

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No., 186 of 2020 (O&M)****Date of Decision: 02.09.2023**

Prem Kumar Sharma

... Appellant(s)

Versus

Vice Chancellor, Kurukshetra University, Kurukshetra and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Dinesh Kumar, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. The correctness of the concurrent findings of facts, arrived by both the Courts below, is assailed by the plaintiff in this second appeal.

3. The dispute is with regard to the counting of the petitioner's previous service from the year 1965 to 1975 in the Regional Engineering College, Kurukshetra. Subsequently, he joined the Kurukshetra University in the year 1975 and retired on 31.05.2001. The State of Haryana came out with the instructions dated 07.01.2002 (Ex.D2) for giving benefit to the employees who are in service and have not retired on the date of issuance of

the office memorandum. It was provided that the previous service rendered

by an employee will be taken into consideration for the purpose of pension if he/she has applied through the proper channel and has been absorbed in the service with the prior consent of the employer. However, the scope of the office memorandum was restricted to the employees who are in service.

Para 4 and 5 of the circular is extracted as under:-

*“4. **Scope of the office memorandum:** This OM would apply to the employees who are in service and have not been retired from service on the date of issue of this office memorandum and also subject to the condition that such employees applied for the job from one organization to the other through proper channel or should have been absorbed in the service with the prior consent of the employer of the employee concerned or appointed on transfer basis.*

*5. **Exclusion:** this office memorandum shall not apply in the case of employees already retired or who have been re-employed after retirement and in case where the selection/appointment in the other entity is not through proper channel. This office memorandum shall not be applicable in the case of employees coming over to the government from public sector undertakings/societies/private managements and such of the statutory bodies, which are not wholly/substantially funded by the state government/Central government.”*

4. The petitioner retired on 31.05.2001. Both the Courts below have formed an opinion that such circular does not enure to the benefit of the appellant.

5. Heard the learned counsel representing the appellant at length and with his able assistance perused the paper-book.

6. The learned counsel representing the appellant while drawing the attention of the Court to the resolution No. 53 dated 11.10.2008, submits

that for the first time, the Kurukshetra University decided to grant the benefit of past qualifying service towards pension to the employees of the university, who were coming from the State Government or an autonomous body, Central Government or Central Autonomous Body or vice versa. He further submits that once the decision was taken by the university in the year 2008, no option could be given by the appellant before 2008.

7. This Court has considered the submission. On the careful reading of the resolution No. 53, it is evident that the university extended the benefit of the office memorandum dated 07.01.2002 issued by the Government of Haryana. Hence, the aforesaid instructions will be applicable only to those employees who fulfill the requirement of the office memorandum dated 07.01.2002. As is evident, the appellant does not fall within the scope of the office memorandum dated 07.01.2002 because he was not in service in the month of January, 2002 as he retired on 31.05.2001.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts, arrived at by both the Courts below. Hence, the present appeal is dismissed.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 02, 2023
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No