2025:PHHC:013672

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-21743-2016 (O&M).
Date of Decision: 29.01.2025.

K.L. SHEORAN

... Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Rajiv Sharma (Hisarwale), Advocate and
Ms. Indu Bala Sharma, Advocate,
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Challenging the order dated 08.04.2016 (Annexure P-5) whereby the claim of the petitioner for counting the past service rendered in Government Aided College w.e.f. 10.08.1981 to 24.03.1989 towards pension and pensionary benefits has been rejected, the petitioner has approached this Court.

2 Briefly summarized, the facts of the present case are that the petitioner was appointed as Lecturer (English) in All India Jat Hero's

Memorial College, Rohtak and joined as such on 10.08.1981. He served as Lecturer till 23.03.1989. The above All India Jat Hero's Memorial College, Rohtak is a Government Aided Privately Managed College and receives 95% grants in Aid from Government of Haryana, Department of Higher Education. It is stated that the Haryana Public Service Commission advertised posts of HCS (Executive & Allied) for which the petitioner applied through a proper channel. On completion of the selection process, the petitioner was found suitable and was recommended for the post of Assistant Excise & Taxation Officer in the Excise & Taxation Department, Haryana.

3 Consequent upon his selection, the petitioner was relieved from the college vide order 24.03.1989 and he joined the Haryana Govt. Service. On the basis of the seniority and merit, he was eventually promoted in his hierarchy and rose up-to the rank of Deputy Excise & Taxation Commissioner. The petitioner thereafter submitted an application with the respondent authorities for counting his past service rendered by him as a Lecturer with the All India Jat Hero's Memorial College, Rohtak towards pension and pensionary benefits and submitted his certificate dated 04.08.2012 obtained from College about the service rendered by him. On attaining the age of superannuation i.e. 58 years, the petitioner stood retired on 31.01.2013 and was paid pension and other pensionary benefits by considering the qualifying service w.e.f. 24.03.1989 to 31.01.2013 i.e. 23 years 10 months and 7 days. The service rendered by the petitioner as

Lecturer in Government Aided College w.e.f. 10.08.1981 to 23.03.1989 i.e. 7 years 7 months 13 days was however not counted towards pension and other pensionary benefits.

4 It is pleaded that vide Office Memorandum dated 07.01.2002, issued by the Finance Department, Government of Haryana, bearing Memo No.1/2(4)- 96-2FR-II, the service rendered in an Autonomous Body (Statutory Body) under Haryana Government or seeking absorption in State Autonomous Body or Vice-Versa is to be counted for the purpose of pension. It is averred that the respondents did not pay any heed to the requests made by the petitioner for giving admissible benefits despite repeated reminders and later denied the same vide order dated 08.04.2016 on the ground that petitioner was not in service of a Govt. Aided College on the cut-off date of pension scheme i.e. 11.05.1998 and was hence not eligible for availing benefits of the said service in terms of Rule 3 of Haryana Aided College (Pension and Contributory Fund) Rules, 1999.

5 It is averred that the respondents State had notified the Rules called the Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 that were published in Haryana Govt. Gazette dated 24.01.2001 effective from 11.05.1998. Under the said Rules, the benefit of counting past service was allowed to the employees appointed against aided sanctioned posts on or after 11.05.1998 and to those who continued to work

on aided sanctioned posts immediately before 11.05.1998 and continue to work as such.

6 Reliance is also placed on certain precedent judgments to substantiate his case for entitlement to computing the said period for grant of pension and also on the notification whereby another employee with the respondent-Department, namely Baljeet Singh, Dy. Excise and Taxation Commissioner (Retd.), had been granted the benefit of past service rendered by him with the Maharishi Dayanand University Rohtak w.e.f. 28.8.1978 to 15.04.1989 towards his pension and other pensionary benefits vide order dated 20.08.2010. It is argued that the petitioner has been discriminated and that the admissible benefits wrongly and illegally had not been extended to him ignoring the legal position.

