
(2019) 12 P&H CK 0129

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 21327 Of 2014

Bhupinder Singh

APPELLANT

Vs

Punjabi University Patiala And Others

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Citation : (2019) 12 P&H CK 0129

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : G.S.Bal, Gursimran Kaur, Ajaivir Singh, Parveen Chander Goyal, Aarti Goyal

Judgement

Harsimran Singh Sethi, J

In the present writ petition, the grievance of the petitioner is that the respondents initially, vide order dated 04.08.2014 (Annexure P-30) and, thereafter, once again during the pendency of this writ petition vide order dated 26.03.2019 (Annexure P-35), have declined the benefit of pension to the petitioner in respect of the services, which the petitioner has rendered with the Sports Authority of India as well as Punjabi University, Patiala.

The claim of the petitioner is that as he has worked continuously from 05.08.1983 till he attained the age of superannuation on 31.07.2013 with Sports Authority of India and Punjabi University, Patiala and therefore as he has more than 10 years of qualifying service to his credit and keeping in view the rule governing the service of Punjabi University, Patiala, the respondent-University directed to grant the petitioner the pensionary benefits, alongwith arrears and with interest.

The facts as stated in the writ petition are:-

Petitioner was appointed as Kabbadi and Kho-Kho Coach at Netaji Subhash National Institute of Sports, Patiala (hereinafter referred to as "NIS") on

05.08.1983 in the pay scale of Rs.500-900. Thereafter, the NIS was amalgamated with Sports Authority of India (hereinafter referred to as "SAI"). After amalgamation, the petitioner was promoted as Higher Grade Coach w.e.f. 20.11.1987 in the pay scale of Rs.700-1100. The said pay scale was revised to Rs.2200-4000 w.e.f. 01.01.1986 and was further revised to a pay scale of Rs.8000-13500 w.e.f. 01.01.1996.

While the petitioner was working with the SAI, Punjabi University, Patiala issued an advertisement advertising the post of Reader-cum-Joint Director Sports on 21.06.2000(Annexure P/3). Petitioner, who considered himself to be fully eligible as per the eligibility conditions laid down in the said advertisement, applied for the same and ultimately was selected against the post of Reader-cum-Joint Director Sports by the Punjabi University, Patiala. An appointment letter was issued to him on 10.11.2000. After the selection as a Reader-cum-Joint Director Sports in Punjabi University, Patiala, the petitioner was relieved by the SAI and he joined Punjabi University, Patiala on the same day, i.e., on 13.11.2000. After the petitioner worked for a period of four months, the appointment of the petitioner was ratified by the Syndicate of the Punjabi University, Patiala on 26.03.2001. Petitioner was placed on probation for a period of one year and while the petitioner was on probation, one Sh. Tarlok Singh Sandhu challenged the appointment of the petitioner by filing a Civil Suit. In the reply to the said Civil Suit, Punjabi University, Patiala defended the selection of the petitioner but as the Civil Suit was pending, the respondent did not confirm the petitioner by clearing his probation period.

On 08.09.2003, petitioner was suspended by the respondent-University and he remain under suspension till 20.02.2004 when the services of the petitioner were terminated. The said order terminating the services of the petitioner by the respondent-University, was challenged by the petitioner by filing CWP No.20381 of 2005, which, as per the information supplied by the learned Senior counsel appearing on behalf of the petitioner, stands admitted and is pending before this Court for final adjudication.

As the petitioner was a confirmed employee of SAI before the petitioner join Punjabi University, Patiala and the petitioner was yet to be confirmed on the post of Reader-cum-Joint Director Sports by the Punjabi University, Patiala, petitioner approached SAI for his reinstatement into the service against the post on which he was working prior to joining the Punjabi University, Patiala. SAI permitted the petitioner to join back the services but with certain conditions. The said order was passed on 29.12.2004 and petitioner immediately rejoined services on the post on which he was working with SAI. While petitioner was working with the SAI, the suit which was filed challenging the appointment of the petitioner with the Punjabi University, Patiala was dismissed by the competent Court of law on 20.02.2006 and as no appeal was preferred, the said decision became final and the appointment of the petitioner on the post of Reader-cum-Joint Director Sports with the Punjabi University, Patiala, was upheld.

