

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

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CWP-4473-2017 (O&M)
Date of decision: 23.04.2024

Naresh Kumar and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Ms. Ramandeep Kaur, Advocate for
Ms. Himani Gupta, Advocate for the petitioners.

Mr. Swapan Shorey, DAG, Punjab.

AMAN CHAUDHARY, J. (Oral)

1. The prayer made in the present petition is for directing the respondents to consider the claim of the petitioners for grant of pensionary benefits by taking into account their entire service including that rendered against aided post as well till their retirement and a further prayer for granting arrears alongwith interest @ 18% compound interest from due date.

2. Learned counsel submits that the petitioners were initially appointed as Masters/JBT Teacher against aided post in Govt. Aided School. Thereafter, their schools were taken over by the Govt. between 1989 to 1997, Annexure P-1. However, the services which had been rendered by them therein were not counted as qualifying for pensionary benefits, leading to filing of the present petition. The said prayer stands accepted by the Department, a reference in which regard is made to para No.5 of the written statement, which reads thus:

“5. That So for as the claim of the petitioners for counting service rendered by them in Aided Schools, towards pay fixation and other benefits in concerned, the answering deponent has carefully gone through the provisions contained in the relevant Chapter dealing with the pay fixation in Punjab Civil Service Rules, Judgments delivered by Hon'ble Punjab

and Haryana High Court and available official record pertaining to such matter. A perusal of Judgments of the Hon'ble High in case of Harnandan V/S State of Punjab and Charan Singh V/S State of Punjab revealed that, the service on aided post has been counted only for the purpose of pensionary benefits and not for any other purpose. In another case that relates to the State of Punjab, CWP No. 14238 of 1991 titled as **Sukhdev Singh and others V/S State of Punjab**, the Hon'ble Court directed to the respondents to count the service rendered by the petitioners in Government Aided Privately Managed against post duly sanctioned under Grant in Aid Scheme towards their, 'qualifying service' for pension subject to certain condition. Hence, the petitioners are not entitled for benefits of interest."

3. The operative portion of **Sukhdev Singh and others vs. State of Punjab and others**, 2010(7) SLR 772, reads thus:

"8. Before advertng to the cited decisions relied upon by learned counsel for the parties, it may be noticed here that had the petitioners continued to serve in the Government-Aided Privately Managed Schools, they would have got the retiral benefits like the pension and gratuity subject to, however, fulfillment of the eligibility conditions laid down in 'the 1992 Scheme'. Similarly, the service rendered by them in the Education Department, Government of Punjab, after resigning from the Government Aided Privately Managed Schools, is also a 'qualifying service' for the purpose of pension under Rules 3.16 read with Rules 3.17, 3.17A, 3.30 & 3.31 of the Punjab Civil Services Rules (Vol. II) (hereinafter referred to as the 'CSR').

9. Rule 3.16 of the CSR provides that 'service' of a Government Employee does not qualify for pension unless he is appointed and his duties and pay are regulated by the Government or under the conditions determined by the Government. Note-I thereto excludes certain services including of a Municipality or the Grant-in-Aid Schools and Institutions, for the purposes of pension. Rule 3.17 contemplates that an employee holding substantively a permanent post on the date of his retirement, would be entitled to pension after including the 'temporary' or 'officiating' service rendered by him, towards 'qualifying service', except such temporary or officiating services in nonpensionable establishment or when it is paid from the contingencies. Initially, the period of service rendered in the work-charged establishment was also excluded for the purpose of pension but the provision to that effect was struck down by a Full Bench of this Court in **Kesar Chand v. State of Punjab and others**, (AIR 1988 Punjab & Haryana 265).

10-11. Rule 3.17A provides that all services rendered on establishment, interrupted or continuous, shall count as qualifying service except in the cases mentioned below,

including the service rendered in work-charged establishment or paid from contingencies. Rule 3.30 describes the 'service' which satisfies the conditions for its inclusion as a 'qualifying service' and it is apparent from Rule 3.31 that those services which are paid from the Government Revenue qualify for pension. To be more explicit, the service not paid from the Government Revenue or paid from the funds in respect to which the Government holds the position of a Trustee or paid by fees levied by law or under the authority of the Government or by Commission or by the grant in accordance with law or custom of a tenure in land, or of any source of income or right to collect money or paid from local funds, does not qualify for pension. Rules 3.16, 3.17, 3.17A, 3.30 and 3.31 (relevant extracts only) read as follows :-

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15. The respondents have nowhere averred that the financial aid under the Grant-in-Aid Scheme is not provided to the Schools/Institutions out of the State Revenue. The service rendered by an employee of the Government Aided School/Institution against a sanctioned post under the Grant-in-Aid Scheme and subject to fulfillment of other eligibility conditions as laid down in 'the 1992 Scheme', shall have to be counted towards qualifying service for the purposes of 'pension' under Rule 3.16 read with Rule 3.17 of the CSR (Volume- II).

