

CM-16868-CWP-2023 in/&
CWP-22415-2021 (O&M)

2023:PHHC:147632

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105+265

CM-16868-CWP-2023 in/&
CWP-22415-2021 (O&M)
Date of Decision :-21.11.2023

Saroj Bala Deswal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.N. Lohan, Advocate for the petitioner.

Mr. Tapan Yadav, AAG, Haryana.

Mr. Rupinder Singh Rana, Advocate

Ms. Swati Dayalan, Advocate for respondent No.2.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-16868-CWP-2023

As prayed for, application is allowed.

Reply filed on behalf of respondent No.2 is taken on record.

CWP-22415-2021

1. In the present petition, the prayer of the petitioner is that her gratuity has not been calculated by the respondents in a manner required by giving her the benefit of service, which she had rendered with the Education Department, Haryana starting from 26.06.1985 to 21.11.1988.
2. Certain facts need to be noticed for the correct appreciation of the issue in hand.

3. The petitioner was appointed through proper channel as Science teacher in the Government Sr. Sec. School, Loharu in the Department of Education, Haryana on 26.07.1985. Once again, through proper channel, the petitioner was appointed as Lecturer of Biology in the Government Sr. Sec. School, Bawani Khera in the same Education Department, Haryana on 17.08.1985. While working on the said post, the petitioner applied through proper channel for the post of Biologist in the Health Department, Haryana, which was advertised by the Government of Haryana. The petitioner was given 'no objection certificate' by the department of Education for competing for the said post and ultimately the petitioner was appointed as Biologist in the Health Department, Haryana after being selected by the Haryana Public Service Commission, on 22.11.1988.

4. It may be noticed that there is no gap in the two services which the petitioner had rendered with two different departments of Government of Haryana. The petitioner attained the age of superannuation and retired from the post of Biologist on 31.10.2018. While counting the qualifying service of the petitioner, she has not been given benefit of the service, which she had rendered with the Education Department, Haryana starting from 26.07.1985 to 21.11.1988 by the respondents. The said grievance is being raised by the petitioner in the present petition with a further prayer that the respondents be directed to recalculate the gratuity of the petitioner by taking into consideration the service which she had rendered with the Education Department, Haryana starting from 26.07.1985 to 21.11.1988 as qualifying service for the purpose of computing his pensionary benefits.

5. In reply to the petition, the respondents have conceded the fact

that the petitioner was working with the Education Department, Haryana starting from 26.07.1985 till 26.11.1988 and, thereafter, with the Health Department, Haryana as Biologist till she attained the age of superannuation and there is no gap in these two services of the petitioner. It is also conceded by the respondents that the petitioner was allowed to compete for the post of Biologist by the Department of Education Haryana. As per the respondents, the service which the petitioner had rendered with another department cannot be taken into account as qualifying service so as to compute the gratuity of the petitioner keeping in view the order passed by the Department of Health, Haryana dated 18.12.1989 by which, the benefit of past service of the petitioner was declined.

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

7. For computing the pensionary benefits of an employee, Haryana Civil Services (Pension) Rules, 2016 (in short 'Pension Rules, 2016') have been framed by the Government of Haryana. In the Pension Rules, 2016, a description of qualifying service so as to compute the pensionary benefits has also been given. Rule 14 and 15 of the said Rules are as under:-

14. Service qualifying for pension.—

(1) The term 'qualifying service' has been defined in Chapter-2 of these rules. In addition, the following periods of service rendered by a Government employee appointed on regular basis shall also be qualified for pension :-

(a) Duty period of foreign service; provided the pension contribution has been made to the parent department.

(b) The period of suspension, dismissal, removal, compulsory retirement, followed by re-instatement and treated as duty or such period allowed to be converted into leave of the kind due, shall also qualify for pension upto the extent it is admissible under the rules.

(c) Any other period of service treated as duty for the purpose of pension by the competent authority.

(d) The period of departmental training, followed immediately by regular appointment, which is required to undergo before appointment on regular basis even if instead of entry level pay a nominal allowance is allowed during the period

of training.

Note. ■ The period of dies non, if any, shall not be treated as qualifying for pension.

(2) Save as otherwise provided in these rules, all regular service interrupted or continuous in one or more Departments of Haryana Government shall be treated as qualifying service for pension subject to provision in rule 15 and the following conditions:-

(i) The interruption shall have been caused by reasons beyond the control of the Government employee;

(ii) Service preceding the interruption shall be minimum of two years or more;

(iii) The interruption shall not be more than one year's duration. The adhoc service followed by regularization shall also be counted as qualifying service for pension subject to provision of rule 15. The period of break between two or more spells of service shall be omitted subject to provision in sub-rule (2) above. (4) The service paid from contingencies followed by regularization rendered by a Government employee retiring from service on or after the 12th December, 1997 shall count as qualifying service provided the service shall have been—

(i) in a job involving whole time employment and not part time for a portion of day;

(ii) in a type of work or job for which regular post would have been sanctioned;

(iii) such for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay/ pay structure shall bear some relations in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments; and (iv) continuous and followed by absorption in regular employment without a break.