7 Responding to the above, learned counsel for the respondent State referred to the written statement filed on behalf of the respondents wherein the factual matrix noticed above is not in dispute. It is, however, submitted that the claim of the petitioner for counting his past service rendered in Government Aided privately managed College/Institution was not considered and vide order under challenge, the petitioner was not found entitled to the grant of such benefits. He contends that a specific cut-off date has been prescribed in the Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 and that the said cut-off date was challenged by various similarly placed employees before this Court by filing

a writ petition (CWP-1618 of 2000) which was dismissed by this Court after considering the settled position in law. Aggrieved thereof, the LPA No.1469 of 2003 and LPA No.138-2005 had been preferred before the Division Bench and the same have also been dismissed on 30.08.2010. The said orders have attained finality. It is thus argued that as on the prescribed cut-off date i.e. 11.05.1998, the petitioner was not in service having joined the Department of Excise and Taxation on 24.03.1989 i.e. much before the promulgation of the aforesaid Rules of 1999. It is contended that the petitioner would not be eligible even in terms of the notified rules as also the instructions/notification cited by the petitioner to substantiate his case.

8 Learned State counsel further contends that so far as the case of some of employees namely Balbir Singh Rathee and Sh. Devender Kumar is concerned, the said CWP-15932-1993 and CWP-13301-1999 relate to an incident wherein the petitioners were serving in a privately managed aided school before they were taken over by the Department of Education itself, hence, they were taken in the service of the Department and that there was no break in their services and they continued to serve in the said Institutions which had been taken over. Thus, they would fall in the category of employees who were merged in the Government itself and were serving soon before 11.05.1998.

9 In response to the case of similarly situated employees in the Department of Excise and Taxation, namely Baljeet Singh, it is contended

that the said employee was working with the Maharishi Dayanand University, Rohtak, which is a State instrumentality and is not a privately managed and state aided institution. Hence, it was not a case of shifting from any private body to public service, rather, he was part of the State establishment even prior thereto. Reference is also made to the documents that have been appended by the petitioner with the instant petition to contend that the said judgments are not applicable to the facts of the present case. While responding to the judgments of ***Vijay Singh Vs. State of Haryana and others passed in CWP-16817-2007 decided on 22.07.2009***, it is contended that in the said case, the petitioner was working as Head Master in the Haryana Education Department. It is thus contended that the services with the department continued and as a result thereof, the benefits were given on the parameter that there had been no break in the overall service rendered in the parent department. It was also specifically noted that service in the said aided institutions was pensionable and had the employee continued in the said institution, he would have nonetheless been vested with the benefit of such service for grant of pension whereas in the present case, the petitioner had severed his relationship with the earlier service and had accepted a fresh appointment in another Department i.e. the Department of Excise and Taxation, hence, there was no continuity. Referring to the judgment in the matter of ***Dharamvati Vs. State of Haryana and others, passed in CWP-8429-2010 on 10.05.2010***, counsel contends that the facts of the said case are at par with the case of ***__Vijay Singh (supra) as well as Raj Kali Vs. State of Haryana and others, CWP-3932-2011 decided on 06.09.2012.__***

10 While referring to the instructions issued by the respondent-State for counting the past service rendered in the govt. aided schools/ colleges, before the same were taken over by the Government establishment in the light of various judgments, counsel contends that any reliance on such instructions is misplaced since the said issue pertains to the institutions where an employee was serving at the time when the institution had been taken over by the Government. He contends that the case of the petitioner does not fall in the said category to which the said instructions pertain and apply.

11 While rebutting the aforesaid argument, counsel for the petitioner contends that such an artificial classification is impermissible. Respondents would not be justified in saying that the benefit of past service in computing pension would be admissible to employees who have been absorbed and that such a benefit would not be extended to any other person who has been appointed in any other department. He further contends that the intention of the legislature was to extend the benefit to all persons who were working against the aided sanctioned posts and that is why there is no specified period prior to 11.05.1998 as has been specified thereunder. Every person who had worked against the sanctioned posts and continues to work as such thereafter, he would be entitled to the benefits of pension as well.

