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**(1997) 12 P&H CK 0031**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Writ Petition No. 16733 of 1996**

Manohar Lal Kakkar, Principal (Retired)

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision : 05-12-1997**

**Acts Referred:**

**Citation : (1998) 119 PLR 77**

**Hon'ble Judges : V.S. Aggarwal, J; Amarjeet Chaudhary, J**

**Bench : Division Bench**

**Advocate : Sanjiv Bansal, for the Appellant; Randhir Singh, for Respondent Nos. 1 and 2 and D.D. Sharma, (Union of India), for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

V.S. Aggarwal, J.—By this common judgment both the petitions i.e. Civil Writ Petition Nos. 16733 and 17895 of 1996 can conveniently be disposed of together. Since common questions are involved, for the sake of convenience facts from the case of Manohar Lal Kakkar are being mentioned in detail.

2. Petitioner Manohar Lal Kakkar joined the Punjab Education Department as M.A., B.T. Master on 16.9.1958 at Government High School, Ladwa, Distt. Hissar. He was selected by the Subordinate Services Selection Board. Later on he was posted at Government Higher Secondary School, Ferozepur City. In the year 1964 some vacancies in the Kendriya Vidyalaya Sangathan (a Central Government Organisation) were advertised. The petitioner applied to the District Education Officer, Ferozepur for obtaining permission to apply for service under the Government of India. The District Education Officer granted "No Objection Certificate" subject to the approval of D.P.I. (Schools), Punjab, Chandigarh-. The application of the petitioner was forwarded. The petitioner was selected for service under the Kendriya Vidyalaya Sangathan. In pursuance of his selection, he resigned from the service of State of Punjab. There was no break in his service.

3. The petitioner applied to the Commissioner Kendriya Vidyalaya Sangathan for continuing his past service rendered under the Government of Punjab towards gratuity and pensionary benefits. This was for the reason that he put in about 7 years of service under the State of Punjab. A reply was received that the Kendriya Vidyalaya Sangathan had no objection for counting the past service of the petitioner provided the Punjab Government agrees to pay in lumpsum on prorata retiral benefits for the period the petitioner served the Punjab Government. The petitioner applied to D.P.I. (Schools), Punjab for counting his past service towards pensionary benefits. But the said request was not accepted despite the petitioner have retired on 31.7.1991. Petitioner claims that as per the instructions issued by the State of Punjab, his past service has to be counted for retiral benefits for the service rendered by the petitioner from 16.9.1958 to 30.6.1965. A direction to this effect has been claimed in the present petition.

4. In the reply filed by the Union of India-respondent No. 3, there was no dispute raised pertaining to the facts. It was alleged that conditions which are required to be fulfilled for counting the past service are:-

"i) The petitioner should have applied for counting of past service in the KVS prior to 31.12.20.

ii) His application for employment in KVS should have been forwarded through proper channel i.e. with the due approval of his previous employer.

iii) Previous employer should certify that there was no break in service during the period of his service in his previous department.

iv) There should not have been any break in service from the date of relieving from his previous department till to the date of joining in KVS.

v) The qualifying service rendered by the petitioner in his previous department should be properly certified by the previous employer.

vi) The previous department should permit to the KVS the pro-rata pensionary liabilities as per Govt. of India instructions for the purpose of counting of past services of the petitioner."

It was pleaded further that it has no objection to the counting the service of the petitioner rendered by him in the State of Punjab provided that pro-rata pensionary liabilities are remitted by the State of Punjab.

5. Contest has been offered mainly by respondents 1 and 2, namely State of Punjab and Director Public Instructions (School) Punjab. It was contended that the demand of the petitioner cannot be acceded to because the petitioner had resigned from the post in order to obtain further higher post of principal under the control of the Central Government. This was done without the permission of the Head of the Department. As regards the no objection certificate that had been granted, it was alleged that "No Objection Certificate" was issued to the petitioner subject to the approval of The D.P.I. (Schools), Punjab. "No Objection

certificate" was granted to the petitioner by the District Education Officer, Ferozepur and consequential the benefit claimed cannot be granted to the petitioner.

6. The facts in the case of Ashok Kumar Goyal are identical. He was serving under the State of Punjab and served from 12.10.1971 to 20.7.1982. He joined the Punjab State Electricity Board and retired while serving Punjab State Electricity Board. The petitioner claimed the past service rendered in the State of Punjab to be counted. The objections were identical that petitioner had resigned his service and has joined the Punjab State Electricity Board for better prospectus. It was further contended that while forwarding the application of the petitioner, he was informed that in case he is selected, he shall have to deposit 3 months' salary and he shall have to submit his resignation to the department. The petitioner had resigned and now cannot claim the benefit of his past service rendered in the State of Punjab.

7. On the strength of these assertions, learned counsel for the petitioner urged that the petitioner had served the State of Punjab. His application was forwarded and "No Objection Certificate" had been granted while sending his application to the Kendriya Vidyalaya Sangathan. The petitioner had to resign before he could join the new post. Therefore, as per the instructions that have been issued, the benefit of past service has to be granted while the gratuity and the pension of the petitioner has to be counted.

