

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 23240 of 2014

Vinod Kumar Modi

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

AND

2. Civil Writ Petition No. 5768 of 2016

Saroj Rani Kukkar

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

Reserved On: 12.04.2023
Pronounced On: 17.08.2023

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. P.K.Goklaney, Advocate
for the petitioner(s) (In CWP-23240-2014).

Mr. Lovish Arora, Advocate
for Mr. S.K.Arora, Advocate
for the petitioner (In CWP-5768-2016).

Mr. R.K.Kapoor, Additional Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. This order shall dispose of the above referred two writ petitions.

On 03.03.2023, after having heard the learned counsel representing the parties at length, the following issue was culled out for adjudication:-

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basis in the Government Schools(s) is subsequently appointed on the aided post in a privately managed aided school, whether he is entitled to retiral benefits by including the service rendered by such employee in Government School(s) on temporary basis under the Punjab Privately Managed Recognized Aided Schools Retirement Benefits Scheme, 1992?”

2. The learned counsel representing the petitioner has filed the written arguments in support of his submissions. In Civil writ Petition No. 23240 of 2014, the petitioner claims that before his joining the Privately Managed Recognized Aided School, namely S.D.S.E Senior Secondary School, Patiala, on 21.12.1974, he worked intermittently in the government schools in the following manner:-

- “1. 29.04.1970 F.N. to 04.06.1970 A.N.=37 days (Govt. Model Hr. Sec. School, Jalandhar).
2. 06.08.1970 F.N. to 5.2.1971 A.N.=184 days (Govt. Hr. Sec. school, Nathana, Bathinda).
3. 8.2.1971 F.N. to 12.6.1971 A.N.=125 days (Govt. Hr. Sec. school, Nathana, Bathinda).
4. 24.7.1971 F.N. to 24.1.1972 F.N.=184 days (Govt. Hr. Sec. school, Nathana, Bathinda).
5. 25.1.1972 F.N. to 14.6.1972 A.N.=142 days (Govt. Hr. Sec. school, Nathana, Bathinda).
6. 30.8.1972 F.N. to 28.02.1973 A.N.= 183 days (Govt. Hr. Sec. School, Sangrur).
7. 2.3.1973 F.N. to 15.6.1973 A.N.=106 days (Govt. Hr.

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Sec. School, Sangrur).”

He retired on 30.09.2005. Under the Punjab Privately Managed Recognized Aided Schools Retirement Benefit Scheme, 1992 (hereinafter referred to as the 1992 Scheme”) he has been granted pension vide P.P.O. No. 6683. In substance, he claims that the temporary service rendered by him in the government schools before his joining in the Aided School is required to be counted for the pensionary purpose.

3. In the Civil Writ Petition No. 5768 of 2016, the petitioner worked on *the ad hoc* basis in a government school. Thereafter, she was appointed in the S.D. Elementary Primary School, Fazilka, District Fazilka on 02.04.1976. She is also getting pension under the 1992 Scheme.

4. In support of his oral submissions in the Civil Writ Petition No. 23240 of 2014, the learned counsel representing the petitioner has filed his written submissions while reiterating his oral arguments. The relevant part of the aforesaid argument is extracted as under:-

“11. That similarly it has been stated in the order dated 04.09.2014 that in view of the Section 6 of the pensionary benefits scheme, 1992, the qualifying service of any employee for the purpose of computing his retiral benefits will be taken into account with effect from an employee started contribution towards the contributory provident fund. In this regard it is - humbly submitted that number of writ petitions were filed in this Hon'ble Court and this Hon'ble Court has clearly held that the entire service has to be counted for the purpose of pensionary benefits from the date of initial appointment. For

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the convenience of this Hon'ble Court, copy of one judgment passed by this Hon'ble Court in CWP No. 14051 of 2005 titled as Ram Lubhaya Khanna & Others vs. State of Punjab & Others decided on 17.05.2007 is hereby attached with the petition as ANNEXURE P-11.

12. That once the writ petitions were allowed by this Hon'ble Court, as such the department issued a letter dated 31.08.2010 in which the matter was generalized and the pensionary benefits were granted to all the employees of the aided schools from the date of their initial appointment. Copy of letter dated 31.08,2010 is hereby attached with the petition as - ANNEXURE P-12 and the continuation of the letter dated 31.08.2010, the department also issued a letter dated 29.10.2010 in which a direction was issued to send the case of the employees for counting their entire services for the purpose of pensionary benefits. Copy of letter dated 29.10.2010 is hereby attached as ANNEXURE P-13.