12 I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the present petition.

13 The entire issue in the present case revolves around the benefit of service that had been rendered by the petitioner in a privately managed college receiving grant-in-aid from the Government against a sanctioned post. The period during which the petitioner served is from 10.08.1981 and 24.03.1989 i.e. nearly 7 years and 7 months approximately. It is not in dispute that the petitioner joined the services with the Government of Haryana in the Department of Excise and Taxation as Assistant Excise and Taxation Officer on 24.03.1989. He thereafter retired from the Government Service in the year 2013 after having rendered more than 23 years of service in the Excise and Taxation Department. It is further undisputed that vide the Gazettee Notification dated 24.01.2001, the Government of Haryana, notified the Haryana Affiliated College (Pension and Contributory Provident Fund) Rules, 1999 that were made effective from 11.05.1998. Certain relevant provisions thereof are extracted as under:-

> *"The Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999.*
>
> *xxx xxx xxx*
>
> *1. Short, Title and Commencement.*
>
> *(2) They shall be deemed to have come into force with effect from the 11th day of May, 1998.*

2. Definitions.- In these rules, unless the context otherwise requires:-

(a) "aided college" means the college receiving grant-in-aid against duly sanctioned posts from the Higher Education Department Haryana.

(aa) "aided sanctioned post" means the post for which grant-in-aid is allowed by the Higher Education Department Haryana.

(b) "Act" means the Haryana Affiliated Colleges (Security of Service) Act, 1979 (Act 15 of 1979);

(c) "Department" means the Higher Education Department, Haryana,

Xxx xxx xxx

(k)" Service" means the service rendered under the provisions of the Haryana Affiliated Colleges Security of Service) Act, 1979 (Act 15 of 1979) and rules made there under;

(l) The words and expressions used in these rules but not defined, shall have the same meaning as assigned to them in the Haryana Affiliated Colleges Security of Service) Act, 1979 (Act 15 of 1979)

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 1, 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 the aided sanctioned posts immediately before 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 office Gazette.

(2) These rules shall not apply to :-

(i) the employees appointed on part-time basis against aided sanctioned posts;

(ii) the employees appointed against the posts not sanctioned by the Government;

(iii) the employees who retired from the sanctioned posts before the 11th day of May, 1998 and the employee who attained the age of superannuation before the said date except those who

have been given extension by the Department after the age of superannuation on sanctioned posts; and

(iv) the employees employed on a leave-gap arrangement or on adhoc basis or on contractual basis."

(emphasis supplied)

14 It would also be relevant to make a reference to the circular issued by the respondent State vide No.F.D Hr. U.O. No.6/2/1/2FD-II/87-A dated 31.05.2011 in supersession of the advise issued earlier by the Finance Department. The above said advise had been issued by the Finance Department after passing of the judgment in the matter of K.C. Thakur and others Vs. State of Haryana, CWP No.1618 of 2000, decided on 04.07.2003 as well as the subsequent decisions. Para 5 of the same is extracted as under:-

"5. The whole issue has been re-examined in the light of above mentioned facts and it is has now been decided to allow the benefit 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 Govt. Institutions. This will be applicable to those who are covered under the Haryana Aided Schools (Pension and Contributory Provident Fund") Rules, 1999 and Haryana Affillated 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 this 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 along with 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 Govt. Treasury.*
>
> *2. That if a retired Govt. employee opts for this benefit he shall deposit the share of contribution made by the Management along with 10% annual compounded Interest (upto the date depositing) In lump sum in Govt. Treasury.*
>
> *3. <u>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 11.5.98</u>."*

15 The aforesaid advise issued by the Finance Department dated 31.05.2011 was further modified vide Memo No.4/4-2001C-1(4) dated Panchkula 28.11.2011 as well and as per conjoint reading of the same, the petitioner's case does not fall under the category to whom the benefit was extended.

