(2017) 03 P&H CK 0120

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 18081 of 2013 (O/M)

Asha Malhotra APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 17-03-2017

Acts Referred:

Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001 — Rule 18(4)

Citation : (2017) 3 SCT 242

Hon'ble Judges : Kuldip Singh, J.

Bench : Single Bench

Advocate : Rajesh Punj, Advocate, for the Petitioner; Naveen Sheoran, Deputy Advocate General, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Kuldip Singh J. (Oral)—The petitioner was appointed as a JBT teacher on 9.11.1966with respondent No. 5-JRD Arya Girls High School, Ambala City, which was a Privately Managed Government Aided School, getting 95% grant-in-aid from the Government. The petitioner retired from service on 30.11.2002 on attaining the age of superannuation.

2. It comes out that on 31.5.1999, the Haryana Government framed the Haryana Aided Schools (Pension and Contributory Provident Fund) Rules, 1999. The petitioner had earlier filed CWP-11940-2004, titled as Asha Malhotra v. State of Haryana and others and the same was disposed of by a Division Bench of this Court, vide order dated 10.8.2004 (Annexure-P-10) with a direction to respondents to decide the legal notice dated 23.6.2004 (Annexure-P-7), served on them, by passing a speaking order within two months from the date of receipt of certified copy of the order. In pursuance to that order, the District Primary Education Officer, Ambala, (respondent) passed the speaking order dated 26.10.2004 (Annexure-P-11), vide which the claim of the petitioner for release of pension and gratuity was declined on the ground that there was no agreement

between the said JRD Girls High School, Ambala City and the Government and that the pension and gratuity case has not been submitted along with option undertaking by the petitioner as required under Rule 3(1) and employer''s share of CPF, as required under Rule 18(4) of the Haryana Aided School (Special Pension and Contributory Provident Fund) Rules, 2001. Therefore, the retiral benefits under the pension scheme of 2001 cannot be released. It comes out that vide order dated 2.3.2010 (Annexure-P-14), the Government has already released the DCRG to the petitioner. Out of the total amount of gratuity of Rs. 93,100/-, the Government share, amounting to Rs. 69,825/-, has been released by the Government, whereas the share of Management is Rs. 23,275/-, which has not been released so far. It also comes out that on account of mismanagement in respondent No. 5-JRD Arya Girls High School, Ambala City, the Sub Divisional Officer (Civil), Ambala, has been appointed as an Administrator of the said school, vide order dated 10.1.2013 (Annexure-R-2), passed by the Government, for a period of one year. That arrangement is stated to be still continuing.

3. The second claim of the petitioner is that she joined the service with respondent No. 5 on 9.11.1966 and retired on 30.11.2002 on attaining the age of superannuation. Her qualifying service has been qualified as 20 years and 2 months by computing her qualifying service from 1.10.1982 when she started contributing towards CPF.

4. The learned counsel for the petitioner states that the CPF was deducted from day one by respondent-Management, but in any case, in order to avoid further complications, he is ready to deposit her share of CPF from 9.11.1966 till 30.9.1982 along with interest and that her qualifying service may be computed from the date she joined the initial service with respondent No. 5-School i.e. 9.11.1966.

5. In the reply, the Government has stated that the pension has been sanctioned, vide order dated 2.3.2010 (Annexure-P-14). It is further stated that the management of respondent No. 5 School passed a resolution on 26.11.2008 (Annexure-R-1), regarding implementation of the pension scheme. A reference was also made to the payment of gratuity, vide order dated 2.3.2010 (Annexure-P-14). It is further stated that the Administrator has been appointed and that the management share is to be paid by the managing committee whenever the managing committee is re-constituted. Further stand taken is that the qualifying service has been computed from the date of contribution towards CPF.

6. I have heard the learned counsels for the parties and have also carefully gone through the file.

7. So far as the DCRG contribution share of management is concerned, it is not a denying fact that the management has since been taken over by an Administrator, appointed by the Government. Therefore, the said school is now under the control of the said Administrator. The control of funds of the

management also lies with the Administrator of the said school. Therefore, now, the Administrator is liable to pay the DCRG contribution share of the management from the funds of the said school. Accordingly, the Sub Division Officer (Civil), Ambala, who is the Administrator of JRD Arya Girls High School, Ambala City, is ordered to pay the DCRG contribution share of the management, as indicated above, along with interest at the rate of 9% per annum from the date of grant of sanction by the Government.

8. So far as the second part of the relief is concerned, the learned counsel for the petitioner has undertaken to deposit her contribution of CPF along with interest from 9.11.1966 till 30.9.1982.

9. The learned counsel for the petitioner has placed reliance upon the authorities of this Court in Sita Devi w/o Manohar Lal v. State of Punjab and others, 2016 (1) SCT 69; Satish Rani Sood v. State of Punjab and others, 2013 (3) SCT 480 and Mahavir Yadav v. State of Haryana and others, 2015 (4) SCT 224, where in the said cases, this Court allowed the deposit of CPF along with interest and allowed the said period to be computed towards qualifying service for pension.

10. It being so, the present writ petition is allowed. Respondents are directed to communicate the petitioner about the amount of her share of CPF along with interest within one month from the date of receipt of certified copy of this order and thereafter, the petitioner will deposit her share of CPF, from 9.11.1966 to 30.9.1982 along with interest, as determined by the Government, within two months from the date of receipt of said communication from respondents. Thereafter, the service of the petitioner shall also be computed towards pension and the pension of the petitioner shall also be accordingly re-fixed and the revised PPO will be issued and the arrears of pension will also be paid to her.