While the petitioner was working with the SAI, petitioner moved an application to the Punjabi University, Patiala for reinstatement. The request of the petitioner was placed before the highest body of the University, i.e., Syndicate and the Syndicate took a decision in its meeting held on 16.01.2008 accepting the prayer of the petitioner for reinstatement into service in the Punjabi University, Patiala but with a clear condition that petitioner will not be given the back wages for the period when he remained out after his services were terminated by the Punjabi University, Patiala on 20.02.2004 till the date of his reinstatement. Petitioner accepted the said condition and rejoined Punjabi University, Patiala on 16.04.2008. Petitioner was relieved by SAI on 15.04.2008 and he joined Punjabi University, Patiala on 16.04.2008 without there being any break in service. Petitioner continued working with the Punjabi University, Patiala till 31.07.2013, when he retired on attaining the age of superannuation.

After retirement, petitioner requested for the release of his pensionary benefits. Said request was declined by the respondent-University by passing order on 04.08.2014 (Annexure P/30) on the ground that the petitioner does not have 10 years' service to his credit, so as to become eligible for the grant of pensionary benefits. While rejecting the claim of the petitioner, the respondent-Punjabi University, Patiala had only calculated the service which the petitioner had rendered with Punjabi University, Patiala from 13.11.2000 till 20.04.2004 and, thereafter, from April 2008 till 31.07.2013. Petitioner challenged the said order dated 04.08.2014 (Annexure P/30) by filing present writ petition.

Petitioner raised a contention before this Court that the period of service which has been computed as a qualifying service by the respondent-Punjabi University, Patiala, is not correct. Petitioner retired upon the resolution passed by the Punjabi University, Patiala dated 26.03.2008 (Annexure P/22), which was passed by the Syndicate, i.e. the highest body of the Punjabi University, Patiala that the services, which has been rendered by an employee in the Colleges/Institutions under Government of India and any Deemed University of India, will be counted as a qualifying service for computing the pension and the pensionary benefits. Petitioner contended before this Court that keeping in view the said decision of the Syndicate, the total length of service which the petitioner has rendered with the SAI starting from the year 1983 onwards till the year 2000 and thereafter the year 2004 to 2008 is liable to be counted as a qualifying service and by counting the said period as a qualifying service, the petitioner has more than 10 years of service to his credit, hence he is eligible for grant of pension and other pensionary benefits by the Respondent-University.

Upon notice of motion, respondents have filed reply. In the reply, the respondents have taken an objection that the decision of the Syndicate dated 26.03.2008 (Annexure P/22), being relied by the petitioner, cannot come to the rescue of the petitioner as the same is yet to be approved by the Chancellor and till the approval, no benefit of the said resolution dated 26.03.2008 (Annexure P/22), passed by the Syndicate, can be extended in favour of the petitioner and,

therefore, the petitioner has less than 10 years of his service to his credit and, therefore, the claim as raised by the petitioner in the present writ petition is liable to be rejected.

During the pendency of the writ petition, petitioner has placed on record a letter dated 21.11.2018 Annexure P/34) by which the resolution dated 26.03.2008 passed by the Syndicate, has been approved by the Hon'ble Governor of Punjab and the said resolution has been made applicable to the employees who have been appointed on or after 15.10.1997. Petitioner raised a contention that once the resolution passed by the Syndicate in its meeting held on 26.03.2008 (Annexure P/22) has been approved by the competent authority and is made applicable w.e.f. 15.10.1997, petitioner, who joined the service of the Punjabi University, Patiala after the said date, will be entitled for the benefit of the resolution dated 26.03.2008 and the service rendered by the petitioner with SAI from the year 1983 is liable to be taken into consideration as a qualifying service for computing the pensionary benefits.

After the approval of the resolution dated 26.03.2008 by the competent authority and issuance of the letter dated 22.11.2018(Annexure P/34), this Court directed the respondents to reconsider the case of the petitioner for the grant of the benefit of the pension and other pensionary benefits in view of the resolution dated 26.03.2008.

Respondent-University rejected the claim of the petitioner by passing an order dated 26.03.2019 (Annexure P-35) wherein, the respondent-University has declined to give the benefit of the service, which the petitioner has rendered with SAI as a qualifying service for computing the pensionary benefits. The said order dated 26.03.2019 (Annexure P/35) has also been challenge in the present writ petition by amending the writ petition.

No reply has been filed to the amended writ petition, as learned counsel for the respondent-University stated that the reply already filed to the unamended CWP, be treated as a reply to the amended writ petition as well.

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

The first question, which has been raised before this Court for consideration is whether the benefit of the service, which the petitioner has rendered with SAI from 05.08.1983 till 13.11.2000 and, thereafter, once again from 29.12.2004 till 15.04.2008, can be taken as a qualifying service for computing the pensionary benefits or not? It is not disputed by the learned counsel for the respondents that in its meeting held on 26.03.2008, Syndicate, which is the highest body of the Respondent-University has taken a decision that the service which an employee has rendered in the Colleges/Institutions under the Government of India or any Deemed University is to be taken into account as a qualifying service for computing the pensionary benefits as well as the gratuity. The said resolution has already attained finality after the approval of the competent

authority, which is clear from Annexure P-34 dated 21.11.2018.

