules relating to family pension, if any, of the organization, will be applicable, in which the concerned Government employee was/is working at time of retirement/death while in service.

[9]. On 04.07.2022, following order was passed:-

“Learned counsel for the petitioner argues that the contradictory stands are being taken by the respondents.

In the reply, the respondents have stated that

the benefit of service rendered by the late husband of the petitioner in the Agriculture Department from 25.05.1971 to 31.12.1984 has been granted whereas, in the affidavit which has been filed on 09.12.2019, it has been mentioned that the said benefit has not been given.

Keeping in view the contradictory stand, learned counsel for the respondents seeks an adjournment to seek appropriate instructions qua the correct facts of the case whether, the late husband of the petitioner has been granted the benefit of service rendered by him in the Agriculture Department or not.

Adjourned to 24.08.2022.

*July 04, 2022
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*(HARSIMRAN SINGH SETHI)
JUDGE"*

[10]. The documents attached with the aforesaid affidavit dated 09.12.2019 i.e. Annexures R1 and R3 showed that an amount of Rs.2,45,030/- was sanctioned as leave encashment i.e. equivalent to leave salaries for 300 days, which was admissible to late Sh. Bali Singh Verma husband of the petitioner on 31.10.2005 i.e. the date of his retirement. Perusal of Annexure R-3 would show that the retiral benefits were granted to late Sh. Bali Singh Verma, Deputy Director for the services rendered by him in the Haryana Seed Certification Agency only and not for the services rendered in the Agriculture Department. Precisely, for the clarity of the aforesaid facts, the order dated 04.07.2022 was passed by this Court.

[11]. Thereafter, learned State counsel placed on record communication dated 19.09.2022 received from the Director General, Agriculture and Farmer Welfare Department, Haryana, Panchkula. The aforesaid communication was taken on record. According to the aforesaid communication dated 19.09.2022, the Haryana State Seed Certification Agency granted retiral benefits to the husband of the petitioner in terms of leave encashment of Rs.2,45,030/- of 300 days and gratuity of Rs.2,81,785/- and the said benefit was granted by the Haryana State Seed Certification Agency towards retiral benefits for the services rendered by late Sh. Bali Singh Verma in the aforesaid agency and not granted the benefits of services rendered by him in the Agriculture Department. As per Government instructions dated 22.08.1988 clarified in subsequent instructions dated 07.01.2002, on appointment from pensionable service to an organization where pension scheme is not in existence, the concerned employee will be eligible for pro rata retirement benefits as admissible under the Rules of the old organization. The husband of the petitioner has rendered services from 25.05.1971 to 31.12.1984 in the Agriculture Department and he was granted benefit of pro rata pension and pro rata amount to the tune of Rs.45,994/- was directly deposited by the Treasury Office, Haryana, Chandigarh and a copy was endorsed to the husband of the petitioner on

14.12.2008.

[12]. The husband of the petitioner had died on 06.03.2006 and after the demise of the petitioner, pro rata pension was released by the Accountant General, Haryana in the name of the petitioner on 04.01.2009 as intimated by the Treasury Office. With this explanation, the respondents have clarified that for the service rendered in the Agriculture Department, pro rata pension to the tune of Rs.45,994/- in lump sum has been released to the petitioner on 04.01.2009 and for the services rendered in the Haryana State Seed Certification Agency, the retiral benefits in terms of leave encashment (Rs.2,45,030/-) and gratuity (Rs.2,81,785/-) have been released.

[13]. Vide order dated 30.01.2023, this Court directed the learned State counsel to explain as to on what basis, the aforesaid amount of Rs.45,994/- for the services rendered by the husband of the petitioner in Agriculture Department was calculated and it was also required that in the event of not joining the services of State Seed Certification Agency, how much pension the husband of the petitioner would have received on his retirement from the Haryana Agriculture Department. The aforesaid information was sought by way of clarification on an affidavit of the competent person.