13. That similarly, the Government also issued a letter dated 29.05.2006 in which interruption between two spells of service rendered under the State Government shall be treated as automatically condoned and qualifying service for the pre-interruption service shall be treated as pension purposes. Copy of letter dated 29.05.2006 is hereby attached with the petition as ANNEXURE P-14.

14. That it is relevant to mention here that the department

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has already granted the benefit of increments for the service rendered by the petitioner in various Government schools, as such once the department has already granted the benefit of previous services rendered by the petitioner a by way of increments, as such at this stage, the benefit of pension cannot be denied. So the entire service of the petitioner has to be counted for the purpose of pensionary benefits.

15. That vide order dated 23.01.2020, this Hon'ble Court directed the petitioner to file specific affidavit stating that benefit of increments was granted to the petitioner for the service rendered by the petitioner with the education department of the State of Punjab so that same can be put to the respondents for verification.

16. That in view of the direction issued by this Hon'ble court the petitioner file a specific affidavit vide C.M. No. 4561 of 2020 and this Hon'ble Court vide order dated 04.07.2022 directed the state counsel to file a response to the said affidavit. It is relevant to mention here the respondent department filed reply on 13.02.2023 and admitted the fact that the benefit of increments has been granted to the petitioner.

17. That though the petitioner has served in different Govt. Schools against existing vacancy, whereas the department is claiming that the petitioner has served against leave vacancy, this Hon'ble Court has already decided number of cases that even the service rendered against leave vacancy has to be

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counted for the purpose of pensionary benefits. The copy of Judgment passed in CWP No. 20780 of 2013 titled as Manorma Gautam Vs. State of Punjab & Others is hereby attached as ANNEXURE P-16.

18. That in a recent case CWP No. 14238 of 1991 titled as Sukhdev Singh & Others Vs. State of Punjab & Others, this Hon'ble High Court vide order dated 10.03.2010 has clearly held that the service rendered by the employee in Government Privately Managed Recognized Aided Schools has to be counted for the purpose of pensionary benefits. The copy of the order dated 10.03.2010 is hereby attached as ANNEXURE P-15.

19. That the service book of the petitioner by which the increments have been granted to the petitioner for the service rendered by him prior to his joining in Aided School is also attached with the petition as ANNEXURE P-17.

MAIN ARGUMENTS

That the Hon'ble High Court raised the query whether the service claimed by the petitioner, can be counted for the purpose of pensionary benefit under the Punjab Privately Managed Recognized Aided Schools Retirement Benefits Scheme, 1992.

In this regard it is humbly submitted that rule 6 has already been interpreted by this Hon'ble Court in CWP No. 6090 of 2006 decided on 03.05.2007 titled as Sukhwant Singh

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& Others Vs. State of Punjab. In this Judgment has clearly held that the employees retired from Punjab Privately Managed Recognized Schools, are entitled for the release of pension and dearness allowance with their counter parts in the Govt.

That as submitted earlier that this Hon'ble Court in case titled as Sukhdev Singh & Others Vs. State of Punjab (Annexure P-15), the petitioners who were earlier working in Punjab Privately Managed Recognized Schools, later on joined Govt. Schools and the petitioner claimed that there services rendered in Punjab Privately Managed Recognized Schools, be counted for the purpose of pensionary benefits and this Hon'ble Court held that service rendered by an employee in Punjab Privately Managed Recognized Aided Schools, has to be counted for the purpose pensionary benefits.

So if a set of employees joined on the same date and later on few shifted to Govt. Schools and similarly vice-versa few employees shifted to Govt. Aided Schools, as submitted earlier the service rendered by an employee in Aided Schools has to be counted for the purpose of pensionary benefits and if the same principle is not applied to the set of employees who have shifted from Govt. Schools to Aided Schools, certainly there will be disparity and in view of the judgment Sukhwant Singh Vs. State of Punjab pension has to be given at par. So there will be great injustice to the set of employees who joined Aided Schools and the same will be also against the law settled by this Hon'ble

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Court in the above said case.