The relevant portion of the resolution passed by the Syndicate is an under:-

"To

The Registrar,

Punjabi University,

Patiala.

Subject:- Regarding amendment in Statute 9 Page 100,

Calender Gazette 1, 2006, Punjabi University, Patiala.

Sir,

I have been directed to invite your attention to letter No.3365, dated 09.05.2008 on the subject noted above and inform that the Syndicate in its meeting held on 26.03.2008(Para 14) which is related to Chapter (iv) at Page 100 of the Punjabi University Calender Volume-I, 2006, which is related to Pension Scheme, the proposal to amend Statute 9 was sent to you for approval, has been approved by the Hon'ble Governor, Punjab and Vice Chancellor, Punjabi University, Patiala.

2. This amendment shall apply to the employees who have been appointed on or after 15.10.1997."

Yours faithfully,

Sd/-

(Jagpal Singh)

Superintendent,

Punjab Bhawan."

A bare perusal of the above would show that the service, which an employee of the University has rendered with the Colleges/Institutions of Government of India is to be taken as a qualifying service for computing the pensionary benefits. SAI is an institution which is being run by the Government of India, which fact is not disputed by the learned counsel appearing for the respondent-Punjabi University, Patiala. Once that be so, the claim of the petitioner is squarely covered by the resolution of the Syndicate dated 26.03.2008, read with the letter dated 21.11.2018 (Annexure P/34), for counting the period of service rendered by him with SAI, as a qualifying service for computing the pensionary benefits. No justification has been come forward from the Respondent-Punjabi University, Patiala in the impugned order dated 26.03.2019 as to why or on what account, the benefit of the service rendered by the petitioner with SAI, is being declined to the petitioner as a qualifying service for computing the pensionary benefits. Even during the course of argument, learned counsel for the respondent-Punjabi

University, Patiala has not been able to address any single objection, which the University has for taking into consideration the service which the petitioner has rendered with the SAI as a qualifying service keeping in view the resolution passed by the Syndicate dated 26.03.2008 duly approved by the competent authority as circulated vide letter dated 21.11.2018(Annexure P/34).

In the absence of any valid objection raised on behalf of Respondent-University, the benefit of service, which the petitioner has rendered with the SAI, cannot be declined to be taken as a qualifying service for computing the pensionary benefits.

The learned counsel for the respondent states that only the service, which the petitioner has rendered with the Punjabi University, Patiala, can be taken into account. Once the resolution dated 26.03.2008, passed by the highest body of Respondent-University, grants the benefit to an employee of the service which he or she has rendered with the Institution of the Government of India, as a qualifying service, University is bound to follow its own decision, which has due approval of the competent authority. Respondent-University cannot ignore the resolution dated 26.03.2008 and too without any valid justification.

The learned counsel for the respondent-Punjabi University, Patiala further argues that the University in the impugned order has declined the benefit of the period for which the petitioner remain suspended from 08.09.2003 till 20.02.2004, as qualifying service, on the ground that once the petitioner did not discharge the duties for the said period while being posted in the University, the same period cannot be taken into account as a qualifying service.

Said argument is fallacious. Suspension is not a punishment. A person is only suspended to hold an enquiry so that the delinquent employee, against whom allegations are alleged, does not influence the record in either way. Once, the suspension is not a punishment and during the suspension period, there exist a master and servant relationship between the employee and the employer and for the period of suspension, the employer duly pay the employee though subsistence allowance, the said period cannot be ignored for computing the pensionary benefits by treating it to be non-qualifying period. No Rule governing the service has been cited by the learned counsel for the respondent to support his argument.

Further in case, the argument of the learned counsel for respondent-University is allowed, then even the suspension period will become a punishment as the same will cause prejudice to an employee, which is contrary to the settled principle of law. Once, there existed a master and servant relationship between the petitioner and the Respondent-University during the period of suspension and it is the Respondent-University, which restrained the petitioner from discharging the duty during the period of suspension, petitioner will be caused prejudice for no fault of his, in case, Respondent-University is allowed to deny the benefit of said period of suspension, to be taken as a qualifying service. Period starting

from 08.09.2003 till 20.02.2004 has to be taken as a qualifying service for computing the pensionary benefits.