16 Having taken into consideration all the aforesaid aspects and specific provisions and the rules as also the reasons cited by the competent authority, it is evident that the case is being founded by the petitioner for claiming the said benefits by placing reliance on the rules of 1999 notified on

24.01.2001. The said rules undisputedly became effective from 11.05.1998. The factual position has also remained undisputed to the effect that the aforesaid cut-off date was challenged in various writ petitions before this Court and that the said writ petitions were dismissed. The order passed by the Single Judge of this Court was also upheld by the Division Bench in the Letters Patent Appeal.

17 Under the given circumstances, the cut-off date as prescribed having been come into force and being binding against the competent authorities remain undisputed. The contention of the petitioner that his case would be squarely covered under Section 3 (1) (b) of the Rules of 1999 (supra), however, fails to convince this Court. The requirement prescribed thereunder for a person to claim the benefit of past service rendered towards calculation of the pension is where a person was '<u>working against an aided sanctioned post immediately before 11.05.1998 and continues to work as such thereafter</u>.' These are the twin conditions being prescribed. Thus, the condition of working against the sanctioned post is coupled with continuity of said person being in the employment on such post even after notification of the said rules. When the facts of the present case are examined in the light of the aforesaid clauses, it remains undisputed that the relationship of the petitioner with the aided college had been severed on 23.03.1989 i.e. nearly 09 years prior to coming into force of the aforesaid provisions. Thus, it cannot be said that the petitioner was working on an aided sanctioned post

immediately before 11.05.1998. Even if the contention of the counsel for the petitioner that the word "immediately" has not been defined and, as such, it would not carry any sanctity, if taken into consideration for sake of consideration. I find that such an argument would not be in conformity with the intent.

18 The plain language of the Rule clearly suggests that the employment has to be immediately prior to 11.05.1998 and it is required to be followed in continuation to hold an employee entitled and eligible for grant of pensionary benefits for the past service under the said Rules. Undisputedly, the petitioner does not fulfill the twin conditions. The scope of the word "immediately" as used in Rule 3 (1) (b) has to be read also in context with the expression "continued to work as such" along with another expression used prior thereto i.e. "on an aided sanctioned post." The continuation to work thus has to be against the aided sanctioned post and not on any other post in the public employment.

19 Further, even though the word "immediately" may not have been defined, however, in the absence of any specific definition, the same has to be interpreted in light of what is to be understood to be a plain, simple and preliminary meaning of such word and has to be read in reference whereof such an expression has been used. Even though the word "immediately" is relative term on a scale of time, however, the time scale in the present case by no stretch of imagination be extended to hold that a gap of nearly 09 years

can be considered as an employment immediately before 11.05.1998. Such a construction and interpretation in the present case scenario would render the said expression meaningless. The position in law is well settled that the Legislature does not use any word which it does not intend to assign any meaning to or to be nugatory. Every effort must be made by a Court of law or a Constitutional Court, while assigning a meaning, to implement and effectively interpret such words so as to enforce the intent of Legislature. I am afraid that the argument as raised by the counsel for the petitioner and the interpretation as suggested renders the usage nugatory. Such an interpretation cannot be accepted at this juncture more-so when interpretation of the proximity and the direct linked continuation to such post have to be read in continuity and there is a necessity of the relationship to be prevailing for availing the said benefit.

20 In so far as reliance on the office Memo dated 07.01.2002 issued by the Finance Department is concerned, the same relates to counting of service of employees of the State Government on their appointment or absorption in an autonomous body under the Government of Haryana or from one autonomous body to another, both under the Government of Haryana. The college where the petitioner was employed is not an autonomous body as per the definition prescribed therein. The same is extracted as under: -

*"3. **Definition of Statutory Body/Autonomous Body**:-*

In order to be eligible for the benefits under this office memorandum, and employee must have rendered service in a state Autonomous/statutory body:-

(i) That has been created under a statue/Act of a State/Centre Government: and

(ii) Is financed wholly or substantially from the cess or central/State Got. Grants" Substantially" means that more than 50% of the expenditure of the autonomous bodies is met through cess or Central/State Govt. grants.