That similarly the service rendered by an employee against leave vacancy, has not been mentioned in the scheme, even then this Hon'ble Court while interpreting the scheme clearly held that the service rendered against leave vacancy has to be counted for the purpose of pensionary benefit (Annexure P-16).

That it is relevant to mention here that the department was not counting the entire service rendered by an employee in the aided schools and in view of rule 6 (6) the same was counted with effect from an employee started contributing towards the Contributory Provident Fund. This Hon'ble Court while interpreting rule 6 (6) of the scheme clearly held that the entire service has to be counted for the purpose pensionary benefits from the date of initial appointment and the judgment was rendered by this Hon'ble Court in CWP No. 14051 of 2005 titled as Ram Lubhaya Khanna & Ors. Vs. State of Punjab and Others (Annexure P-11).”

5. At this stage, it would be important to note that the government, in exercise of the powers conferred by Rule 22-A of the Punjab Privately Managed Recognized Schools Employees (Security of Service) Rules, 1981 (hereinafter referred to as “the 1981 Rules”), notified a scheme of 1992 which has come into force w.e.f. 05.02.1987. Clause 3 of the 1992 Scheme is extracted as under:-

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employees, excepting those who do not opt in term of clause 4 (subject to the condition that the Managing Committee of a Privately Managed Recognised Aided School, executes an agreement in Form-I duly supported by a resolution of the Managing Committee to abide by the provisions of this Scheme and instructions, issued by the Department from time to time), who, -

- (a) are appointed to the aided posts on or after the fifth day of February, 1987; and*
- (b) were working on aided posts immediately before the fifth day of February, 1987 and continue to work as such after that date.*

Provided that the employees who were appointed to the aided posts:-

- (i) before the fifth day of February, 1987, and who have attained or will attain the age of superannuation on or after that date; and*
- (ii) on or after the fifth day of February, 1987, but before the 16th day of January, 1991;*

shall have the right to opt within a period of four months from the date of publication of this Scheme to be or not to be governed by the provisions of the Scheme.

(2) The Scheme shall not apply to,-

- (i) the employees appointed on part-time basis against aided posts;*

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- (ii) *The employees who retired from the aided posts before the 5th day of February, 1987 and the employees who attained the age of superannuation before the fifth day of February, 1987 and were re-employed on the aided posts;*
- (iii) *the employees who are governed by the Contributory Provident Fund;*
- (iv) *the employees employed on a leave-gap arrangement on ad hoc basis.”*

6. Being of relevance, Rule 6 of the 1992 Scheme is also extracted 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.*

(2) *The leave admissible under the Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981 and under the instructions issued by the Department from time to time, shall qualify for pension but leave without pay and period of suspension, overstay of leave not subsequently regularised under the above said rules and the*

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period of break in service shall not be reckoned as qualifying service.

(3) *The service rendered in one or more privately managed recognised aided schools under the same management shall count for retirement benefits; provided the transfer was made in terms of the Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981.*

(4) *In a case where the total qualifying service is less than ten years, no pension benefit shall be admissible.*

(5) *The service rendered on an aided post in another privately managed recognised schools in the State of Punjab, shall count for retirements benefits;*

Provided that the contributory Provident Fund account of the employee in the previous schools continued as such in the subsequent school to which he is transferred or appointed and there is no break in service.

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

7. It is evident from the reading of the 1992 Scheme that the employees, who were working before 05.02.1987, are required to opt out of the Scheme. The 1992 Scheme itself does not provide that the period of service rendered by the employee against the leave vacancies while working in the government schools is entitled to include the entire service.

Now, the Bench proceeds to examine the arguments of the

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learned counsel representing the petitioners. The first argument of the learned counsel is based upon the judgment passed by the Division Bench in *Ram Lubhaya Khanna and Others v. State of Punjab and Others (Civil Writ Petition No. 14051 of 2005, decided on 17.05.2007)*. In the aforesaid case, the employees shifted from one government aided school to another and the petitioner's deposited the contributed provident fund which was withdrawn in the subsequent school. In that context, the Division Bench held that the qualifying service would commence from the date of the continuous appointment. The aforesaid judgment with the highest respect shall not be applicable to the facts of the present case as the petitioner initially worked on a temporary basis i.e. against the leave vacancies intermediately.