Learned counsel for the respondent-University argues that the petitioner remained out of service from 20.02.2004 till 16.04.2008 hence the petitioner cannot be granted benefit of the said period to be counted as a qualifying service and, therefore, the respondent-University rightly declined the benefit of the said period as a qualifying service to the petitioner. Before deciding the said issue, certain facts are to be noticed.

During the period when the petitioner remained out of service of the respondent-University, petitioner was working with SAI again, as the petitioner was holding a lien on the post on which the petitioner was working with SAI before petitioner joined respondent-University. It is a matter of fact which is not disputed by the respondent-University that the petitioner continued to work with SAI from December, 2004 till 15.04.2008 and, therefore, once the service, which the petitioner had rendered prior to the joining of the University with SAI, is to be taken as a qualifying service, the later period of the service, which the petitioner had rendered with SAI, after his services were terminated by respondent-University, cannot be ignored. Once that is a valid service, rendered by the petitioner with SAI, the petitioner is entitled for the benefit of the same as a qualifying service keeping in view the resolution of Respondent-University dated 26.03.2008.

Further, the Syndicate passed a resolution by which the petitioner was reinstated. The Syndicate, which is the highest body, passed the following resolution while reinstating him in the year 2008. The relevant portion of the decision of the Syndicate as recorded in the resolution is as under:-

"Dr. Bhupinder Singh, Ex.-Reader-cum-Joint Director Sports.

In his case, it is the opinion of the Committee that quantum of punishment is high as compared to misconduct. Therefore recommendation of the Committee in this regard are as follows:-

The post of Reader-cum-Joint Director Sports was converted to the post of Reader in Physical Education Department and is redesignated as joint Director Sports, where after Dr.Bhupinder Singh be reinstated as Joint Director Sports in Sports Department. It is clear that for the period he did not remain on that post he would not get salary for that period and this period would be counted for next increments but no arrears shall be paid. Whatever subsistence allowance Dr. Bhupinder Singh had received during the suspension, nothing over and above this would be paid to him.

Dr. Bhupinder Singh has promised in writing that he would not file any case against University, Tribunal, Commission or other Forums and in case he has filed any in the Court would be withdrawn."

A bare perusal of the above would show that for the period when the petitioner

remained out of the service of University, he was not to be paid any arrear of salary but petitioner was made eligible for the grant of increment for the said period. Once the petitioner was granted the benefit of increments for the said period by the University itself means that the petitioner has notionally worked for the said period. Once the benefit of increments has been given by the University itself for the said period when petitioner remained out of the service of University starting from 20.02.2004 till 16.04.2008, the said period has to be treated as his duty period for the grant of pensionary benefit. Therefore, once for the period, for which the petitioner remained out of the service of University, the respondents itself have granted the benefit of increment, the same period has to be taken into account as a qualifying service for the grant of pensionary benefits. Therefore, the objection raised by the learned counsel for the respondents, for not taking into consideration the period when the petitioner remain out of service of the Punjabi University from 20.02.2004 till 16.04.2008 as a qualifying service, is also not valid and is rejected.

No other argument was raised on behalf of learned counsel for the parties.

Keeping in view the above, impugned order dated 04.08.2014 (Annexure P/30) as well as order dated 26.03.2019 (Annexure P/35) are set aside and it is held that petitioner is entitled for benefit of service rendered by him from 05.08.1983 till the date of his retirement i.e. 31.07.2013 as a qualifying service for computing pensionary benefits.

Learned counsel for the respondent states that once the benefit of service, which the petitioner has rendered with SAI, has been allowed as a qualifying service, the contribution for the said period toward the pensionary benefit, has to be made by SAI. for the said period. It is admitted by the learned counsel for the SAI , during the course of hearing, that no benefit has been taken by the petitioner for the service which the petitioner has rendered with SAI initially from 1983 till 2000 and, thereafter 2004 till 2008.

If that be so, then the benefits in respect of the service rendered by the petitioner with SAI are lying with the Sports Authority of India. Sports Authority of India is also respondent in the present writ petition and a direction is issued to SAI to transfer all those benefits to the Punjabi University, Patiala, so that the total length of service of the petitioner is calculated as a qualifying service for computing the pensionary benefits.

Let the benefits, which are lying with the Sports Authority of India be transferred to the Respondent-University within a period of two months from the date of receipt of the certified copy of this order. Once the benefits are received by the respondent-Punjabi University, Patiala from SAI, pensionary benefits, which the petitioner being entitled for under this order, shall be calculated and released within a period of two months thereafter.

The writ petition is allowed in the above terms.

All the pending applications, if any, stand disposed of having been rendered infructuous.