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(2017) 01 P&H CK 0143

In the Punjab And Haryana At Chandigarh

Case No : CWP No.24824 of 2014 (O&M)

Karamvir Singh APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2017) 1 LawHerald 315 : (2017) 3 SCT 280

Hon'ble Judges : Mr. Kuldip Singh, J.

Bench : Single Bench

Advocate : Mr. Ram Niwas Sharma, Advocate, for the Petitioner; Mr. Naveen Sheoran, DAG, Haryana, for the Respondents

Final Decision : Allowed

Judgement

Kuldip Singh J. (Oral) - Petitioner worked as Social Studies Master from 01.01.1987 to 28.02.1994 in Samaj Kalyan High School, Gohana (Sonepat) against a sanctioned post. Thereafter, the petitioner was appointed as Social Studies Master in Govt. School vide order/posting order dated 8/17.03.1994, where he joined on 19.03.1994. He retired from service on 31.07.2009 on attaining the age of superannuation.

2. The grouse of the petitioner is that for the purpose of pension and pensionary benefits, service rendered by him in the Govt. School from 19.03.1994 to 31.07.2009 i.e. 15 years, 4 months and 13 days has been taken into consideration, whereas his service rendered in the Govt. Aided Privately Managed School from 01.0.1987 to 28.02.1994 has not been computed. The prayer is that the said period should also be treated as qualifying service for the purpose of pension and pensionary benefits. The petitioner has also impugned the order dated 28.04.2014 (Annexure P-4) passed by the respondents vide which the said claim of the petitioner has been declined.

3. In the written statement, the respondents have taken the stand that the

petitioner had not opted for the Contributory Provident Fund Scheme during his service at Samaj Kalyan High School, Gohana (Sonepat). It is stated that the claim of the petitioner is not covered under the statutory provisions of the Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001. It is also stated that the petitioner has resigned from service and under Rules 3.17 A of the Punjab Civil Services Rules, such resignation forfeited the past service.

4. I have heard learned counsel for the parties and have also carefully gone through the case file.

5. It is not disputed that the petitioner has worked in Samaj Kalyan School, Gohana (Sonepat) which is a Govt. Aided Privately Managed School from 01.01.1987 to 28.02.1994. The fact that the petitioner was appointed as Social Studies Master in the Govt. High School, vide order/posting order dated 08/17.03.1994, shows that probably on account of the selection of the petitioner in the Govt. service, he resigned from the services in the said Govt. Aided Privately Managed School. The impugned order dated 28.04.2014 (Annexure P-4) does not give the reasoning why the past service rendered by the petitioner in the Govt. Aided Privately Managed School was not counted for the purpose of pension and pensionary benefits.

6. In this regard, the instructions of the Government dated 09.02.2011 (Annexure P-5) and further instructions dated 31.05.2011 (Annexure P-6) are relevant. Vide Instructions dated 09.02.2011 (Annexure P-5) the Government decided that the service rendered in the Government Aided Establishment be considered as qualifying service for the purpose of calculation of pension. The relevant extract of the said instructions is as under:

"Finance Department observes that the benefit of pension and gratuity has already been allowed to the employees of Govt. Aided Establishment w.e.f. 11th May, 1998. Now, it has been decided that the service rendered by them in Govt. Aided Establishment be considered as a qualifying service for the purpose of calculation of pension because in both these establishments those are Aided School/Colleges and Govt. Schools/Colleges, the benefit of pension and gratuity is available under the provisions of service rules. However, the said benefit will admissible only to those employees who covered under the service rules and are entitled to the benefit of pension under the provisions of the Haryana Aided Schools (Pension and contributory provident fund) Rules, 1999 and Haryana affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999."

7. These instructions were further clarified vide another set of Instructions dated 31.05.2011 (Annexure P-6). The relevant extract of the same is reproduced as under:

"5. The whole issue has been re-examined in the light of above mentioned facts and it has now been decided to allow the benefit of past service rendered by an employee in government aided establishment before these were taken over or

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service rendered in aided establishment before appointment in Govt. Institutions. This will be applicable to those who are covered under the Haryana Aided Schools (Pension and Contributory Provident Fund") Rules, 1999 and Haryana Affliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 and entitled to the benefits of pension. This benefit will be subject to the following conditions:-

1. That this offer will by optional and applicable only to those employees who agree to refund the Management Share (before the date of taking over of the Colleges/Schools by the State Government along with 10% annual compound interest). This amount can be deducted from their gratuity and they will give an undertaking to this effect that if the amount of Contributory Provident fund is more than gratuity payable to them, then the pensioners will deposit the excess amount in Govt. Treasury.

2. That if a retired Govt. employee opts for this benefit he shall deposit the share of contribution made by the Management along with 10% annual compounded interest (upto the date depositing) in lump sum in Govt. Treasury.

3. That these benefits will be made effective in respect of the employees of the taken over Colleges/Schools from the date of Pension Scheme mad applicable in Private Aided Colleges/Schools i.e. with effect from 11.5.98."

8. A combined reading of these instructions shows that the past service rendered by the petitioner in Government Aided Privately Managed Schools is to be computed as qualifying service for the purpose of pension, subject to certain conditions mentioned in the instructions i.e. deposit of the share of contribution made by the management along with 10% annual compounded interest in lump-sum in the Government Treasury.

9. Learned counsel for the petitioner has stated that he had opted for the said pension and had claimed the same but the same has been declinedby the respondents vide impugned order dated 28.04.2014 (Annexure P-4).

10. The matter has already been considered by this Court in CWP No.8429 of 2010 titled as "Dharamvati v. State of Haryana and another", decided on 10.05.2010 as well as in CWP No.18544 of 2006, titled as "Randhir Singh v. State of Haryana and another", decided on 06.11.2009.

11. In view of the matter, the present writ petition is allowed. The service rendered by the petitioner in Government Aided Privately Managed School from 01.01.1987 to 28.02.1994 is ordered to be computed as qualifying service for the purpose of grant of pension and pensionary benefits on the condition that the petitioner shall deposit the share of the management with 10% annual compound interest. For this purpose, the respondents are directed to intimate the amount along with interest to the petitioner within one month from the date of receipt of certified copy of this order. Thereafter, the petitioner shall deposit the same with the Government Treasury within next one month. Thereafter, the

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service rendered by the petitioner in the Government Aided Privately Managed School shall be counted as qualifying service for the purpose of pension and pensionary benefits. The benefits shall be released, accordingly, within three months from the date of deposit of the share of the Management along with interest.

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