

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

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1. CWP No.19699 of 2016 (O & M)

Date of Decision : 7.12.2023

S.L. Goyal

..... Petitioner

versus

State of Haryana and others

..... Respondents

2. CWP No.23745 of 2018 (O & M)

2023:PHHC:157751

Shashi Manchanda

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. K.L. Arora, Advocate, for the petitioner(s)

Ms. Tanushree Gupta, DAG, Haryana

Mr. Rajdeep Cheema, Advocate
for respondents no.2 and 3 in CWP No.19699 of 2016
for respondents no.3 to 5 in CWP No.23745 of 2018

TRIBHUVAN DAHIYA J.

Both these petitions are being decided together since a common question of law on similar facts arises therein, as to whether past service rendered by a Lecturer outside the State can be counted as qualifying service for pension under the Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 (for short 'the Rules of 1999'). To decide the issue, facts are being taken from Civil Writ Petition No.19699 of 2016.

2. The petition has been filed seeking a writ of *certiorari* to set

aside the order dated 21.5.2015, Annexure P/15, whereby the respondents declined to count the petitioner's past service rendered in DAV College, Bathinda, towards pension; and a writ of *mandamus* directing them to count the service rendered by him from 01.07.1969 to 21.02.1993 as qualifying service and release pension and other retiral benefits on that basis. Facts of the case in brief are;

2.1. The petitioner was appointed as Lecturer in English vide appointment letter dated 1.8.1969, Annexure P-1, in DAV College, Bathinda; it was an aided college receiving grant-in-aid from the Government of Punjab. The post was advertised by the second respondent/College Management, and he joined as Lecturer pursuant to a regular selection.

2.2. During the period when the State of Punjab was a disturbed area, there had been a murderous attack on the petitioner and his wife on 16.10.1987. He was hit by a bullet that pierced his cheeks, and his lower jaw was lost. On humanitarian grounds, he was transferred to Dayanand College, Hisar, Haryana, by the Management and joined there on 28.11.1987. He served in the college upto 21.2.1993 against a un-sanctioned post, and his salary for this entire period was paid by the Management.

2.3. Later, one post Lecturer in English was sanctioned for Dayanand College, Hisar. The petitioner was appointed against it on being selected by a duly constituted selection committee, and joined as such w.e.f. 22.2.1993. He served the college till superannuation on 30.9.2005, and has been released pension and gratuity by the first respondent by counting his service from 22.2.1993 to 30.9.2005. His claim to count the

service rendered in DAV College, Bathinda, from 1.7.1969 to 27.11.1987, and in Dayanand College, Hisar from 28.11.1987 to 21.2.1993, as qualifying service for pension has been rejected vide impugned order dated 21.5.2015, on the ground that during this period Contributory Provident Fund (for short 'the CPF') deductions were not been made from his salary, and his case was not covered under Rule 2(j) and 6 (iv) of the Rules of 1999.

2.4. In these circumstances, the petition has been filed challenging the impugned order dated 21.5.2015.

3. Learned counsel for the petitioner contends that the petitioner served under the DAV Management in both the colleges, at Bathinda as well as Hisar. As per Rule 6 (iv) of the Rules of 1999, service rendered by him at Bathinda is countable as qualifying service for pension since the Colleges were receiving grant-in-aid under the same Management. It was only on account of extra ordinary life-threatening circumstances that he was transferred to Hisar and, therefore, should be given benefit under the Rules. He is ready and willing to deposit the employer's share of CPF along with interest, or the same can be deducted from the pensionary benefits becoming due to him as per Section 17 of the Pension Rules. In support of his contention, learned counsel has relied upon the judgment, dated 22.09.2005, rendered by a Division Bench of this Court in *Ved Parkash Kaushik v. State of Haryana and others*, Law Finder Doc Id#1488293.

4. Learned counsel for the respondents, on the contrary, contends that the service cannot be counted since it was outside the State of Haryana. As per the Rules of 1999, only the service rendered on a

sanctioned post in any aided college within the state of Haryana, can be counted as qualifying service. Law in this regard has been settled by a Division Bench of this Court in *Gajinder Trehan v. State of Haryana and others*, 2012 (3) SLR 116. Therefore, the petition deserves dismissal.

