(2016) 02 P&H CK 0213

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 5451 of 2012

Jai Ram Tehlan and Others APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Citation : (2016) 02 P&H CK 0213

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : K.L. Arora, Advocate, for the Appellant; Keshav Gupta, AAG, for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J.—1. The petitioners are seeking quashing of the order dated 16.4.2012 (Annexure P-15/A) vide which respondent no.2 had declined to count the services rendered by the petitioners in Govt. aided private College, namely D.A.V College, Hassangarh as qualifying service towards pension/leave encashment/gratuity etc.

2. Both the petitioners served as lecturers in DAV College, Hassangarh. Petitioner no.1 served this College from 16.7.1972 to 31.7.1984 and petitioner no.2 from 25.7.1973 to 31.7.1984. DAV College, Hassangarh was closed on 31.7.1984. The Govt. took a decision to adjust the surplus staff of the privately managed colleges in other privately managed colleges run by the State. Petitioner no.1 was adjusted in CRK College, Jind w.e.f. 6.9.1985 vide letter dated 11.1.1986 (Annexure P-5). His last pay drawn at DAV College, Hassangarh was protected vide letter dated 9.1.1987 (Annexure P- 6). Petitioner no.2 was adjusted in Indira Gandhi National College, Ladwa (Dhanora) as lecturer in Hindi vide letter dated 9.12.1986 (Annexure P-7). His appointment was approved by the Kurukshetra University vide letter dated 29.1.1987 (Annexure P-8). His last pay drawn at DAV College, Hassangarh was also protected vide letter dated 19.6.1987 (Annexure P-9).

3. The petitioners along with their one colleague namely, S.B Ruhil filed a CWP No. 3214 of 2002 in this Court for counting previous services rendered by them in Govt. aided private college namely D.A.V College, Hassangarh towards senior/ selection grade. The said writ petition was allowed by this Court vide order dated 14.11.2002 (Annexure P-10) and the department was directed therein to count the services rendered by them in Govt. aided private college, Hassangarh for the purposes of Senior Scale and placement of Selection Grade after 8 and 16 years of services. Directions regarding payment of arrears to the petitioners were also made. Aggrieved against the order of this Court, the department preferred a special leave petition but the same was dismissed vide order dated 10.3.2010 (Annexure P-11). Meanwhile, both the petitioners retired from their services on 31.8.2006 and 28.2.2009 respectively after attaining the age of superannuation. Petitioner no.1 was informed by the office of respondent no.2 that services rendered by him in DAV College, Hassangarh has not been counted as qualifying service towards pensionary and other retiral benefits vide letter dated 26.8.2011 (Annexure P-12). The petitioner made his representation on 28.9.2011 (Annexure P-13). Thereafter upon legal notice dated 18.11.2011 (Annexure P-14) respondent no.2 declined to count the services rendered by the petitioners in DAV College, Hassangarh vide order dated 16.4.2012 (Annexure P-15/A).

4. By way of filing the present writ petition, the petitioners have prayed that their services rendered in DAV College, Hassangarh be counted as qualifying service towards pensionary and other retiral benefits. The petitioners has made reference to the Haryana Government notification dated 17.7.2007 (Annexure P-16) wherein a decision was taken that services rendered in Government Aided Private Colleges prior to taking over of the college will be taken into consideration for the purpose of pension. A similar controversy has been answered in favour of the petitioners vide judgments dated 23.1.2008 passed in CWP No. 2799 of 2007 (Annexure P-17) in the case of S.M Acharya vs. State of Haryana and another and in CWP No. 9767 of 2009 (Annexure P-18) in the case of Dr. Virender Singh Dahiya and others vs. State of Haryana and others decided on 13.1.2011.

5. Counsel for the respondent, Mr. Keshav Gupta has argued that the petitioners are not entitled to the benefit of the service of the DAV College, Hassangarh for the purpose of pension as the case of the petitioners is not covered under Rule-6(v) of the Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 as there is break of one year service after closure of the DAV College, Hassangarh and joining the subsequent College i.e CRK College, Jind. As per the proviso to said Rule, the Contributory Provident Fund account of the employee in the previous college continued as such in the subsequent college to which he is transferred or appointed and there is no break in service. The petitioners-College was closed down on 31.7.1984 and after being rendered surplus, the Government decided to adjust them in privately aided College, where he joined and hence for this one year gap, his contributory fund was discontinued and this amounted to a break in service and thus his case is not

covered for grant of pension. There is no challenge to the Pension Rules of 1999 and amended Rules of 2001 and the petitioners are not entitled to count their services for pensionary benefits.

6. Heard counsel for the parties and gone through the records of the case.

7. In S.M Acharya''s case (supra), the petitioner left the DAV College, Hassangarh on September 5,1983 as it had closed down and joined the C.R.K College, Jind on September 6, 1983. The claim of the petitioner for counting his service from October 14, 1974 to September 5, 1983 i.e for eight years and eleven months rendered in DAV College, Hassangarh for the purpose of grant of pension and gratuity was rejected on the ground that his case was not covered under Rule 6 of the Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules 1999 as amended vide notification dated 24.1.2001. The petitioner had drawn his CPF share of DAV College, Hassangarh. His CPF share deductions started from May 01, 1984. Hence, there was a break of CPF deduction for a period of eight months and 24 days. It was further pleaded that the benefit of pay protection given to the petitioner does not entitled him for the pensionary benefits. The stand of the respondents was rejected in view of the notification which amended Rule 17 by adding Sub Rule 3. As per the above said amendment, the employees who had retired and had already drawn their share of contributory fund and were not in a position to refund the same in cash were allowed to adjust the same against the gratuity of the arrears of pension that may be admissible to them. The amount of contributory fund along with 12% interest was required to be deposited back and adjusted for recalculating the pension after taking into account the service rendered in the first College or institution. The date of drawal and refund of the amount of employers'' share together with interest thereon shall be recorded in the service book and the entry shall be attested after verification by the Director. The concerned employees and legal heirs as the case may be shall given an undertaking in writing to the effect that he has no objection to such recovery or adjustment. S.M Acharya had retired on 31.1.2003 and was extended the benefit of the notification. A Special Leave Petition filed against the judgment in the case of S.M Acharya''s case (supra) has also been dismissed by Hon''ble the Supreme Court of India.

8. The argument of the counsel for the respondent had been answered in the judgment of the S.M Acharya''s case (supra) that even if there is a gap in service and the petitioner has taken his contributory fund from the College, the same can be adjusted along with the interest for the purpose of recalculating the pensionary benefits after counting the service in the first institute which is Govt. aided college. The judgment of S.M Acharya is applicable to the facts of the present case as the petitioners were also employees of DAV College, Hassangarh and had joined the subsequent institute after some time.

9. Having regard to the aforesaid and in view of the judgment in S.M Acharya''s case (supra), the impugned order dated 16.4.2012 (Annexure P-15/A) is set

aside. Respondent no.2 is directed to count the services rendered by the petitioners in Govt. aided private College, namely D.A.V College, Hassangarh as qualifying service towards pension/leave encashment/gratuity etc. The writ petition is allowed in the aforesaid terms.