***Explanation**: A State Autonomous bodies includes a State University but does not include a Public Sector undertaking/ Public Enterprises/Company registered under the Company Act/Society registered under the Societies Registration Act/ and private bodied and managements"*

21 The said office Memorandum is thus not applicable to the petitioner.

22 Adverting to the contention that was raised by relying upon the F.D. Advise dated 31.05.2011 is concerned, the said advise had been issued in the context of counting of the past service rendered in a Government aided school/college before they were taken over before the appointment of an employee in the Government establishment in the light of the previous judgments.

23 The said advise has been confined to allowing the benefit of past service rendered by an employee in a Government aided establishment before the said establishment is taken over, for the services rendered in the said establishment on permanent basis. Hence, the said advise has been confined or restricted only to an employee in a Government aided establishment that had been taken over by the Government and not to any other establishment. Since there is an inherent continuity in the service rendered and the person opting is subsumed in the service of Government while working in the same establishment itself, hence, the benefit had been extended.

24 The petitioner cannot avail any advantage by relying on the aforesaid clause since the said advise/clause is not applicable to the petitioner. A parity can be asked for only in case the petitioner would have fallen within the category as prescribed under the said clause. The petitioner not falling in the said category and no challenge having been raised in relation to the similar benefits not being extended to other employee, the petitioner cannot claim that said provision ought to be supplanted to the petitioner for extending the said benefit as well. Such a process of referring to/reading into different schemes, different advisories and different categories of employees for extending the benefit of past service rendered, in the absence of any such challenge to the applicability of the same is impermissible. For claiming such a benefit, the petitioner is required to establish his entitlement for the extension of such a benefit, under the rules and regulations that are

applicable, to him and he cannot be permitted to claim that even though other instructions are not for the category of petitioner but still such benefit also ought to be extended to him.

25 It is in the context of the aforesaid financial advisory that had been issued on 31.05.2011 that the judgments relied upon by the petitioner gain significance. Undisputedly, all these cases relate to a situation where an employee was already serving in the aided schools against sanctioned posts which were later either taken over or their services were subsumed in the Government services. Thus, there was an inherent continuity and they did not severe their relationship with the parent organization so as to take an assignment with any other different organization.

26 Similarly, in the matter of ***Sukhdev Singh and others Vs. State of Punjab and others, reported as 2010 (7) SLR 772***, the petitioners therein were working as teachers in Government aided privately managed schools and thereafter they joined the Government Schools on their selection in Government service i.e. in the same Department. Hence, the factual matrix in context to the aforesaid judgment is clearly not applicable to the facts of the present case. It is also a settled position in law that benefits under the Financial Statutes/Rules and Regulations may be restricted by the State and that any act of prescribing a cut-off date for extending financial benefits cannot be held to be arbitrary or discriminatory as the decision has to be taken by the competent executive authorities after examining the fiscal health and

capabilities of the parties to disburse the said financial benefits. The petitioner having opted to severe his relationship with the erstwhile Government aided college and to have taken up an another appointment under department/organization, cannot thereafter contend that said benefit of service be extended to him despite gap of nearly nine years between the time of the petitioner resigning from the said service and taking up a different assignment and the pension rules having been notified.

27 Under the given circumstances, I fail to find that the reasons and arguments advanced by the counsel for the petitioner are convincing or meritorious and am of the view that there is no illegality or violation in the order that had been passed by the competent authority.

28 For the foregoing reasons, I find that the present writ petition is devoid of any merits. The same is accordingly dismissed. The order dated 08.04.2016 (Annexure P-5) passed by the competent authority is affirmed.

January 29, 2025. **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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