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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8306-2015 (O&M)
Date of Decision: 07.03.2024

DAYA RANI

...Petitioner

Vs.

STATE OF HARYANA AND ORS

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.K. Kaushik, Advocate for the petitioner.

Ms. Vibha Tewari, AAG, Punjab.

HARSIMRAN SINGH SETHI, J. *(Oral)*

1. In the present petition, the petitioner is claiming retiral benefits after retiring from the post of Craft Teacher while working in the Panchayat Samiti, Thanesar.

2. As per the averments made in the petition, the petitioner started working as Craft Teacher with the respondent/Panchayat Samiti in the year 1979 and retired from the same Samiti from the same post in the year 2014. After the retirement, the petitioner has been seeking the retiral benefits such as gratuity, leave encashment, pension, but, the said benefits have not been extended to the petitioner on the ground that the post of Craft Teacher is not a pensionable post.

3. Learned counsel for the petitioner argues that the other Craft Teachers, who have retired from the Punjab Samiti have already been given the same benefits as being claimed in the present petition, copy of which are appended as Annexures P-3 to P-5 hence, taking a contrary plea of

declaring the petitioner “not eligible” to get the pensionary benefits, is arbitrary and illegal.

4. Upon being issued notice of motion, the respondents have appeared and contested the claim of the petitioner that the post available with the Punjab Samiti, Thanesar is not a pensionable post, but, it has been conceded that certain employees similarly situated as the petitioner have been given pensionary benefits but, on the directions of the competent Court of law.

5. I have heard counsel for the parties and have gone through the record with their able assistance.

6. The only question which arise in the present petition is whether, keeping in view the facts that the other Craft Teachers and the employees of the Panchayat Samiti have been extended the pensionary benefits, the same is liable to be extended to the petitioner or not.

7. It has already come on record that another Craft Teacher namely Saroj Bala, after her retirement on 28.02.2011, has been extended the pensionary benefits. Similarly, one Sunder Devi, who was also being denied the pensionary benefits, approached this Court in **CWP No. 20123 of 2014 titled Sunder Devi and another Vs. State of Haryana and others decided on 18.10.2019** and during the pendency of the said petition, the said Sunder Devi has also been extended the pensionary benefits.

8. Further, the question as to whether, the employees of the Panchayat Samiti are entitled for the grant of pensionary benefits or not has also been decided by the Coordinate Bench of this Court while passing order in **CWP No. 7778 of 2013 titled Hanuman Vs. State of Haryana**

<u>and others decided on 16.01.2020</u> wherein, the employee of a Panchayat Samiti has been held entitled for the grant of pensionary benefits. The relevant paragraph No. 6, 7 & 8 are reproduced as under:

> *6. In the reply, it is not denied that Section 15(1) above would come into operation in case the same is not covered by the 1961 Act. The only objection raised is that the petitioner was never absorbed in the Government and the petitioner continued to work in Panchayat Samiti and retired as such. Further, the Panchayat Samiti is dependent upon its own sources and, therefore, is not liable to pay pension. However, the said argument does not help. Section 15(1) specifically states that members of the service of Punjab Panchayat Samitis and Zila Parishads shall be governed by the provisions of the Punjab Civil Services Rules and it is not denied that Punjab Civil Services Rules also include Pension Rules which allows pension, gratuity and leave encashment.*
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> *7. This Court in the case of Shardha Ram @ Bashir Ahmed vs The State of Haryana and others in CWP No.10051 of 1992 decided on 05.03.2012, while allowing to grant pension to petitioner, who was a Chowkidar and was treated as an employee under the Punjab Samiti and retired as such on 03.09.1991 was held to be entitled to the pension, gratuity and leave encashment. The argument that he was allowed pension as he was subsequently held an employee of State Government as the said employee was absorbed in the office of Deputy Commissioner does not help. In the said case, the instructions dated 24.11.1991 were invoked in order to grant the benefit of previous service in the Panchayat Samiti towards pension and gratuity. In the present case, Section 15(1) of the 1965 Rules makes it clear that the Punjab Civil Service Rules are applicable to the Panchayat Samiti. The applicability of Punjab Civil Service Rules to the petitioner is not denied either in the reply or before this Court.*
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> *8. Hence, this Court does not find any bar in granting the claim of the petitioner. The petition is accordingly allowed. In case, the amount of CPF has been received by the petitioner at the time of his retirement, the same be refunded alongwith interest and the same be adjusted against arrears of the pension payable*

to the petitioner.

9. A bare perusal of the above reproduction would show that by a categoric pronouncement, the employees of Panchayat Samiti have been held entitled for the pensionary benefits.

10. Learned counsel for the respondent has not been able to rebut the said fact. Keeping in view the above mentioned position, where, the respondent themselves have granted the pensionary benefits to the other Craft Teachers and the entitlement of the employees of the Panchayat Samiti to the retiral benefits has already been upheld while passing the order in **Hanuman's case (Supra),** denial of the said benefit to the petitioner is totally arbitrary, illegal and in fact discriminatory.

11. It may be noticed that the Panchayat Samiti considered the claim of the petitioner and pass a resolution vide (Annexure P-14) dated 08.03.2019 holding that that the petitioner is entitled for the grant of pensionary benefits but sent the case to the Government for approval. It is only that the Government has not granted the approval, the Panchayat Samiti has not paid the retiral benefits, despite allowing the same. Once the Panchayat Samiti is an employer and has passed the resolution accepting the claim of the petitioner for the grant of pensionary benefits, no approval was required to be taken from the Government hence, even otherwise, once the employer of the petitioner has already found the petitioner entitled for the pensionary benefits, the respondent should have released the same without waiting for the approval of the government.

12. Resultantly, the claim of the petitioner for the grant of retiral benefits, as extended to the other similarly situated employees is allowed

and the respondents are directed to release all the pensionary benefits, which have been released in favour of the other Craft Teachers namely Saroj Bala, Sunder Devi as well as Hanuman.

13. As the respondents have not released the pensionary benefits after the retirement and the petitioner is litigating the same for the last 10 years, the petitioner will also be liable for interest on the arrears/arreas of the pensionary benefits which will be released to the petitioner, keeping in view the judgment of the Coordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355**, wherein it has been held that where an amount belonging to an employee, has been retained and used by the respondents, upon the release of the said amount, on a later date, the interest has to be given. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

> *"The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."*

14 The respondents are directed to release all the pensionary benefits for which the petitioner becomes entitled by this order, within a period of 08 weeks of the receipt of the certified copy of this order.

15. At this stage, learned counsel for the petitioner submits that as the petitioner is entitled for the grant of benefit of 3rd ACP which was not

granted to him, hence, liberty be granted to the petitioner to approach the Department by way of appropriate representation to claim the benefit of 3^{rd} ACP and the respondents be directed to decide the said represntation as expeditiously as possible.

16. Ordered accordingly.

17. The present petition is allowed in the above terms.

Any civil miscellaneous application pending if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)
(JUDGE)

07.03.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No