5. Heard.

6. As per admitted facts on record, the petitioner has served as Lecturer in English against sanctioned posts in two aided colleges, one at Bathinda under the State of Punjab and the other at Hisar under the State of Haryana. There is a break in service also, as after the petitioner's transfer from the college at Bathinda to the one at Hisar on 28.11.1987, he worked there up to 21.2.1993 against un-sanctioned post; salary for this period of service was paid by the private Management out of its own funds. After a regular post of Lecturer in English was sanctioned for the College by the government under grant-in-aid, he was selected against it and joined there w.e.f. 22.2.1993.

6.1. Although the petitioner rendered his entire service as Lecturer in English in aided colleges under the same DAV Management, but in different States and there was a break in service also, as aforementioned, from 28.11.1987 to 21.2.1993. To decide the issue of counting such past service, it is apt to reproduce the following provisions, of the Rules of 1999:

2. Definitions- In these rules, unless the context otherwise requires:-

(a) **“aided college”** means the college receiving grant-in-aid against duly sanctioned posts from the Higher Education Department, Haryana;

(aa) **“aided sanctioned post”** means the post for which grant-in-aid is allowed by Higher Education Directorate, Haryana;

colleges, receiving grant-in-aid under the same management.

(v) Service rendered on aided sanctioned post in any aided college in the State of Haryana.

Provided that the official has been appointed through proper channel on aided sanctioned post and the approval of continuity of service has been obtained from the Director:

Provided further that the Contributory Provident Fund account of the employee in the previous college continued as such in the subsequent college to which he is transferred or appointed and there is no break in service or the service condition as modified by the Government from time to time.

6.2. As per provisions of Rule 2 (j) of the Rules of 1999, 'qualifying service' means the service rendered by an employee from the date he/she starts contributing towards CPF; as per Rule 2 (k) 'service' means the one rendered under the provisions of Haryana Affiliated Colleges (Security of Service) Act, 1979, and the rules made thereunder. Further, Rule 6 (iv) provides that service rendered under one or more affiliated colleges, receiving grant-in-aid under the same Management, will be considered qualifying service; and Rule 6 (v) provides that service rendered on aided sanctioned post in any aided college in the State of Haryana is qualifying service for the purpose of pension. It is also required by the first proviso to sub-rule (v), that the employee has to be appointed on the post through proper channel with approval of continuity of service from the Director. Sub-rule (iv) of Rule 6 cannot be read in isolation, it is to be read in conjunction with sub-rule (v) which makes it apparent that the qualifying service rendered in one or more affiliated colleges on sanctioned posts receiving grant-in-aid under the same Management has to be within the State of Haryana. This is clear from provisions of Rule 2 (k) also, which provides that 'service for the purpose of pension' means service rendered

under the Act of 1979. Same Management is not the *sine qua non* for counting past service; rather, the prerequisite is that the service ought to be on an aided post sanctioned by the Department of Higher Education to an affiliated college within the State, and fulfillment of other conditions of continuity and transfer of CPF account as such, etc.

6.3. Reading the sub-rule (iv) to mean that ‘qualifying service’ is service rendered by an employee in one or more private affiliated colleges *within or outside the State of Haryana* receiving grant-in-aid under the same management, as argued by learned counsel for the petitioner, cannot be permitted. It is because, firstly, the words ‘within or outside the State’ have not been explicitly provided for in the sub-rule, nor is there any reason or justification for reading the same by implication into it. Once a statutory rule is explicit, it leaves no room for addition by way of interpretation and needs to be read as it is giving plain meaning to the words incorporated, unless the same leads to a contradiction or an absurd situation at odds with the object of the Rules which is not the case here. Secondly, such a reading of the sub-rule would not be consonance with other provisions of the Rules; rather, amounts to reading it out of the context in which it has been phrased. Apparently, the Rules do not recognise service rendered by an employee outside the State for any of its purposes, nor could the learned counsel point out any provision or instruction to the contrary. The provisions of Rule 2 and Rule 6, as discussed herein above, make it abundantly clear that scheme of the Rules is to count service rendered by an employee within the State on a post aided and sanctioned by the Directorate, as qualifying service for pension.