[14]. In compliance of the aforesaid order dated 30.01.2023, an affidavit of Sh. Parshant Atkaan, Joint Director (Admn)

Agriculture and Farmers Welfare Department, Haryana Panchkula has been filed, wherein it has been explained that a permanent employee borne on pensionable establishment on his absorption under an organization having no pensionable avenues will be eligible for pro rata retirement benefits as admissible under the Rules of the old organization. These benefits will be payable after accepting the resignation of the concerned Government employee. The husband of the petitioner had rendered the services in Agriculture Department as Agriculture Development Officer for 13 years, 7 months and 6 days. In pursuance of instructions dated 07.01.2002, the Department has calculated the lump sum pro rata pension of the husband of the petitioner on the following formula:-

“I. Last basic pay i.e. Rs. 1150/- in the year of 1984.

II. Total qualifying services in the Agriculture Department: 13 years 07 months 06 days (say 27 half years)

III. Calculation of Pension: $\frac{1150 \times 27}{2 \times 66} = 235.22$ (Say

Rs.235/-)

IV. Pro-rata pension: $235 \times 12 \times 16.31 = \text{Rs.}45,994/-$ (as per commutation value as Annexure to Rule 11.5 ibid copy enclosed.)”

[15]. The office of Accountant Genreal, Haryana (A&E) Chandigarh vide letter dated 28.01.2009 issued one time pro

rata pension amounting to Rs.45,994/- and the pension has been released as one time payment and the amount was directly deposited by the Treasury Office, Haryana in the account of the petitioner. Para No.6 of the affidavit dated 09.03.2023 is reproduced hereasunder:-

“6. That the husband of the petitioner joined in Agriculture Department on 25.05.1971. It is submitted that if the husband of the petitioner did not join/absorb in the office of Director State Seed Certificate Agency, Panchkula, then he retired from the Agriculture Department on 31.10.2005 after attaining the age of superannuation i.e. 58 years. In this way, total length of services becomes from 25.05.1971 to 31.10.2005 i.e. 34 years 05 months and 06 days. It is submitted that the basic pay of the husband of the petitioner becomes Rs.11500/- and pension becomes Rs.11500/2 i.e. Rs. 5750/-. In this way, the husband of the petitioner will get pension Rs.5750/- from the Agriculture Department if he has retired from this Department and the same may be further revised time to time.”

[16]. Evidently, the husband of the petitioner had joined the Agriculture Department on 25.05.1971. Had he not joined or absorbed in the Haryana State Seed Certification Agency, then he would have retired from Haryana Agriculture Department on 31.10.2005 after attaining the age of superannuation i.e. 58 years and in such eventuality, his total length of service would have been from 25.05.1971 to 31.10.2005 i.e. 34 years, 5

months and 6 days. The basic pay of the husband of the petitioner would have been Rs.11,500/- and accordingly pension would have been Rs.5750/-. The aforesaid pension was further subject to the revision from time to time under the Rules.

[17]. The grievance of the petitioner is that the husband of the petitioner would have rendered 34 years, 5 months and 6 days of service in the pensionable organization, had he been not absorbed in a non-pensionable organization. Even in pensionable organization, he has already served for 13 years, 7 months and 6 days and was entitled to retiral benefits. By virtue of award of retiral benefits in the name of her husband, financial loss has been caused to the petitioner as the petitioner is not getting the monthly pension from Agriculture Department for the service of 13 years, 7 months and 6 days rendered by her husband. As clarified by the respondent-Department, the benefits of leave encashment and gratuity have been accorded only for the services rendered by the husband of the petitioner in Haryana Seed Certification Agency and not on account of any services rendered by him in the Agriculture Department. For the services rendered in Agriculture Department, pro rata pension amounting to Rs.45,994/- in lump sum has been sanctioned and released, which according to the learned counsel for the petitioner is wholly inadequate and attracts financial implication.

