

Sr. No.208
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-1128-2021 (O&M)
Date of decision:25.04.2024

State of Haryana and others **...Appellants**
Vs.
Attar Singh (now deceased) through his LRs **...Respondents**

CORAM: **HON'BLE MR. JUSTICE G.S.SANDHAWALIA ACTING CHIEF JUSTICE**
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: **Mr. Deepak Balyan, Additional A.G., Haryana.**
For the appellants.

Mr. Rajender Singh Malik, Advocate,
For respondent No.1.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (ORAL)

Consideration in the present appeal is to the judgment dated 04.02.2020 passed in CWP No.18497 of 2016 which was allowed, and to the order dated 19.01.2021 passed in CM Application No.407 of 2021, which sought modification of order dated 04.02.2020, was dismissed.

2. Learned Single Judge has granted the benefit of the second ACP after quashing the order dated 10.08.2016 by counting the previous service rendered in Government aided institution from 01.08.1979 to 31.03.1986 and thus issued necessary directions to grant the same.

3. Judgment is primarily based upon the precedence regarding the said issue of a coordinate Bench in '*Uma Devi and others Vs. State of Haryana and others*', 2015 (3) SCT 553.

4. A perusal of the same would go on to show that learned Single Judge therein had placed reliance upon the judgment passed by another Single Judge in Civil Writ Petition No.6586 of 2008 in *Shyam Kumar Vs. State of*

Haryana and others decided on 24.07.2009 which order was upheld by the Coordinate Bench in LPA No.420 of 2010.

5. Matter was taken up by the State before the Apex Court vide SLP (C) No.18709 of 2010 which was dismissed on 21.04.2011. A perusal of the said order of the coordinate Bench dated 05.04.2010 would go on to show that it was passed in terms of LPA No.162 of 2010 decided on 08.02.2010 titled '*The State of Haryana and others Vs. Vijay Singh*'. Order dated 08.02.2010 reads as under:-

“1. This appeal has been preferred against judgment of learned Single Judge, directing counting of service rendered by the respondent/writ petitioner in an aided school, prior to his joining Government School, for retiral benefits.

2. The respondent served from 1972 to 1989 in an aided school and was, thereafter, selected in a Government school and he retired from service on 31.03.2006. His service with the aided school prior to joining Government service was not counted, against which he filed writ petition, which was opposed by the State, relying on Rules 3.12 and 3.16 of the Civil Services Rules, Vol.-II.

3. Learned Single Judge relying upon Division Bench judgment of Rajasthan High Court in **Union of India and others V. Jawahar Lal Sharma** 2003 (3) RSJ 672 and Division Bench judgments of this Court in **Harnandan Singh V. State of Punjab and others** 2007(2) RSJ 437 and **Charan Singh v. State of Punjab and others** 2006(6) SLR 624 and also after referring to judgment of the Hon'ble Supreme Court in **Chander Sain v. State of Haryana and others** AIR 1994 SC 972, allowed the claim of the petitioner.

4. We have heard learned counsel for the appellants and perused the record.

5. Learned counsel for the appellants states that only distinction in the judgments relied upon by learned Single Judge and the present case is that while in those cases, the institutions were taken over by the State while in the present case, the petitioner himself left the earlier service and joined the State service and hence, past service in an aided school cannot be counted for retiral benefits.

6. We are unable to accept the submission in view of judgments referred to above. Past service in an aided institution has to be counted for pension, which principle will also apply even when the employee himself leaves the earlier service and joins the Government service. Admittedly, service in aided institution is pensionable and if employee continues in such

institution, he gets benefit of such service. Liability is substantially born by the State. There is not ground to deny the said benefit when the employer switches over the Government service.

7. *Accordingly, the appeal is dismissed.”*

6. It is not disputed that the SLP bearing No. 13909 of 2010 ‘*State of Haryana and another Vs. Vijay Singh and another*’ was dismissed on 12.05.2010. LPA No.1487-2019 preferred by the State in Uma Devi’s case was dismissed on 27.01.2020 by a Coordinate Bench by noting the fact that Shyam Kumar’s case has also been discussed by the Apex Court on 21.04.2011 and that too orders have already been implemented in compliance of the judgments, resultantly, the appeal was dismissed.

7. In such circumstances, counsel for the State cannot be in any position to argue to the contrary once the matter has repeatedly been taken to the Apex Court but without any success.

8. For the reasons given above, there is no merit in the present appeal. Dismissed.

9. Pending application(s) if any, shall also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

April 25, 2024
vandana

Whether speaking/reasoned:	Yes
Whether reportable:	No