16. In **State of Punjab and others v. Dev Dutt Kaushal and others**, 1995(4) S.C.T. 575 : AIR 1996 Supreme Court 85, the pensionable service rendered in a private college which was taken over by the Government and the teachers working therein were absorbed in the Government service, was held to be 'qualifying service' for the purpose of pension under the Government.

17. In **Chander Sain v. State of Haryana**, 1994(2) S.C.T. 102 : 1994 (1) SCC 750, also the service rendered in a Government-Aided-Private College which was later on taken over by the State of Haryana, was held to be countable towards pension, keeping in view the terms and conditions laid down while taking over the said College.

18. In **Charan Singh v. State of Punjab and others**, 2006(4) S.C.T. 151 : 2006 (6) SLR 624, a Division Bench of this Court took the same view and placed reliance on the above-cited two decision of the Supreme Court.

19. In **Harnandan Singh v. State of Punjab**, 2007 (1) SCT 514, the service rendered in a Privately Managed Government Aided School before it was taken over by the State Government, was permitted to be computed towards pensionary benefits in terms of 'the 1992 Scheme'.

20. The above stated decisions are the cases where the Privately Managed Government Aided Institutions were later on taken over by the State Government alongwith the staff. The uninterrupted service in the same Institution before and after

taking over by the State Government was pensionable and therefore, it was ruled that the service rendered with the Institution before it was taken over by the State Government, was also the 'qualifying service' for the purpose of pension and other retiral benefits.

21. 2009(4) S.C.T. 32 : Civil Writ Petition No. 16817 of 2007 (**Vijay Singh v. State of Haryana and others**), decided on 22.7.2009, is an instance where the writ petitioner was serving in a Government Aided Privately Managed School before he resigned and joined the Education Department, Government of Haryana. A Co-ordinate Bench accepted his claim for counting the service rendered by him in the Government Aided Privately Managed School for the purpose of pension etc. on the premise that had he continued to serve on the said post in the Government Aided Privately Managed School, he would have been entitled to count his entire service for the purpose of pension and other retiral benefits.

22. As has already been held that after 'the 1992 Scheme' came into force retrospectively w.e.f. 1987, Rule 3.16, Note-1 (Sr. No. 2) is deemed to have been omitted and/or relaxed and the service rendered by the Teachers like the petitioners, subject to fulfillment of the conditions laid down in Pension Scheme 1992 itself, would be countable as 'qualifying service' towards pension etc. in Government service.

23. For the reasons afore-stated, the writ petitions are allowed and the respondents are directed to count the services rendered by the petitioners in Government Aided Privately Managed Schools against the posts duly sanctioned under the Grant-in-Aid Scheme, towards their 'qualifying service' for pension subject to however, following conditions :-

(1) The respondents shall call upon the petitioners to furnish their exact service particulars in respect of the service rendered by them in the Government Aided Privately Managed Schools. Such an information shall be called within a period of two months from the date of receiving a certified copy of this order and the petitioners shall furnish the same within one month thereafter;

(2) The respondents shall also call upon the records of the Government Aided Privately Managed Schools and verify as to whether or not the petitioners have served in such Government Aided Schools against the posts duly sanctioned;

(3) The respondents shall be at liberty to ascertain as to whether or not the petitioners had resigned from the Government Aided Privately Managed Schools to enable them to join the Government service;

(4) The insignificant or small break between the two services shall be condoned in terms of Rule 7.5 (3) of CSR (Volume-I);

(5) The benefit of service rendered in Government Aided Privately Managed Schools shall be extended strictly as

per the terms and conditions contained in 'the Pension Scheme 1992';

(6) If some of the petitioners who are still in service are found to be not entitled to the benefit of their previous service in Government Aided Schools, necessary speaking orders to this effect shall be passed by the respondents;

(7) This order shall not be construed to mean acceptance of claim of the petitioners to count the service rendered by them in Government Aided Privately Managed Schools, towards their seniority, proficiency step-up or ACP etc. as the claim in the present writ petitions is confined qua pensionary benefits only;

(8) The entire exercise including the payment of consequential arrears shall be completed as early as possible, preferably within a period of one year from the date of receiving a certified copy of this order.”

4. Learned State counsel, despite his best efforts, has been unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

5. In view of the aforesaid, the present petition is disposed of in terms of the judgment passed in **Sukhdev Singh** (supra).

(AMAN CHAUDHARY)
JUDGE

23.04.2024
Hemant

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