

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19166-2020
DECIDED ON: 18.07.2023

MAHI PAL SINGH

....PETITIONER

VERSUS

THE CHIEF ADMINISTRATOR AND ORS.

....RESPONDENTS

CORAM: HON'BLR MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.P. Arora, Advocate and
Mr. Himanshu Arora, Advocate for the petitioner.

Mr. Jagbir Malik, Advocate for respondent No.2.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court under article 226/227 of the Constitution of India has been invoked for issuance of writ in the nature of mandamus, directing the respondents to count the service of the petitioner rendered from 30.06.2004 to 17.06. 2005 with the respondent no.2 and consequently joined respondent no.1 board on transfer basis. Further to treat the case of the petitioner under the old Old pension scheme from the date the petitioner actually joined the board that is 17.06.2005.

2. Learned counsel for the petitioner contends that petitioner was appointed as Driver on regular basis with the respondent no.2 i.e The Secretary, market committee, Pundari , district Kaithal on 30.06.2004 And thereafter the petitioner was taken on transfer basis as a driver in the office of respondent no.1 on 17.06.2005. Also wide order dated 05.07.2006, the petitioner has been absorbed as driver on transfer basis.

3. He further submits that the petitioner was relieved by the respondent no.2 only on 16.06 2005. And thereafter he joined respondent no.1 board on 17.06.2005 and after sometime new pension scheme came into being on 01.01.2006 and the respondent considered the case of the petitioner under the new pension scheme whereas the case of petitioner is entitled to be covered under the old pension scheme , As when petitioner joined the board on 17.06.2005, admittedly, at the relevant time, the old pension rules were in force and thus the case of the petitioner is entitled to be covered by the old pension scheme and not by the new pension scheme which is introduced much after the joining of the petitioner i.e on 01.01.2006.

4. Furthermore the petitioner is aggrieved by the action of respondent's for not counting the services rendered by petitioner with respondent no.2 from 30.06.2004 to 17.06.2005 for his pensionary benefits. To support his contention he relies upon rule 15 of Haryana Civil Services "Pension" rules 2016, which provides for benefits of past service towards pension, the relevant is reproduced as under:-

"15. Benefit of past service towards pension.—

(A) On appointment from any other Government to Haryana Government—

(1) A Government employee of Central or any other State Government (except Jammu and Kashmir) who covered under the pension rules there, on his— (a) permanent transfer; or

(b) subsequent appointment,

shall be entitled to get the benefit of past qualifying service towards pension duly verified by the competent authority of his previous Government; provided he submitted his application through proper channel.

B. On appointment from a pensionable organization to

a department under Haryana Government—

On absorption or subsequent appointment of an employee from a pensionable—

(a) Organization to a department both under Haryana Government or vice-versa; or

(c) On appointment from one department to another of Haryana Government—

On appointment from one department to another department of Haryana, the benefit of past qualifying service towards pension shall be admissible provided it is certified by the Head of Department that the application for new/subsequent appointment was submitted through proper channel.

(D) On appointment from pensionable to non-pensionable organization —

On permanent absorption or subsequent appointment of a Government employee from a department to a non-pensionable organization under any State Government or Government of India, pro-rata pensionary benefits shall, in lump sum or otherwise as per option exercised by the concerned Government employee, be admissible of the qualifying service rendered before permanent absorption or subsequent appointment, as the case may be, provided the application has been submitted through proper channel. The pro-rata pensionary benefits shall be payable from the date of permanent absorption or subsequent appointment and shall be released within six months from the date of submission of documents complete in all respects required for the purpose. The incumbent has to resign from service which will be a technical formality. No family pension shall be admissible in case of death after the date of permanent absorption or subsequent appointment.

Note. ■ The competent authority for this purpose shall be the appointing authority or Head of Department, whichever is higher.”

In addition to support his claim Counsel for the petitioner places

reliance upon Annexure P 11 issued by government of Haryana whereby they have clarified that an employee who was already in service of the government of Haryana prior to 1 January 2006 on regular basis, if re-appointed on or after 11 2006 on different or same post within the same or other departments under the government of Haryana will be covered under the “Old Pension Scheme”.

6. On the other hand, learned state counsel submits that petitioner was appointed as a driver with respondent i.e Sugar Mill which is not a pensionable establishment and the transfer was made on the request of the petitioner on deputation basis giving reasons of his ill health and therefore on 17.06.2005 the petitioner was posted with respondent no.1 on 17.06.2005 on humanitarian grounds and thereafter on 13.03.2006 the petitioner submitted another representation requesting for his permanent absorption with the answering respondent and finally on 05.07.2006 the petitioner was absorbed with the respondent no.1 but the said absorption was made with a specific condition that the petitioner will be given fresh appointment and no seniority benefit would be given to the petitioner and petitioner conceded to all the conditions.

7. To rebut the another contention of the petitioner he refers to para 4 of his written statement specifically denying the claim case of the petitioner to be covered under “old pension scheme”.

8. Heard learned counsel for the parties.

9. After going through the submissions of both the counsel two aspects are coming forth to be considered before this court firstly whether the service rendered with the respondent .i.e sugar mill from 30.04.2004 to

16.06.2005 is liable to be counted for pensionary benefits. Secondly whether the petitioner's case is liable to be covered under 'old pension scheme'.

10. As far as first aspect is concerned it is as admitted fact that the petitioner joined as was driver with the respondent no. 2 on regular basis on 30.06.2004 to 17.06.2005 and after that he joined respondent No.3 i.e., the Board on 17.06.2005 on deputation basis where he was absorbed permanently meaning thereby that he was in continuous service and according to rule 15 of the Haryana civil services 'Pension' Rule 2016 the past services rendered by the petitioner is liable to be counted for the pensionary benefits further this rule stipulates that on permanent absorption or subsequent appointment the govt. employee shall be admissible of the qualifying service rendered before absorption or subsequent appointment, provided the application has been submitted through proper channel, "except otherwise provided" these rules shall be applicable to all the government employee appointed to a regular post on or before 31st December, 2005. Meaning thereby that his past services are liable to be counted for his pensionary benefits.

11. With regards to another aspect that the case of the petitioner be considered under old Pension scheme is concerned, admittedly the petitioner joined the respondent no. 1 board on 17. 06.2005 and at that time Old Pension Scheme was in existence and new Pension scheme came in the year 01.01.2006. Further more, a clarification was issued by the Government of Haryana (Annexure P-11) wherein, it is clarified that cases where such Government employee is re-appointed on or after 01.01.2006 in the same or any other Government Department, will be covered under Punjab CSR Volume-II (Old Pension Scheme) which is applicable to Government

employees who joined Government service prior to 01.01.2006 provided he applied through proper channel. Thus, the case of the petitioner is liable to be considered under the Old Pension Scheme.

12. In view of the discussions made hereinabove, the present petition is allowed.

(SANDEEP MOUDGIL)
JUDGE

18.07.2023
menu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>