

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

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**CWP No.7296 of 2015
Date of Decision : 13.2.2024**

*Amit Jain and others**..... Petitioners**versus**State of Haryana and others**..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Kanwal Goyal, Advocate,
Mr. Paramjit Singh, Advocate and
Mr. Govind Tanwar, Advocate, for the petitioners

Ms. Tanushree Gupta, DAG, Haryana

TRIBHUVAN DAHIYA J.:

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing letters dated 28.10.2013 and 12.9.2014, Annexures P-8 and P-9 respectively; and a writ of *mandamus* directing the respondents to count the petitioners' previous service rendered in their respective government aided schools/respondents no.6 to 8, as qualifying service for pension and other retiral benefits.

2. Facts of the case in brief are, the petitioners worked as Junior Basic Training (JBT) Teachers in schools which were getting grant-in-aid from the State Government, details whereof are as under:

Petitioner no.1 with respondent no.6 from 4.1.2003 to 4.9.2008;
Petitioner no.2 with respondent no.6 from 11.7.2000 to 4.9.2008;
Petitioner no.3 with respondent no.7 from 1.2.2005 to 3.9.2008;
Petitioner no.4 with respondent no.8 from 26.4.1999 to 4.9.2008.

While working in their respective aided Schools, the petitioners applied for the posts of JBT Teachers in the respondent Department of Elementary Education. They were selected as regular JBT Teachers and issued letters of appointment dated 2.9.2008, Annexures P-1 to P-4.

2.1. On being offered appointment in government service, the petitioners resigned as JBT Teachers in the respondents/Schools. Their resignations were duly accepted by the competent authority and were relieved from service on 3/4.9.2008 in the afternoon. It was duly recorded in their respective service books that the resignation letters had been given in time with prior information due to appointment in government service.

2.2. After getting relieved, the petitioners joined the Department as JBT Teachers at the respective places of postings on 4/5.9.2008 in the forenoon, and are still working there. Their claim for giving pensionary and other retiral benefits by counting the service rendered in government aided schools was rejected, vide impugned order dated 28.10.2013, on the ground that they were not in service in the aided schools on 11.5.1998. Another reason cited for not counting the service was, their case was not covered under Finance Department's Instructions dated 31.5.2011, Annexure P-7.

2.3. In this background, the petitioners approached this Court by filing the instant petition.

3. Learned counsel for the petitioners has contended that the cut-off date of 11.5.1998, as prescribed under the Haryana Aided Schools (Pension and Contributory Provident Fund) Rules, 1999 (in short 'the 1999 Pension Rules') has no application to the petitioners' case. It is because all the petitioners joined service in the aided Schools after this

date, and they are entitled to previous service benefit under the Rules meant for Department employees. Secondly, the Instructions, dated 31.5.2011, stipulate that the past service rendered by an employee in government aided establishment before appointment in government institutions, will entitle him/her to benefit under the 1999 Pension Rules from the date these Rules were made applicable, i.e., 11.5.1998. Since the petitioners joined services subsequent to this date, no benefit can be denied to them relying upon these Instructions. Accordingly, both the grounds of rejection are not sustainable. It is further contended that the respondents are not allowed to come up with a new ground, mentioned in the written statement, to deny the benefit that, as all the petitioners had resigned from previous service, they would not be entitled to benefits under the 1999 Pension Rules. Even this ground is not available since the petitioners tendered their resignation with proper permission to take permanent appointments in the Department. Their case for grant of benefits is covered under Rule 4.19 (b) of the Punjab Civil Service Rules, (as applicable to Haryana) Vol. II, Chapter-IV (in short 'the Civil Service Rules'). Lastly, he has referred to an office order dated 31.5.2017, Annexure P-23/A, whereby the respondents have granted sanction to count past service of a similarly situated employee, namely, Niranjan Kumar Sharma, PGT-English, rendered in DAV Senior Secondary School, Ambala Cantonment from 3.6.1999 to 26.6.2014, towards pension. Therefore, denial of benefit to the petitioners is discriminatory and arbitrary.

4. Learned State counsel, on the contrary, contends that the impugned orders have been rightly passed and the petitioners are not

entitled to get retiral benefits for the service rendered in government aided schools since they had resigned from their posts, which would lead to forfeiture of service in terms of Rule 4.19 (a) of the Civil Service Rules.

5. Heard.

6. It is not in dispute that all the petitioners were working in the government aided privately managed schools as JBT Teachers against aided sanctioned posts on permanent basis. While in service they applied for the post of JBT Teacher in the respondent-Department, and were duly selected. Before joining on the posts, the petitioners tendered resignation from the aided Schools they were working in for joining government service, and were duly relieved from their posts on 3/4.9.2008 afternoon. Without any break they joined service in the Department, and are working there ever since.

7. The impugned orders rejecting the petitioners' claim for counting previous service in the aided Schools, has been passed on unfounded and baseless grounds. The first ground of rejection is that they were not in service in the aided Schools on cut-off date, 11.5.1998, to be entitled to previous service benefits. This is illogical, and a glaring example of non-application of mind to the facts of the case. The cut-off date has no relevance for the petitioners' claim, nor could have it been rejected on that basis. This date decides applicability of the 1999 Pension Rules to employees of aided Schools claiming pension thereunder. Rule 3 of the Rules reads as under:

3. Application:- (1) Except as otherwise provided in any rule, and Subject to the condition that the Managing Committee of Aided College, executes an agreement in Form-I, duly supported by a resolution of the Managing Committee to abide by the provisions of

these rules and undertaking of the employee in Form-II and instructions, issued by the Department from time to time, these rules shall apply to all the employees, who –

(a) are appointed to the aided sanctioned post on or after the 11th day of May, 1998; and

(b) were working on aided sanctioned posts immediately before the 11th day of May, 1998 and continue to work as such thereafter.