6.4. Concededly, the petitioner has not rendered service from

1.7.1969 to 27.11.1987 on an aided sanctioned post in the State of Haryana, nor was this service under provisions of the 1979 Act. During this period, he was in the service of affiliated college at Bathinda. Merely because the college was receiving grant-in-aid under the same Management as was the college at Hisar, that in itself is not sufficient to consider the service rendered as qualifying service for pension under the Rules of 1999, as discussed hereinabove. Further, his service from 28.11.1987 to 21.2.1993 in the College at Hisar cannot be counted as qualifying service since it was on an unsanctioned post and salary for the same was not paid by the government under grant-in-aid. Also, the petitioner's offer to return the amount of employer's contribution to CPF cannot be considered as his case is not covered under the Rules of 1999.

7. Further, *vires* of Rule 6 of the Rules of 1999 have been upheld by this Court in *Gajindra Trehan* case (*supra*). Relevant paragraphs no.9 and 13 of the judgment read as under:

9. A perusal of the above quoted rules would show that the Rule has restricted the counting of service rendered in one or more affiliated colleges receiving grant-in-aid under the same management and it must be service rendered on aided sanctioned post in any aided college in the State of Haryana. According to proviso appended with Clause (v) of Rule 6 of the 1999 Rules, the official should be appointed through proper channel on aided sanctioned post and the approval of continuity of service must have been obtained from the Director of Higher Education. According to unnumbered second proviso, the CPF account of such an employee in the previous college must be continued in the subsequent college to which she/he has been either appointed or transferred. The petitioner has superannuated on 31.10.2007 and the amendment made in the Rules on 24.01.2001 would be applicable. Accordingly, the service rendered by her on an aided post outside the State of Haryana would not qualify for pension as per Rule 6 (v).

13. Once the aforesaid constitutional position is clear then to accept the offer made by the petitioner that she can return the amount of CPF received by her to the extent of employer's contribution, would be wholly unwarranted and unsustainable in the eyes of law, in the absence of any statutory provision. The statutory provision which is available under Rule 6 (iv) of 1999 Rules is that the only service qualified for pension rendered by an employee in the State of Haryana on an aided post in any affiliated college under the same management would qualify for pension. Such a course as offered by the petitioner is available under Rules 17 and 18 of the 1999 Rules to the employees who have worked in the State of Haryana on an aided post. Therefore, it is not possible to declare the Rules as violative of [Article 14](#) and [16\(1\)](#) of the Constitution.

8. The judgment in *Ved Parkash Kaushik* case (*supra*) relied upon by learned counsel for the petitioner, has no application to the issue arising in the case at hand. The said case pertained to the Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001, and not to the Rules of 1999. The petitioner therein was transferred from a school at Derabassi, Punjab, to a school at Ambala City, Haryana, under the same Management w.e.f. 16.08.1982, and his pay was duly ratified at the time of transfer. Reliance was placed upon a clarification issued by the government, vide letter dated 27.2.1984, *inter alia* stating, if an employee is transferred to another school under the same Management, his pay is to be fixed in the new school on the basis of past service and grant-in-aid would be given on that basis. Accordingly, the petitioner's pay was protected and grant-in-aid was given by the government; later, arrears were also paid to him on the basis of revised pay scales. His CPF account in the school at Derabassi continued as such in the school to which he was transferred. And there was no break in service from his joining the post on 27.5.1970 to superannuation from service on 31.3.1999, as he

immediately joined on the transferred post at Ambala City. However, after superannuation from service his pay was ordered to be reduced w.e.f. 16.08.1982, vide impugned order dated 23.10.2001, without affording any opportunity of hearing. In these circumstances, the order dated 23.10.2001 passed after eighteen years of transfer, was set aside, and it was directed to take into consideration the previous service rendered by the petitioner at Derabassi to re-fix his salary and grant all consequential benefits on that basis. Apparently, the judgment was based on different Rules, instructions and facts, none of those exist in the instant case, as already discussed.

9. In view of the discussion, there is no merit in the aforesaid petitions, and the same are accordingly dismissed.

10. Pending miscellaneous application(s), if any, stand(s) disposed of accordingly.

11. Photocopy of this order be placed on the connected case file.

(TRIBHUVAN DAHIYA)
JUDGE

7.12.2023
Ashwani

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No