IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.233 **CWP No.918 of 2020 (O&M)**
Date of Decision: 30.01.2024

C.L.Soni .... Petitioner

Versus

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

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

Mr. Rohit Arya, DAG, Haryana and
Mr. Suneel Ranga, DAG, Haryana.

Mr. Surender Saini, Advocate for respondent no.2A.

Mr. Bhupinder Ghanghas, Advocate for respondent no.3.

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<u>TRIBHUVAN DAHIYA, J. (ORAL)</u>

This petition has been filed, *inter alia,* seeking a writ of *mandamus* directing the respondents to release pension and retiral benefits to the petitioner by counting the entire service rendered by him in two government aided colleges as qualifying service.

2. Succinctly, facts relevant for deciding the case are as under.

2.1. The petitioner rendered service in the following two government aided colleges in the State of Haryana:

(i) In Tika Ram College of Education, Sonepat (hereinafter referred to as 'the first College'), from 31.07.1976 to 31.01.1986, i.e., for about nine and a half years, as Lecturer in Physical Education.

(ii) In Rao Lal Singh College of Education, Sidhrawali, District Gurugram (hereinafter referred to as 'the second College'), from

01.02.1986 to 30.11.2009, i.e., for about twenty-four years, as Lecturer in Physical Science.

2.2. It is not in dispute that both the Colleges were getting grant-in-aid from the government. The petitioner was appointed as Lecturer in Physical Education in the first College on the recommendation of a duly constituted selection committee dated 13.08.1978, Annexure P-1. He was duly confirmed in service, vide letter dated 05.01.1981, Annexure P-4.

2.3. While serving the first College, he applied through proper channel for the post of Lecturer in Physical Science in the second College, vide application Annexure P-6, and was issued a 'No Objection Certificate' dated 14.09.1985, Annexure P-7, by respondent no.2A.

2.4. Based on the recommendation of a duly constituted selection committee, the petitioner was appointed as Lecturer in Physical Science in the second College on regular basis, vide letter dated 04.01.1986, Annexure P-8. The appointment was approved by the affiliating Maharishi Dayanand University, Rohtak, vide letter dated 12.05.1986, Annexure P-9. The pay he was getting in the first College was also protected by the second respondent/Director Higher Education, vide letter dated 06.02.1989, Annexure P-10.

2.5. Later, by counting the previous service rendered in the first College, the petitioner was granted senior scale of pay with effect from 01.02.1986, and selection grade with effect from 31.07.1992, as apparent from the minutes of screening committee meeting held on 20.12.2005, Annexure P-11.

2.6. He superannuated from service in the second College on 30.11.2009, and was released pension and other retiral benefits by the Department, vide order dated 28.07.2010, Annexure P-12. In doing so, the service rendered by him in the second College only from 01.02.1987 to 30.11.2009 was counted by excluding one year of service from the date of joining, i.e., 01.02.1986 to 01.02.1987, and also the entire service rendered in the first College.

2.7. The petitioner claimed full pension by counting the service rendered in the first College, and requested its principal/respondent no.2A, vide letter Annexure P-14, that his Provident Fund (PF) share be deposited for the purpose. Thereafter, he wrote a letter, dated 01.12.2012, Annexure P-14/1, to the second respondent also for giving benefit of previous service rendered in the first College by directing its Principal to deposit his PF share with the Directorate. However, no action was taken on the same. After some time, he sent a reminder, dated 04.03.2013, Annexure P-14/2, to the second respondent for counting his previous service for pensionary benefits. Another reminder in this regard was sent on 03.06.2013, Annexure P-14/3, but no action was taken by the Department, nor was the petitioner's previous service counted.

2.8. After all the representations and requests to the second respondent to count his previous service for pensionary benefits remained unanswered, the petitioner approached this court by filing the instant petition.

