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

CWP-1558-2016

Date of Decision: 31.07.2024

SANTOSH DEVI

...Petitioner

Vs.

STATE OF HARYANA & OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Ankur Sheoran, Advocate
For the petitioner.

Ms. Tanushree Gupta, DAG, Haryana.

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed seeking a writ of *certiorari* for setting aside letter dated 03.04.2014/20.05.2014, Annexure P-7, whereby the petitioner's claim for granting the benefit of previous service rendered in a Government aided private school for pensionary benefits, has been rejected.

2. Facts of the case in brief are, the petitioner was selected and appointed as S.S. Mistress in Government aided private school, Kanya Gurukul High School, Kharal, Jind, and worked there from 15.04.1983 to 18.08.1993. Due to abolition of the post being surplus, her services were terminated with effect from 18.08.1993. Later, she was selected as Junior Basic Training (in short, 'JBT') teacher in the respondent-Department, and joined as such on 25.11.1995. While serving there, she was promoted as S.S. Mistress, and superannuated from service on 30.06.2014. Her request for counting the previous service rendered in the aided School towards pensionary benefits, was rejected vide impugned letter dated 03.04.2014/20.05.2014.

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3. Learned senior counsel representing the petitioner contends that the respondents have wrongly declined to count the petitioner's previous service. In terms of instructions issued by the Government vide memo dated 28.11.2011, Annexure P-3, service rendered by an employee in Government aided establishment before appointment in Government institutions is to be counted towards pensionary benefits. He has placed reliance upon the judgment rendered by the Supreme Court in Civil Appeal (S) No. 3808 of 2015 titled as *State of Haryana and others v. Vijay Seth and others*, to contend that the respondents were required to adjust the petitioner in some other aided school after abolition of the posts held by her.

4. Learned State counsel on the contrary contends that instructions, dated 28.11.2011, have no applicability to the petitioner's case, as the same are for the aided school employees who are covered under the Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 1999 (in short, '1999 Rules'). The petitioner being a Government employee was not entitled to pensionary benefits under the 1999 Rules, as replaced by the Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules 2001 (in short, '2001 Rules'). She further contends that the petitioner remained out of service for a period of two years and three months before joining service in the Department on 25.11.1995. There being no continuity in service, she becomes dis-entitled to counting her previous service for pensionary benefits.

5. Heard.

6. As per facts apparent on record, the petitioner's service in the aided School was terminated on account of abolition of post with effect from



18.08.1993, and she joined the Government service as JBT teacher after a gap of about two years and three months on 25.11.1995. The termination was never challenged by the petitioner, nor did she seek adjustment in any other aided school; learned senior counsel could not dispute the fact on the basis of any document. The judgment rendered in *Vijay Seth* case *ibid.*, is on distinct facts and has no application to the instant case. In that matter, pursuant to an order of closing the school and transferring the students in the neighboring schools, the teachers were treated as discharged from duty. Admissible retiral benefits were also ordered to be released to the staff on that basis. The petitioner therein, who was one such surplus teacher, had approached this Court by filing a writ petition seeking release of salary and other admissible benefits with interest, and for adjustment in another government aided school in the light of provisions of Rule 59(3) of the Haryana School Education (Amendment) Rules, 2007. A direction was issued to consider him for adjustment in other schools under this Rule, by taking a view that the Rule was attracted not only in a case where teachers became surplus in a running school, but also in situations where teachers became surplus on account of closure of an institution. Accepting the view taken by the High Court, the Supreme Court keeping in mind the hardship of teachers and other staff for being kept out of employment for a long period, directed the respondents to adjust them in the suitable posts. The observations of the Court are as follows:

It is evident from a plain reading of the above rule that a teacher is rendered surplus if the student-teacher ratio falls below the norms fixed by the Department. Any such teacher can then be transferred/adjusted in another school similarly aided by the State



within or outside the district where he was working. The Rule does not specifically provide for adjustment of teachers rendered surplus on account of closure of the institution but that does not, in our opinion, make any material difference. That is because the essence of the rule lies in a teacher becoming surplus. He is in that case entitled to be adjusted in another school. So long as teachers are rendered surplus, they have the right to be adjusted, in terms of Rule 59 (3) of the Rules. The provisions of the rule are beneficial in nature. The same must therefore be given a liberal construction. That apart, there is no real rationale behind making a distinction between a teacher who is rendered surplus on account of falling student-teacher ratio and another who is rendered surplus because of the closure of the institution. While a teacher rendered surplus because the number of students is below the prescribed limit would be entitled to adjustment, such adjustment cannot obviously be declined to a teacher who not because of any fault on his part but for some other reasons faces a situation where the institution itself is shut down and students admitted to the school adjusted in other institutions in the neighbourhood. A teacher rendered surplus in such a situation has to be placed on the same footing as a teacher who is rendered surplus because of falling student-teacher ratio. That being so, the High Court was in our opinion perfectly justified in holding that the right to seek adjustment was not dependent upon whether the surplus arose on account of student-teacher ratio or otherwise.

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The interpretation placed by the High Court in the orders impugned, does not in our opinion suffer from any perversity and ought to be accepted by the appellant-State.

In the instant case, the petitioner's service was not terminated on account of having been declared surplus, nor did she ever seek adjustment in any other aided school. She was appointed in government service by fresh selection after more than two years of termination. Therefore, reliance upon the judgment by learned senior counsel is mis-conceived, and does not advance the petitioner's case in any manner.

7. Being in service, the petitioner is entitled to admissible retiral benefits in terms of the applicable Rules framed by the Government for the purpose. She is not entitled to these benefits under the 2001 Rules, which are meant for the aided school employees only. The instructions, dated 28.11.2011, relied upon by learned senior counsel have explicitly been issued only for the aided school employees, who were covered under 1999/2001 Rules, for grant of retiral benefits.

8. For the reasons mentioned above, the petition being devoid of merits, stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

31.07.2024

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