[18]. Learned counsel for the petitioner further submitted that

on account of absorption in non-pensionable organization, the husband of the petitioner cannot be put to loss in terms of his retiral benefits from the post of Agriculture Development Officer in Agriculture Department, on which he had already served for a requisite period, entitling him for retiral benefits. Learned counsel further submitted that the petitioner is ready to deposit the benefits drawn from Haryana State Seed Certification Agency i.e. leave encashment and gratuity with an appropriate interest and also ready to deposit an amount of Rs.45,994/- with an appropriate interest and her case be reconsidered afresh in the light of services rendered by her late husband in the Agriculture Department for the purposes of fixing service/retiral benefits.

[19]. Evidently, the husband of the petitioner was absorbed in Haryana State Seed Certification Agency w.e.f. 01.01.1985 and a formal letter to this effect was issued only on 05.08.1998. The lien of the husband of the petitioner was terminated only on 05.02.1999 even before such letter of communication of absorption on 05.08.1998 and termination of lien w.e.f. 05.02.1999. The husband of the petitioner had already written to the competent authorities of Haryana Agriculture Department as well as Haryana State Seed Certification Agency for considering his total length of service in Agriculture Department towards pension, gratuity and other service benefits. The

correspondence made by the husband of the petitioner has not been denied and the same was not attended to also.

[20]. In view of aforesaid request of the husband of the petitioner, it can be appreciated that the husband of the petitioner never intended to get any pro rata pension after absorption of his service in the Haryana State Seed Certification Agency and was ready and willing to have his pension on the basis of services rendered by him in Haryana Agriculture Department. In a way, the said request of the husband of the petitioner could have been considered as an option by him for considering his case in pensionable department in view of the services rendered by him in the Agriculture Department only.

[21]. In view of aforesaid peculiar facts of the case, it can be appreciated that the husband of the petitioner was entitled for pensionary benefits on account of services rendered by him in the Agriculture Department. The said period was for 13 years, 7 months and 6 days. The petitioner, if so advised, may deposit back the benefits drawn from the Haryana State Seed Certification Agency in terms of leave encashment and gratuity with 6% interest and also deposit the pro rata pension of Rs.45,994/- with 6% interest in the Government Treasury, then her case can be considered afresh for pensionary/retiral benefits for the services rendered by her husband in the Agriculture Department in view of request emanating from

Annexures P-3, P-4, P-5 and legal notice Annexure P-6 attached with this writ petition.

[22]. Since the petitioner has claimed that on account of absorption in non-pensionable organization, the husband of the petitioner should not have been put to loss on account of financial claims, therefore, pension case of the petitioner ought to have been assessed and calculated on the basis of services rendered in the Agriculture Department. If some legal dues have also accrued for the services rendered in Haryana State Seed Certification Agency, then these benefits be added to the pensionary benefits of the husband of the petitioner arising from the services rendered in Agriculture Department.

[23]. This case has its own facts and in view of peculiar facts and circumstances of the case, particularly in view of the fact that on absorption in non-pensionable organization, the retiral dues of the husband of the petitioner are *prima facie* to be on lower side, I deem it appropriate to consider this case as a special case not to be cited as a precedent. The petitioner, if so advised, may deposit back the amount of earned leave and gratuity drawn from Haryana State Seed Certification Agency along with interest @ 6% till date and also deposit an amount of Rs.45,994/- pro rata pension along with interest @ 6% till date within a period of two months. In the event of such deposits, the respondent-Agriculture Department shall proceed to calculate

the retiral/pensionary dues of the husband of the petitioner on the basis of his length of service of 13 years, 7 months and 6 days strictly in accordance with Rules as amended from time to time and fixed the monthly salary and released the pensionary dues of the husband of the petitioner within a further period of two months along with arrears @ 6% from the date of accrual of such amount till final realisation of the amount. If for the service rendered in Haryana State Seed Certification Agency gives any such legal entitlement in favour of the husband of the petitioner, the same be also released to the petitioner in accordance with law.

[24]. For the reasons recorded hereinabove, this writ petition is disposed of. Let the needful shall be done by the respondent-Department within the time prescribed. All pending applications are accordingly disposed of.

16.05.2023

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(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No