3. Learned counsel for the petitioner contends that the petitioner has rendered about nine years and six months of qualifying service in the first College, and there was no break in service as he joined the second College on 01.02.1986 after getting relieved from first College on 31.01.1986. Both the Colleges were government aided, and the respondents have no reason not to count the previous service as qualifying service for pension. The petitioner has also given an undertaking, dated 20.12.1999, Annexure R-1, that he is ready and willing to refund the employer's share of contributory fund as may be worked out by the Director. The respondents, however, did not intimate the amount that the petitioner was required to refund for counting the previous service for pension despite repeated representations and reminders. Besides, one year period of service rendered by the petitioner in the second College is also to be counted as qualifying service, since he was not at fault for non-

deduction of Contributory Provident Fund (CPF) contribution from his salary by the employer. As per settled law, entire service rendered by him in the first as well as the second College is required to be counted for pension.

4. Learned State counsel, on the contrary, contends that the petitioner is not entitled to grant of pensionary benefits by counting the previous service rendered in the first College, since he did not at all contribute to CPF during service. As per Rule 2(j) of the Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 (hereinafter referred to as the 'Pension Rules), qualifying service will be taken into account with effect from the date an employee starts contribution towards CPF. Since the petitioner did not make any contribution during service rendered in the first College and for the initial one year in the second College, the service not being qualifying service could not have been counted for pensionary benefits. He has also relied upon Rule 6(v) of the Pension Rules to contend that service of an employee qualifies for retiral benefits under these rules provided CPF account of the employee in the previous college continues as such in the subsequent college to which he is transferred or appointed, and there is no break in service. Accordingly, service rendered by the petitioner in the first College cannot be taken into consideration for the purpose of pension as his CPF account was never transferred to the subsequent/second College.

5. Heard.

6. There is no dispute that the first as well as the second College where the petitioner rendered services were government aided colleges, being provided salary grant by the Directorate. And that the petitioner was appointed in these colleges on aided sanctioned posts in the regular scales of pay after due selection. While working in the first College he applied for appointment in the second College through proper channel; and at the time of joining there the pay he was getting in the first College was protected. Later, he was given benefit of senior scale of pay and selection grade by counting the service in first College.

The respondents, however, released pension and other retiral benefits to the petitioner only by counting a part of the service rendered by him in the second College, i.e., from 01.02.1987 to 30.11.2009, as qualifying service, and excluding entire service rendered in the first College. It is also not a disputed fact, as mentioned in the written statement filed by respondent no.2A, that the petitioner was a member of CPF in the first College and the entire contribution was transferred to his account on 18.12.2015, which included the management share and interest as well.

7. The petitioner's claim for counting his total service rendered in the first College as well as the remaining one year service in the second College as qualifying service was never considered, nor any order rejecting the claim was conveyed to him. It is only through written statement filed in the instant petition on behalf of the second respondent that the grounds for not counting the service as qualifying service have been made known, i.e., (a) non-transfer of the petitioner's CPF account from first College to second College; and (b) non-payment of CPF contribution for one year on joining the second College.

8. In this background two issues arise for consideration:

(i) Whether the respondents can decline to count the petitioner's initial service in the second College from 01.02.1986 to 01.02.1987 as qualifying service for not contributing towards CPF?

(ii) Whether the transfer of petitioner's CPF account from the first College to the second College can be a pre-condition for counting the previous service as qualifying service for grant of pension and other retiral benefits?

8.1. On the first issue, law is well settled that only because an employee did not start contributing towards CPF immediately on joining service, he cannot be denied benefit of counting the service as qualifying service under the Pension Rules. This Court, vide judgment dated 14.12.2023, rendered in CWP No.15404 of 2019, titled *Mohan Lal Goel @ M.L.Goel v. State of Haryana and others*, has already held as under:

> … This issue has also been decided against the government by this Court, vide judgment dated 29.04.2019, rendered in CWP No.22558 of 2016 titled *Suraj Parkash Bajaj v. State of Haryana and others*. It has been held that entire service of an employee rendered from the date of joining the post will be counted as qualifying service for pensionary benefits under Rule 2(j), subject to the condition that contribution towards CPF for the period it was not deducted will be deposited by the employee concerned. The relevant paragraph of the judgment reads as under:
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> This Court had an occasion to deal with the same question of law while deciding bunch of writ petitions being CWP No.5897 of 2003 and other connected cases titled as Prem Chand Tagla and others vs. State of Haryana and others. While deciding the said question of law in Prem Chand Tagla's case (supra), this Court relied upon the interpretation given by this Court to a similar provision of Rule while deciding CWP No.14051 of 2005, titled as Ram Lubhaya Khanna and others vs. State of Punjab and another decided on 17.05.2007. In the Rules which were there in Ram Lubhaya's case (supra) also stipulated that the qualifying service will be only the service for which the contribution for contributory fund was deducted. While interpreting the said Rule, this Court had held that the entire/total length of service needs to be calculated as qualifying service subject to the condition that the contribution for the period, for which the same was not deducted, should be deposited by the employee concerned. This Court by relying upon the said judgment allowed the relief while deciding the case of Prem Chand Tagla and others (supra).

8.2. In the instant case, it is not in dispute that the petitioner has continuously worked as Lecturer in the second College from his initial appointment on 01.02.1986, though contribution towards CPF was deposited only with effect from 01.02.1987. He cannot be put to any disadvantage on that basis, since it was for the employer to make deductions from his salary towards CPF. Besides, the petitioner has already undertaken to deposit due contribution of CPF along with interest to the respondents for the period it was not deducted, for counting his service as qualifying service for pension. Therefore, there was no basis for the respondents to refuse counting his service from the date of joining as qualifying service.

8.3. So far as the second issue is concerned, the respondents have declined to count the petitioner's previous service in the first College by referring to Rule 6(v) of the Pension Rules, which reads as under:

> **6. Qualifying Service-** The Service of an employee shall qualify for retirement benefits under these rules as under:-
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> (i) to (iv) xxx xxx xxx
>
> (v) Service rendered on aided sanctioned post in any aided college in the State of Haryana;
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> ***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.*

Sub-rule (v) of Rule 6 stipulates that service rendered by an employee on an aided sanctioned post in a College in the State of Haryana is to be counted as qualifying service for retirement benefits, provided the employee was appointed through proper channel and the approval of continuity of service was also obtained from the Director. Provided further, that CPF account of the employee in the previous college continued as such in the subsequent college to which he was appointed and there was no break in service.

9. It is not contested that the petitioner was appointed on an aided sanctioned post in both the Colleges in the State of Haryana. His appointment in the second College was through proper channel and was provided continuity of service as well, since his pay was protected at the time of joining the College. There was no break in service either. The only dispute is with regard to continuation of his CPF account from the first College to the second College. Since the petitioner was relieved from former College on 31.01.1986, i.e., prior to the notification of Pension Rules [notified on 11.05.1998], continuation of CPF account cannot be insisted upon as a pre-condition for counting previous service as qualifying service.

9.1. Besides, as per provisions of Rule 17(3) of the Pension Rules, an employee who has retired on or after coming into force of the Rules, has already drawn the employer's share of CPF together with interest accrued thereon and is not in a position to refund the same in cash, he may be allowed to adjust the same against the amount of gratuity or arrears of pension that may be admissible to him. It is further stipulated that in such cases the employer's share of CPF together with interest thereon shall be refunded with twelve per cent interest on the amount actually drawn, calculated from the date of drawl of the said amount to the date of refund or adjustment. The Rule is reproduced hereunder:

> **17. Transfer of employee's share of contributory provident fund**.-
>
> (1) and (2) xxx xxx xxx
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> (3) The employees who have retired on or after coming into force of these rules and have already drawn the employer's share of contributory Provident Fund together with interest accrued thereon and they (or in any case of death of such an employee his legal heirs) are not in a position to refund the same in cash, may be allowed to adjust the same against the amount of gratuity or

