(2013) 07 P&H CK 0659

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 6780 of 2012

Girdhari Lal and Others — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Citation : (2013) 07 P&H CK 0659

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : R.K. Malik, with Mr. Tejpal, for the Appellant; Harish Rathee, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.—The four petitioners before this Court have retired or are on the verge of retirement on reaching the age of superannuation and have approached this Court aggrieved against the decision of the Government declining pension to them on the ground that they do not have 10 years regular service required under the rules to earn right to pension. It has been asserted that they were inducted into regular service between the period 01.10.2004 to 31.08.2008 by orders of the Government. Consequently, their period of service from 1980, 1982, 1983 and 07.10.1985 respectively cannot be taken into consideration as qualifying service on the ground that they were appointed initially on ad hoc basis and continued to serve till the date of regularization against salaries drawn from the amalgamated funds or what is also called contingency funds. In response to the request made by petitioner No. 1 to the Public Information Officer, Government College, Narnaul, where they served or are serving as Laboratory Attendants to disclose the status, source of salary drawn prior to 01.10.2004, the response of the Public Information Officer addressed to Girdhari Lal-petitioner No. 1 states in para 2 of the memo dated 18.03.2009 that salary was drawn from 01.08.1988 to 30.09.2004 from Government Treasury against vacant posts of Junior Lab Attendant lying vacant in the Government College. The information supplied suggests that because petitioner No. 1 was regularized with effect from October, 2004 therefore, he was not entitled to the benefit of the Assured Carrier Progression Scheme (ACP). Considerations of grant of ACP are widely different from right to pension.

2. Mr. R.K. Malik, learned senior counsel draws attention of this Court to the contents of paras 6 and 7 of the petition. Assertion has been made with respect to drawing of salary from Government Treasury.

3. On notice of motion having been issued, the State has filed reply from which Mr. Malik points out that in the reply to para 7 of the writ petition the State has not rebutted the assertion that since 01.08.1988 the salary of the petitioners was drawn from Government Treasury. On the principle of non-traverse the assertion of the petitioner based on the information supplied to petitioner No. 1 is deemed to be admitted since it is not specifically denied.

4. Mr. Malik relies on a decision rendered by the learned Single Judge of this Court in CWP No. 3120 of 1992 in Prabhu Nath Mishra versus State of Haryana and others involving the same issue. The learned Single Judge noticed Rule 3.17-A of the Punjab Civil Services Rules, Vol. II as applicable to the State of Haryana which provides for counting of all uninterrupted or continuous service followed by confirmation as qualifying service for pension under different situations enumerated in the aforesaid rule. The learned Single Judge relied upon the decision of this Court in Joginder Singh versus The State of Haryana and others; 1998(1) RSJ 671 which dealt with sub Clause (i) of Clause (f) of Rule 3.17-A which provides that even persons paid from contingencies are entitled to tag half of their such service, as qualifying service, provided the four conditions laid down in sub Clause (i) are fulfilled; This Court in Joginder Singh''s case held the stipulation in sub clause (i) of clause (f) that only half of period of service is to be counted as qualifying service is arbitrary and no logic or reason can be spelt out in it. Another Bench in 2009 (2) SCT 522 directed that service rendered on daily wages is countable towards qualifying service and therefore, entitling such person to pension.

5. Since the petitioners continue in service without break till regularization, the period spent earlier would count towards service/purposes of pension.

6. Mr. Harish Rathee, Sr. Deputy Advocate General, Haryana appearing for the State has not been able to effectively distinguish the aforesaid decision of this Court. In the face of the admission that substantial period prior to 01.10.2004 was spent in service drawing salary from Government Treasury would itself justify counting of that period for purposes of pension. The contention of Mr. Malik that the writ petition having been filed on 16.07.2012, when petitioners No. 2 to 4 were not yet retired, is premature and, therefore, no orders need to be passed at this stage, is rejected. Petitioner No. 2 retired on 13.04.2012 whereas petitioner No. 3 and 4 are due to retire on 30.11.2013 and 31.03.2016. They would be yet within the rights to seek a declaration at this stage based on

rejection of the case of petitioner No. 1 against which they are equally aggrieved. This petition is consequently allowed and direction is issued to the respondents to pay pension to petitioners No. 1 and 2 who stand retired on reaching the age of superannuation and to treat petitioner No. 3 and 4 in the same manner when they retire from service. Let the amount of pension be now calculated qua petitioners No. 1 and 2 and be paid their arrears of pension within two months from the date of supply of certified copy of this order and to continue to do so.