8. The instructions of the Government of Punjab dated 20.5.1982 are material. These refer to allocation of pensionary liability in respect of the service rendered under the Government of India and the State Government. The same reads:-

"I am directed to refer to the subject noted above and to say that the Government of Punjab have been considering in consultation with the Government of India the question of sharing, on a reciprocal basis, the proportionate pensionary liability in respect of those temporary employees who had rendered temporary service under the central Govt./State Government prior to securing posts under the State, Central Govt. on their own violation in response to advertisements or circulars, including those by the State/Union Public/Commission, and who are eventually confirmed in their new posts. It has since been decided in consultation with the Govt. of India that proportionate pensionary liability in respect of temporary service rendered under the Central Govt./State Govt., to the extent such service would have qualified for grant of pension under the rules of the respective Govt. will be shared by the Govt. concerned on a service-share basis, so that the Government employees are allowed the benefit of counting their qualifying service both under the Central Government and the State Government for grant of pension by the Govt. from where they eventually retired. The gratuity, if any, received by the government employee for temporary service under the Central or State Govt. will, however, have to be refunded by him to the Government concerned.

2. This benefit will be admissible only to the following categories of employees:-

(1) Those who having been re-trenched from the service of Central/State Government secured on their own, employment under State/Central Govt. either with or without interruption between the date of retrenchment and date of new appointment;

(2) Those who while holding temporary posts under Central/State Government apply for posts under State/central Government through proper channel with proper permission of the administrative authority concerned"

3. The benefit may be allowed in such cases also where an employee is required, for administrative reasons for satisfying a technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, and certificate to the effect that such resignation had been tendered for administrative reasons and or to satisfy a technical requirement to join, with proper permission, the new posts may be issued by the authority accepting the resignation. A record of this may also be made in service book under proper attestation to enable him to get this benefit at the time of retirement. These orders shall come into force effect from 31.3.1982 and cases of all such Government employees retiring on this date and thereafter will be regulated accordingly."

It is on the strength of this letter that petitioner claims that his past service should be counted. Reliance further is being placed on the notification No. 2/9/86-2 FCD/1698 dated 26.2.1990. The relevant portion of the same is as under :-

"IV. Incidence of Pensions.

Except in regard to the apportionment of liabilities of pensions of Government employees, who retired after serving the undivided India between India and Pakistan, the adjustment of pensionary charges of Government employees, who have served under one or more than one Government shall be governed as under:-

"The liability for pension including gratuity will be borne in full by the Central or State Government as the case may be to which the Government employee permanently belongs at the time of retirement.""

A conjoint reading of the above said notification and the instructions clearly shows that if an employee has to tender the resignation before joining the new appointment to satisfy the technical requirement, then he is not to be deprived of his past service for purposes of pension and gratuity etc. The only other condition is that proper permission before joining the new post must be obtained. In other words, the application has to be sent through proper channel with permission of the administrative authorities. Annexure P-2 is the copy of the "No Objection Certificate" granted by the District Education Officer and the same reads :-

"There is no objection to the submission of application for service under the Govt. of India by Shri Manohar Lal Kakkar, M.A., B.T. Govt. Higher Secondary School, Ferozepur, subject to the approval of the D.P.I., Chandigarh, Ferozepur."

A glance at the said document reveals that the objection certificate has been granted but it was subject to the approval of the D.P.I. (Schools), Punjab, Chandigarh. Now it is being contended by the State of Punjab that no objection from D.P.I. has not been obtained. It is strange. The application was duly forwarded. Since then 33 years has expired but the Court is being informed that till date the no objection certificate from D.P.I. has not been obtained. Once the petitioner had applied through proper channel, then it was the duty of functionaries of respondent No. 3 and State of Punjab to forward the application, if necessary, even to D.P.I. Even if there was little time, the said application could be sent subsequently for the sanction of the D.P.I. At this later stage, the State of Punjab cannot be heard to state that approval of D.P.I. has not been obtained. That will be totally unfair and giving premium to the inefficiency of the officials of State of Punjab at the relevant time. It is to be presumed, therefore, in the facts of the case that necessary permission had been granted.

9. As is apparent the petitioner had to resign because he had over come to technical difficulty and immediately joined the Kendriya Vidyalaya Sangathan. Therefore, as per the instructions which have been reproduced above, his past service has to be counted towards calculating his pension and gratuity. Similar is the position in the case of Ashok Kumar Goyal. He too had to resign to over come the technical difficulties and his application had been forwarded. There is no ground to take a different view.

10. For these reasons, we allow the writ petitions and the respondents are directed to give benefit to the petitioners for their past services rendered before they joined the new assignments. The State of Punjab shall share the prorata benefits for the services rendered by the petitioners with it. There will be no order as to costs.