9. The learned counsel has also placed reliance on the communication dated 31.12.2010 and the communication dated 29.10.2010. In compliance with the order of the High Court, the Governor of Punjab has accorded sanction to generalize the decision principally for release of the pensionary benefits to the retirees of the Privately Managed Recognized Aided Schools of the Punjab State from the date of their initial appointment till the date of superannuation i.e. upto 31.05.2003. Both these instructions are not applicable as these are not with respect to the temporary employment under the government which was followed by the service in the aided school. The order dated 29.05.2003, is with respect to the break of more than 30 days. Hence, the aforesaid judgment is also not applicable to the facts of the present case.

10. The next argument put forth by the learned counsel is with regard to the benefit of the increments for the service rendered by the

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petitioner in the various schools. However, such an argument does not *ipso facto* result in quashing of the instructions.

11. The next argument of the learned counsel is also without substance because the benefit of the increments depends upon the relevant instructions in this regard.

12. The next argument of the learned counsel is based upon the affidavit filed by the District Education Officer on 13.02.2023 wherein it has been disclosed that for the purpose of computing the retiral benefits of the employees, the period when the employee started contributing towards the Contributory Provident Fund shall be included. It is not the case of the petitioners in both the writ petitions that they were making any contribution to the Contributory Provident Fund when they were in temporary service of the government.

13. The learned counsel has also placed reliance upon the judgment passed in *Manorma Gautam v. State of Punjab and Others (Civil Writ Petition No.20780 of 2013, decided on 27.05.2015)*. This Court has carefully read the aforesaid judgment. In that case, the petitioner previously worked with some government aided school. Thereafter, he joined the government service. The writ petition was allowed while placing reliance upon the judgments rendered in *Harjit Kaur v. State of Punjab and Others (Civil Writ Petition No.11451 of 2008, decided on 21.04.2009)* and *Asha Sharma v. State of Punjab and Others (Civil Writ Petition No.11852 of 2010, decided on 11.08.2001)*. In *Harjit Kaur's case (supra)*, the Court examined the Rules 3.23 and 4.23 of the Punjab Civil Service Rules. In

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(*supra*) was relied upon. It is evident that in that case, the petitioner who was working against the leave vacancy for a period of nearly five years was held entitled for counting of the service for the purpose of pension under the pension rules applicable to the government servants. In the present case, the petitioners are not the government servants. They were the employees of the Privately Managed Recognized Aided Schools. They are entitled to the pension under the 1992 Scheme, the applicability whereof is also dependent on the various other facts. In Rule 6 of the 1992 Scheme, the qualifying service has been explained. It nowhere provides that the previous temporary government service shall count towards the qualifying service as explained in Rule 6 of the 1992 Scheme. The amount of the pension payable under the 1992 Scheme shall be dependent upon the qualifying service which would be required to be counted under Rule 6 of the 1992 Scheme. Sub Rule 6 of Rule 6 provides that the qualifying service will be taken into account w.e.f. the date the employee starts contributing towards the contributory provident fund. There is no material to prove that the petitioners, while working in the temporary government service, were making any contributions towards the contributory provident fund. Moreover, the amount of pension payable to the employee is dependent upon the Scheme under which they are governed. Once, the pension of the Privately Managed Recognized Aided Schools' employees is based upon the contribution, it would not be appropriate to extend its benefits beyond the scope of the Rules.

14. The next reliance of the learned counsel is upon the judgment

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Writ Petition No. 14238 of 1991, decided on 10.03.2010). This Court has carefully read the aforesaid judgment. In that case, the following issue was decided:-

“The issue a teacher/Master in a Government Aided Privately Managed School, is countable towards the pensionary benefits on his retirement from the Government service?”

Thus, it is evident that the aforesaid judgment is also not applicable to the facts of the present case.

16. It would be noted here that the 1992 Scheme is based upon the contribution of the employee, whereas at the relevant time, the rules providing for pension as applicable to the government employees was not based on contributory provident fund. Moreover, it is evident that the petitioner, in the lead case, has served for a short duration against the leave vacancies. At the relevant time, their services were not even governed in accordance with the 1992 Scheme. In the government service, the provision for pension is based upon a peculiar scheme which is not extendable to the 1992 Scheme.

17. Keeping in view the aforesaid peculiar facts and discussion, this Court does not find any merit. Consequently, both the writ petitions are dismissed.

**(Anil Kshetarpal)
Judge**

August 17, 2023
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No