> arrears of pension that may be admissible to them. In such cases the employer's share of Contributory Provident Fund together with interest accrued thereon and they (or in case of death of such an employee, his legal heirs) are not in a position to refund the same in cash, may be allowed to adjust the same against the amount of gratuity or arrears of pension that may be admissible to them. In such cases the employer's share of Contributory Provident Fund together with interest accrued thereon shall be refunded with twelve percent interest on the amount actually drawn, calculated from the date of drawl of the said amount to the date of refund or adjustment and if there still remains any due amount it will be adjusted by non-payment of pension till recovery of the total amount is adjusted. …

9.2. Rule 6(v) is to be read along with Rule 17(3) of the Pension Rules. Mere transfer of CPF account from the previous college to the subsequent college is not an end itself, nor can the decision to count previous service as qualifying service be made solely dependent upon it, as that will defeat the object of the Rules in counting previous service. The purpose of transferring the account obviously is that the employer's share of CPF contribution is deposited with the Directorate before releasing pensionary benefits. Therefore, in case it could not be done, the alternative has been provided enabling the employee to deposit the same with interest to obviate the loss caused to the Directorate on having being deprived of the share.

9.3. In case the petitioner's CPF was not transferred by the first College to the second College, though he applied for the post in the latter through proper channel and was duly relieved from the former, he cannot be put to any disadvantage on that account. It cannot be lost sight of, as already noticed, that the Pension Rules had not been notified by then, and the requirement as such could not have been insisted upon by the respondents. Besides, there is no reason why the petitioner should not be allowed to make good the loss, more so when he himself undertook to refund the employer's share along with interest at the time to opting for pension under the Rules. Not only that, later he submitted representations asking the second respondent to count his previous service which remained unanswered. It is for such like cases that the provision under Rule 17(3) of the Pension Rules has been made for refund of employer's share of CPF by the employee. Therefore, the act of not permitting the petitioner to deposit the employer's share, and instead requiring continuance of his CPF account in the second College as a pre-condition for counting the previous service as qualifying service, is palpably wrong and in violation of the Rules.

9.4. Still further, it also needs to be noticed that the respondents have already given the benefit of previous service in the first College to the petitioner for the purpose of pay protection, and also for granting him benefit of senior scale of pay and selection grade. The pay he was getting in the first College at the time of joining the second College was protected, vide order dated 06.02.1989. The senior scale of pay was given to him with effect from 01.02.1986, and selection grade with effect from 31.07.1992. Once the previous service has been counted for giving service benefits to the petitioner, the respondents cannot deny to count the same as qualifying service for pensionary benefits. There is no reason or rationale in doing so; it is evidently arbitrary and illogical.

10. In view of the discussion, it is apparent that the respondents have denied due benefits to the petitioner arbitrarily in violation of the Rules as well as the law; they even failed to consider and decide his request for counting the previous service. This has resulted in harassment and deprivation of the rightful benefits to him for over a decade.

11. In view of the reasons recorded above, the petition is allowed. Respondents no.1 and 2 are directed to count entire service rendered by the petitioner in both Colleges from 31.07.1976 to 31.01.1986 and 01.02.1986 to 30.11.2009, as qualifying service for pensionary benefits, and release all the due benefits to him along with arrears of pension, with interest at the rate of

nine per cent per annum from the date of retirement till actual payment, within six weeks of receiving a certified copy of the order. The contribution to CPF required to be deposited by the petitioner shall be deducted from the arrears of pension at the rate of twelve per cent per annum in terms of Rules 4 and 17 of the Pension Rules.

12. In case the benefits, along with arrears, are not released to the petitioner within the stipulated period, the respondents shall pay interest on the same at the rate of twelve per cent per annum from the date of expiry of the period up to the date of actual payment.

13. In the facts of the case the petitioner shall be entitled to costs of the petition which are quantified as ₹50,000 (Rupees fifty thousand), to be paid by respondents no.1 and 2 to the petitioner within the period stipulated above.

(TRIBHUVAN DAHIYA)
JUDGE

30.01.2024
Maninder

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