

(2007) 05 P&H CK 0079
In the Punjab And Haryana At Chandigarh

Ram Lubhaya Khanna and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 147 PLR 762

Hon'ble Judges : Rajesh Bindal, J;M.M. Kumar, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for issuance of a writ in the nature of mandamus directing the respondents to grant pension and all other pensionary benefits along with interest by taking into consideration the total service rendered by the petitioners from the date of their initial appointments.

The details of the service rendered by the petitioners is as under:

Sr.	Name	Date of	Date of	Date of	PPO No.	Appoint-	retirement	Deduction	Nos.
						ment of	CPF		
1.	Ram Lubhaya Khanna	13.8.63	31.10.98	1.4.68	2073				
2.	Jatinder Kaur	7.11.66	30.6.2002	1.4.75	3139				
3.	Gurcharan Kaur Narula	15.7.59	16.11.96	1.4.75	1185				
4.	Saroj Kakkar	4.10.67	31.3.2002	1.4.73	3556				
5.	Amara Sharma	15.4.66	30.11.99	1.4.73	2229				
6.	Urmil Duggal	11.12.65	31.3.2003	1.4.73	4060				
7.	Dewarka Kumari	15.9.67	31.12.97	1.4.71	1709				
8.	Nirmal Sood	1.6.62	31.1.92	1.11.72	107				
9.	Sarojni Sharma	16.11.67	31.1.2001	1.1.74	2631				
10.	Narinder Lal Thakkar	4.7.64	14.1.97	1.4.68	1549				
11.	Gurcharan Kaur Sachdeva	16.8.67	31.5.2001	1.4.75	2601				
12.	Kewal Krishan Sharma	27.11.63	3.3.97	1.6.67	1394				
13.	Sita Juneja	1.4.69	31.3.2000	1.4.75	2270				
14.	Krishna Grover	4.11.56	22.4.93	1.4.70	176				
15.	Sudarshan Sharma	1.9.70	11.5.96	1.4.75	1184				
16.	Sat Paul Chopra	16.4.62	12.9.94	1.10.64	1609				
17.	Raj Kumari	14.1.66	29.2.2000	1.4.75	2272				
18.	Swaran Dhawan	18.5.77	31.3.97	April,79	1734				
19.	Ajit Singh	3.12.63	28.2.98	1.7.75	1839				
20.	Kamlesh	18.6.63	5.6.2000	1.4.74	2531				
21.	Savtri Devi	8.9.62	24.7.95	1.10.69	1183				

2. We do not feel the necessity of going into detailed facts because after hearing the learned Counsel for the parties and perusing the record we are satisfied that the issue raised in the instant petition is no more *res Integra*, inasmuch as, the same has been settled by a Division Bench judgment of this Court in the case of *Kasturi Lal Khurana v. State of Punjab* 2203(4) S.C.T. 462 and two other judgments of this Court rendered in the cases of *M.R. Juneja v. State of Punjab* 2004(3) R.S.J. 236; and *Om Parkash v. State of Punjab and Ors.* C.W.P. No. 14891 of 1996, decided on 5.2.2003. We have already followed the view taken in the aforementioned judgments while deciding exactly similar controversy in our judgment rendered in the case of *Gurmeet Singh v. State of Punjab and Ors.* C.W.P. No. 13831 of 2005, decided on 8.5.2007 and observed as under:

We have heard learned Counsel for the parties and are of the view that the strict rule of interpretation in such matters would lead to defeat justice and the object of beneficial legislation of the Act, Rules and the Scheme. In that regard, the matter has already been considered in the case of *M.R. Juneja (supra)*. Rejecting the objection that the petitioner did not apply for his transfer to other schools through proper channel, this Court in the case of *M.R. Juneja (supra)* has observed as under:

8. In order to appreciate the stand taken by the respondents for not counting the service rendered by the petitioner in M.D.A.S. Higher Secondary School at Moga, namely, that he did not apply for the fresh appointment at Ferozepur through his previous employer at Moga. I am of the view that the provisions of the 1979 Act and the 1981 Rules framed thereunder are primarily meant for protecting and regulating the service conditions of the employees of the government aided private schools. As a cardinal rule of interpretation, an effort should always be made to interpret the Act and the Rules to achieve the object for which the legislature stepped into this field. The provisions of the Act and the Rules framed thereunder, therefore, cannot be interpreted in a manner which may defeat the legislative object by negating the protection of conditions of service of the employees of Govt. aided private schools. Keeping in view these principles, in my view Rule 9(2) of the 1981 Rules, upon which reliance has been placed by the respondents, cannot be construed to mean that the appointment of a teacher in another aided school will be rendered illegal for the purpose of grant of pension merely because he did not apply for the second post in another school through his previous employer. The object of this Rules is that the first employer is not taken by surprise if an employee intends to resign from his service so as to take up another assignment. In the absence of any such objection by the previous employer on record, the State Government cannot be permitted to take shelter behind this technicality. Moreover, the petitioner was appointed in H.M. Higher Secondary School at Ferozepur in the year 1971 and at that time, neither the 1979 Act nor the 1981 Rules framed thereunder were in force. In the absence of retrospective applicability of these provisions, the respondents cannot be permitted to press into this objection.

