IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211 **CWP-14536-2013**
Date of Decision:28.04.2026

Shakuntala Kherata (Deceased) through LRs **…Petitioner(s)**

Versus

B.P.S. Mahila Vishwavidyalaya and others **…Respondent(s)**

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Varun Veer Chauhan, Advocate for the petitioner.

Mr. Karan Singh Sandhu, Advocate for respondent no.1

Mr. Aakash Singla, Additional Advocate General, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed *inter alia* seeking a writ of *mandamus* directing the respondents to grant interest on the delayed payment of retiral benefits to the petitioner.

2. Learned senior counsel contended that the petitioner was initially appointed as Senior Lecturer on 01.08.1972 in B.P.S. College of Education which was an aided institution of the Government of Haryana. After establishment of the University in 2006, the College became its constituent and the petitioner's services were also taken over by the University. She kept on working there and superannuated as Senior Lecturer with effect from 30.11.2007. The due retiral benefits of pension and leave encashment were

released to her after an inordinate delay on 02.04.2013 and 27.03.2023, respectively.

2.1. The second grievance of the petitioner is that one year period of his service with effect from 01.08.1972 to 01.08.1973 has not been counted as qualifying service for pensionary benefits on the ground that employer's share of Contributory Provident Fund (CPF) was not deducted from her salary. The respondents cannot refuse to count the said period of qualifying service in the light of law laid down by this Court in *S.M. Acharya* v. *State of Haryana and another*, 2008 (1) SCT 804.

2.2. The third grievance is with regard to salary for the study leave period. The petitioner was granted study leave from 05.10.1984 to 04.10.1987, and was paid salary also for this period. However, after about twenty-five years, the amount of salary was recovered from her retiral benefits in compliance of memo dated 20.04.2005, Annexure R-1/5, issued by third respondent, without giving any show cause notice or affording any opportunity of hearing. Accordingly, it is violative of the Principles of Natural Justice. Further, the period of study leave has not been counted as qualifying service for the purpose of pension, which is also contrary to law as the period has been taken into account for grant of increments. The aforementioned claims need to be allowed in view of settled law.

3. Learned counsel for the University did not dispute the facts aforementioned regarding the date of release of the benefits. He, however, submitted that the petitioner on her own started contributing towards CPF with effect from 01.08.1973, and failed to deposit the employer's share of CPF along with interest in the pension corpus of the University. This is the

reason her service period from 01.08.1972 to 01.08.1973 has not been counted as qualifying service for pension. He further submits that the benefit of leave encashment was not admissible to the University employees initially, and it was granted for the first time vide memo dated 08.12.2016, Annexure R-2, issued by the Department of Higher Education. Only thereafter the petitioner's case for grant of benefit of leave encashment was processed, which got delayed on account of Covid-19 pandemic. In these circumstances, the benefit could finally be released vide letter dated 27.03.2023, Annexure R-4. Accordingly, this delay is not intentional.

3.1. Regarding the alleged delay in releasing the pensionary benefits, learned counsel for the University has submitted that the reason was the petitioner's failure to submit 'No Dues Certificate' (NDC) to the University, and in its absence the pensionary benefits could not have been released to her. The petitioner was granted study leave for doing Ph.D. which was never completed by her despite availing the leave with full salary. In these circumstances, Director, Higher Education, vide memo dated 20.04.2005, asked the University to recover the salary paid to her, and to two other teachers, who failed to complete their Ph.D. despite availing fully paid study leave. In this regard, another memo dated 24.05.2006, Annexure R-1/6, was sent to the Principal, B.P.S. College of Education, where the petitioner was working, which was received by her on 26.05.2006, as apparent from her signatures thereupon. There is another letter on record, dated 05.05.2005, Annexure R-1/7, by General Secretary of B.P.S. College of Education, Khanpur Kalan, as it then was, directing the petitioner to deposit an amount of ₹1,02,496.8 within one month in view of instructions from the Higher

Education Commissioner. Still further, a copy of another registered letter dated 28.06.2012, Annexure R-1/8, issued by Chairperson of the Faculty of Education to the petitioner is also on record, conveying that the pensionary benefits could not be released to her because she had failed to deposit the amount of leave period salary and submit NDC, and in case the salary was not deposited within ten days, the amount would be deducted from her gratuity or pension as may be the case. Since the amount was not deposited, the University made the deduction out of the due amount of gratuity, and the facts to that effect, detailed in the reply, are as under:

> 3. …The University calculated an amount of Rs.22,45,697/- as pension due to the petitioner upto 28.2.2012, and out of this an amount of Rs. 5,13,700/- was deducted as income tax and a net amount of Rs.17,31,997/- was paid to the petitioner on 30.3.2013. The pension bill of the petitioner is attached as Annexure R-1/2. The total amount of Rs.9,24,043/- was calculated as gratuity and out of that Rs.1,02,496/- was deducted as the amount of recovery of pay for the period of study leave taken by the petitioner and a net amount of Rs.8,21,547/- was paid to the petitioner as gratuity on 30.3.2013. The calculation of the gratuity as done by the University is attached as Annexure R-1/3. The petitioner's Provident Fund of Rs.7,22,479.65/- has also been released. The application form for the release of Provident Fund is attached as Annexure R-1/4. There has been no delay on part of the University in releasing the pension and gratuity to the petitioner. The delay occurred is due to the following reasons.

The remaining pensionary benefits could not be released on account of her failure to submit NDC demanded by Deputy Director (Audit). The petitioner was again requested to submit the certificate vide letter dated 12.12.2012, Annexure R-1/9, but to no effect.

4. Submissions made by learned counsel for the parties have been considered.

5. The first claim raised by the petitioner pertains to delay in release of pension and leave encashment to her by the respondents; she superannuated from service with effect from 30.11.2007, and these benefits were released to her on 02.04.2013 and 27.03.2023, respectively. The delay was caused due to her failure to fulfill the mandatory requirements for the purpose. She was sanctioned fully paid study leave to do Ph.D. Despite availing the leave, she failed to complete the Ph.D., and it is also not the case that she was awarded the degree any time later. Further, no argument has been addressed by learned senior counsel as to why she is not liable to return the salary that was paid to her for doing Ph.D., as demanded by the respondents in terms of memo dated 20.04.2005 issued by the Directorate. Another memo, dated 24.05.2006, also issued by the Directorate to that effect was duly received by her on 26.05.2006. There are other letters on record, dated 05.05.2005 and 28.06.2012, conveying her that pensionary benefits could not be released due to her failure to deposit the amount of leave period salary and submission of NDC. These memorandums were never challenged, nor did the petitioner deposit the amount. In these circumstances, it was deducted from her retiral dues which cannot be taken exception to. It is also a conceded position on record that the petitioner has failed to submit NDC from the concerned Department, which was mandatory to make payment of pensionary benefits. The reasons for not issuing NDC to the petitioner, as canvassed by the University, is her failure to even handover charge of the Department from where she superannuated, to the next incumbent. Again, this fact has also not

been contested by learned senior counsel for the petitioner. Additionally, it can also not be lost sight of that the benefit of leave encashment was not admissible to the University employees, including the petitioner, at the time of her retirement from service on 30.11.2007. It was made admissible much later in terms of memo dated 08.12.2016 issued by the Department of Higher Education. Thereafter, as submitted on behalf of the University, the matter regarding release of the benefit to teachers and other staff could not be processed for quite some time on account of Covid-19 pandemic. Finally, this was released to her after the pandemic was over, vide letter dated 27.03.2023. These facts are also not in dispute. Therefore, there is no reason to believe that there was any intentional delay on the part of the respondents in releasing retiral benefits or that the same were withheld for no justifiable reason. Accordingly, the petitioner is not entitled to claim any interest for this delay.

5.1. The next claim raised by the petitioner is for counting her service from the date of her initial appointment, i.e., from 01.08.1972 to 01.08.1973, as qualifying service for pensionary benefits. The reason the service has not been counted is that the respondents never received employer's share of CPF, i.e., payable by the petitioner with interest as a pre-condition for counting the period as qualifying service. In terms of law laid down in *S.M. Acharya ibid.,* non-payment of employees contribution towards CPF by the Management cannot be a ground to deny the benefit to an employee, and the service is required to be counted as qualifying service on deposit of the employer's share with admissible rate of interest in terms of the Rules, with the Department.

6. Accordingly, the petition is partly allowed by directing the respondents to accept employer's share of CPF with admissible rate of interest from 01.08.1972 to 01.08.1973, from the petitioner and count the said period as qualifying service. Consequently, revise the pensionary benefits and release the arrears that become due with interest at the rate of six per cent per annum from the due date till actual payment. The respondents will convey the due amount of employer's share of CPF with interest to the petitioner within four weeks of receiving a certified copy of the order. She will have an option to get the amount adjusted against the due arrears. On deposit/adjustment of demanded amount the revised pensionary benefits with arrears will be released to her within six weeks therefrom. There shall be no order as to costs.

(TRIBHUVAN DAHIYA)
JUDGE

28.04.2026
Payal/Ad

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