Provided that the employees appointed to the aided sanctioned posts:-

(i) Before the 11th day of May, 1998 who have attained or will attain the age of superannuation on or after that date (hereinafter referred to as “existing employees”); and

(ii) On or after the 11th May, 1998 and before the publication of these rules shall have the right to exercise option as to whether to be governed by these rules or not within a period of three months from the date of publication of these rules in the Official Gazette.

Accordingly, it is stipulated that these Rules will be applicable to aided school employees appointed on aided sanctioned posts on or after 11.5.1998. Concededly, the petitioners were appointed on the aided sanctioned post after this date, between 1999 to 2005, and joined government service as regular JBT teachers in the Department on 5.9.2008. Hence, being government employees they are entitled to retiral benefits, including pension, under the Civil Service (Pension) Rules. Their case for counting previous service rendered in the aided Schools is also to be decided with reference to these Rules or instructions issued thereunder, and not the 1999 Pension Rules which are meant for employees of aided schools.

8. The second ground of rejection, as mentioned in the impugned order, is Instructions dated 31.5.2011. These instructions have been issued for counting past service rendered in government aided schools/colleges

before appointment of employees in government establishments; its relevant part reads as under:

5. The whole issue has been re-examined in the light of above mentioned facts and it has now been decided to allow the benefits of past service rendered by an employee in government aided establishment before these were taken over or service rendered in aided establishment before appointment in Government Institutions. This will be applicable to those who are covered under the Haryana Aided Schools (Pension and Contributory Provident Fund) Rules, 1999 and Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 and entitled to the benefits of pension. This benefit will be subject to the following conditions:-

1. That the offer will be optional and applicable only to those employees who agree to refund the Management Share (before the date of taking over of the Colleges/Schools by the State Government alongwith 10% annual compound interest). This amount can be deducted from their gratuity and they will give an undertaking to this effect that if the amount of Contributory Provident Fund is more than gratuity payable to them, then the pensioners will deposit the excess amount in Government Treasury.

2. That if a retired Government employee opts for this benefit he shall deposit the share of contribution made by the Management alongwith 10% annual compounded interest (upto the date of depositing), in lump sum in Government Treasury.

3. That these benefits will be made effective in respect of the employees of the taken over Colleges/Schools from the date of Pension Scheme made applicable in Private Aided Colleges/Schools i.e. with effect from 11.5.1998.

8.1. There is no stipulation in the Instructions which could deny counting of past service for retiral benefits to the employees, like the petitioners; rather, it entitles them to the benefit claimed. As per the Instructions, benefits of past service will be admissible for the service rendered in aided establishment before appointment in government

Institutions to those who are covered under the 1999 Pension Rules, from the date pension scheme was made applicable in aided colleges/schools, i.e., from 11.5.1998. The petitioners were undoubtedly covered under the 1999 Pension Rules in terms of Rule 3 having being appointed on aided posts after 11.5.1998, when the scheme was made applicable. Had the petitioners continued in service of the aided Schools, they would have been entitled to pension under these Rules. Accordingly, the benefit becomes admissible to them, subject to deposit of employer's share of Contributory Provident Fund (CPF) etc.

9. The third, new ground, for declining to count the petitioners' previous service mentioned in the written statement, which does not find mention in the impugned order is, that all the petitioners had resigned from their posts in aided Schools, which led to forfeiture of entire service and no benefit for it can be extended. This being an additional ground, can provide no justification to the impugned letters/orders. The law in this regard is well settled by the Supreme Court in *Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others*, (1978) 1 SCC 405, that when an order has been made by a statutory authority on certain grounds, its validity must be judged by the reasons mentioned therein, which cannot be supplemented later by new reasons. The relevant paragraph of the judgment reads as under:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the

observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at P.18).

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older.

In view of the law laid down, the additional ground for rejecting the petitioners' claim taken by the Department in the written statement is not sustainable, and cannot be looked into.

10. Lastly, it cannot be lost sight of that the respondents themselves have counted previous service of another employee rendered on aided sanctioned post in a privately managed government aided school from 3.6.1999 to 26.6.2014 as qualifying service towards pension, vide office order dated 31.5.2017. The petitioners are similarly placed, as they have also rendered service between April 1999 to February 2005 on aided sanctioned posts. The respondents cannot be permitted to maintain double standards. Not giving the benefits to the petitioners, and at the same time releasing the same to another similarly placed employee, amounts to discrimination and shows arbitrary functioning of the Department.

11. For the reasons recorded above, the petition is allowed. The impugned letters, dated 28.10.2013 and 12.9.2014, are hereby set aside. Respondents no.1 to 3 and 5 are directed to count the petitioners previous service rendered in government aided Schools as qualifying service for retiral benefits, including pension, and pass appropriate order to that effect

within four weeks of receiving a certified copy of this judgment. The said respondents, who rejected the petitioners’ legitimate claim on unfounded and baseless grounds, in blatant violation of Rules in a discriminatory and arbitrary manner, are also saddled with costs which are quantified as ₹50,000 (Rupees Fifty Thousand) to be paid to each of the petitioners within the period stipulated hereinabove. The respondents shall be at liberty to fix responsibility of the erring official(s) in issuing the impugned letters, and recover the costs from him/her, in accordance with law.

(TRIBHUVAN DAHIYA)
JUDGE

13.2.2024
Ashwani

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