When the aforementioned principles are applied to the facts of the present case, it becomes evident that the petitioner had joined the Khalsa College Senior Secondary School, Amritsar, on 2.1.1990 after rendering about 19 years of service with Shri Parkash Ashram High School, Beri Gate, Amritsar, through proper channel and without any break. The position is the same with regard to his joining service at Sant Singh Sukha Singh Khalsa Senior Secondary School, The Mall, Amritsar. Therefore, the liberal interpretation for such like beneficial legislation to advance the legislative object must be accepted, especially when the assertion of the petitioner that he applied through proper channel has not been seriously disputed. Therefore, there is no substance in the objection raised on behalf of the respondents and the whole service of the petitioner deserve to be counted as qualifying service for the purposes of pension and other retiral benefits.

Likewise, the objection with regard to deposit of Contributory Provident Fund deduction w.e.f. 1.4.1972 would also be not of any consequence. Firstly, the Scheme itself had come into force in the year 1987. Secondly, the Contributory Provident Fund amount of Rs. 99,661/- withdrawn by the petitioner has already been deposited back on 30.6.2004 along with interest, amounting to Rs. 1,17,317/-. Moreover, the petitioner has placed reliance on clause 6(5) of the 1992 Scheme which specifically provides that the service rendered on an aided post in another privately managed recognised school is to count for retirement benefits. According to the proviso the Contributory Provident Fund account of the employee in the previous school is continued as such in the subsequent school to which he was transferred and there was no break in service. The petitioner fulfills both the requirements because he had continued depositing Contributory Provident Fund in the subsequent school on his appointment and there has not been any break in his service. On this additional ground also the petitioner deserve to succeed and the objection in that regard is liable to be rejected. In so far as the objection that the case of the petitioner is not covered by Clause 7(1) of the 1992 Scheme, we are of the view that there is no force in it because after relieving on 1.1.1990 from Shri Parkash Ashram High School, Beri Gate, Amritsar, the petitioner joined on 2.1.1990 at Khalsa College Senior Secondary School, Amritsar. He was relieved from Khalsa College Senior Secondary School, Amritsar, on 30.4.1990 and joined on the same day at Sant Singh Sukha Singh Khalsa Senior Secondary School, the Mall Amritsar. Therefore, there is no substance in the objection raised.

In view of the above, we find that on the basis of statutory Rules, the 1992 Scheme, the principle for interpretation of statutes/rules and the binding precedent the relief claimed by the petitioner deserves to be accepted. Accordingly, this petition succeeds. The respondents are directed to count the entire service of the petitioner w.e.f. 23.4.1971 to 30.11.1999 as qualifying service for the purpose of pension. The needful shall be done within a period of two months from the date of receipt of certified copy of the order. The petitioner shall also be entitled to payment of interest @ 12% from the date the pension

became payable till it is actually paid, as has been laid down by a Full Bench of this Court in the case of *R.S. Randhawa v. State of Punjab* 1997(3) R.S.J. 318. However, the amount of Contributory Provident Fund, which the petitioner was required to deposit, alongwith interest @ 12% per annum, if not already paid, may be adjusted out of the amount which the petitioner may be found entitled to get as a result of recomputation of retiral benefits payable to him in term of this order.

3. While deciding similar controversy raised in the case of *Mrs. Shakuntala Puri v. State of Punjab* and Ors. C.W.P. No. 19639 of 2005, decided on 14.5.2007, we have also considered the judgment of Hon"ble Supreme Court in the case of *Vasant Gangaramsa Chandan v. State of Maharashtra* J.T. 1996 S.C. 544. Their Lordship have considered clause 23 of Chapter VI of a Pension Scheme of the Hyderabad Agricultural Committee, which is as under:

4. Clause 23 of Chapter VI in the scheme reads as under:

Qualifying service of a Market Committee employee shall commence from the date he takes charge of the post to which he is first appointed or from the date the employer started deducting the P.F. contribution for the employee which ever later.

4. It was held that the provision has to be read that the clauses of the Scheme have to be read by keeping in view the fact that pension is not a bounty of the State and it is earned by employees after rendering long service to fall back upon after their retirement. The same cannot be arbitrarily denied. The clause was accordingly read down to mean that the qualifying service would commence either from the date of taking charge of the post to which the employee was first appointed or from the date he started contributing the Provident Fund contribution whichever was earlier. The ratio of the above mentioned judgment would apply to the facts of the instant case, inasmuch as, the provision made in clause 6(6) of the 1992 Scheme has to be read down to mean that qualifying service would commence from the date of continuous appointment or from an earlier date if the employee had started contributing to the Contributory Provident Fund. Therefore, the petitioners would be entitled to counting of their service with effect from the date of their appointment.

5. In view of the above, the action of the respondents in refusing to grant pension to the petitioners is declared as illegal. The petitioners are entitled to count their entire service as qualifying service for the purposes of pension. However, the contributory Provident Fund, which was required to be made by the petitioners, shall be adjusted and deducted from the arrears of their pension. The respondents are, therefore, directed to calculate the pension of the petitioners and fix the same within a period of two months from the date a certified copy of this order is received by them. The arrears after calculation in the aforementioned manner be paid to them within the stipulated period along with other retiral benefits, if any.