Note. ■ While bringing contingent paid employee to the regular establishment following entry for verification of contingent service shall be made at the appropriate place in his service book :- "Service from _____ to _____ paid out of contingencies verified from acquaintance rolls and office copies of contingent bills". Above entry shall be signed by the Head of office with date.

(5) The entire service rendered by an employee as work charged shall be reckoned towards pension provided—

(i) such service is followed by regular employment;

(ii) period of break between two or more spells of service shall be omitted subject to provision in sub-rule (2) above.

(iii) such service is a whole time employment and not part-time or portion of day.

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. *Note*

1. ■ For getting the benefit of past qualifying service, the Government employee shall have to submit an application to the competent authority within one year from the date of joining service in Haryana Government.

Note 2. ■ Certificate regarding qualifying service rendered by the Government employee shall be obtained from the competent authority after permanent transfer or subsequent appointment, as the case may be, and not at the time of retirement.

Note 3. ■ On appointment from one Government to another, the liability of pensionary benefits including the benefit of past qualifying service of previous Government, shall be borne in full by the Government to which the Government

employee permanently belongs at the time of retirement. (See also Appendix 5 of Government Accounting Rules, 1990).

Note 4. ■ Competent authority to grant the benefit of past qualifying service towards pension admissible under this rule shall be the Administrative Department in consultation with the Finance Department.

(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

(b) Statutory body only under GOI to a department of Haryana Government or vice-versa, the benefit of past qualifying service shall be admissible subject to conditions that—

(i) the terminal benefits of past qualifying service, received if any, from the previous Organization shall have to be deposited in the Consolidated Fund of Haryana with interest, at the rate(s) as applicable to General Provident Fund. The interest shall be levied at the rate applicable on General Provident Fund accumulation from time to time computed in the same manner (i.e. with annual compounding), from the date of joining service under Haryana Government to the date of deposit in the state exchequer; and

(ii) the application has been submitted through proper channel in case of subsequent appointment. Note. ■ For competent authority see Note 4 of sub-rule

(A) above. (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.”

8. A bare perusal of the above rules would show that Rule 14 (2) clearly shows that all the regular service interrupted or continuous in one or more Departments of Haryana Government shall be treated as qualifying service for pension subject to provision of Rule 15 and the conditions mentioned therein. Even an adhoc service followed by regularization is also

to be counted as qualifying service.

9. In the present petition, the petitioner had rendered her services with the Education Department, Haryana starting from 26.07.1985 to 21.11.1988 on regular basis and, thereafter, with the Department of Health on the post of Biologist.

10. That being so, Rule 14.2 of the Pension Rules, 2016 clearly covers the case of the petitioner for the grant of benefit of services which the petitioner had rendered with the Education Department, Haryana starting from 26.07.1985 to 21.11.1988 by treating the same as a qualifying service for computing her gratuity.

11. The only objection which is being raised by the respondent-State is that the claim of the petitioner for counting her past service had been rejected by the department vide order dated 18.12.1989, copy of which order has been appended by the petitioner herself as Annexure P/3.

12. Qua the said argument, it may be noticed that the said denial is only for fixation of pay of the petitioner in the department of Health and not for the purpose of pension. Even otherwise, rules governing the service are to be seen and not the order/letter issued by the respondent-department. Once, the rules prescribed that service rendered by an employee in one or more Departments of Haryana Government either interrupted or continuous shall be treated as qualifying service for pension, the benefit of the service which the petitioner had rendered with the Education department has to be extended to her for the purpose of computing her gratuity.

13. Keeping in view the facts and circumstances of the present case coupled with the rules governing the service, present petition is allowed.

Respondents are directed to grant the benefit of service which the petitioner had rendered with the Education department starting from 26.07.1985 to 21.11.1988 as qualifying service for computing her gratuity. Let the gratuity of the petitioner be refixed and the payment of arrears be released to the petitioner within a period of two months from the date of receipt of copy of this order.

14. At this stage, learned counsel for the petitioner submits that as the petitioner had retired in the year 2018 and was forced to litigate with the respondent-department so as to get her entitled dues, the petitioner is also entitled for the grant of benefit of interest.

15. Learned State counsel submit that as the claim of the petitioner is being adjudicated now, the petitioner should not be awarded the benefit of interest.

16. It is a settled principle of law settled by the Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, wherein, it has been held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of ***J.S. Cheema's case (supra)*** is as under: -

“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.”

17. Keeping in view the said proposition of law, the petitioner is also held entitled for the grant of benefit of interest on the arrears, which will be paid to her upon recalculation of her gratuity @ 6% per annum from the date the the petitioner retired till the actual payment is made to her.

18. Let the computation of arrears as well as interest be done by the respondents within a period of two months from the date of receipt of copy of this order and the amount so calculated shall be paid to the petitioner within a period of four weeks thereafter.

November 21, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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