
(2012) 10 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 9927 of 2003

Ram Nath Khurana, S.S. Master (Retd.)	APPELLANT
Vs	
State of Haryana and Others	RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 169 PLR 455

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Mani Ram Verma, for the Appellant; Randhir Singh, Addl. A.G., Haryana and Mr. Naveen S. Bhardwaj, Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, C.J.—Following facts need to be noted to decide the present writ petition:-

The petitioner herein was appointed as S.S. Master with respondent No. 4-School, namely, Vaish Senior Secondary School, Bhiwani on 14.07.1969. The age of retirement, at the relevant time, was 58 years and on attaining this age, the petitioner was shown as retired on 31.05.1997. However, as the date of superannuation is the last date of the month in which an employee attains that age, his date of retirement was treated as 31.05.1997. There is a provision for extension of the services of meritorious teachers made by the State Government qua aided schools. As per this provision, grant-in-aid is generally allowed in respect of salary of the teachers upto the age of 58 years except in case of a teacher of exceptional merit which necessitates his retention in service after that age. This retention can be upto the age of 62 years subject to the condition that if such a teacher is to be retained beyond the age of 58 years, written approval of the State Government is required. Petitioner was given extension by the respondent No. 4-School upto 17.05.2001 and on 17.05.2001 when he attained the age of 62 years, he was relieved. His pension and gratuity became payable

after extended period. The gratuity in the sum of Rs. 1,14,000/- was released to him on 26.03.2002 after its sanction on 05.10.2001 by the State Government. Likewise, pension in the sum of Rs. 32,983/- was sanctioned on 06.03.2002, arrears of which were released on 06.08.2002. While calculating the pension, the services rendered by the petitioner upto 31.05.1997, i.e. the normal age of superannuation, only were taken into consideration and the period for which his services were extended, namely, from 01.06.1997 to 17.05.2001, were not counted. Because of the aforesaid, petitioner has three grievances which are as under:-

- i) In the first instance, the petitioner claimed that the services rendered by him during the extended period, i.e. upto 17.05.2001, should have been taken into consideration for the purpose of computation of pension;
- ii) Since pension and gratuity were released belatedly and not immediately after 17.05.2001, he should be paid interest on this delayed payment of pension and gratuity; and
- iii) Relieving of the petitioner on 17.05.2001 was not proper and it should have been on the last date of the month i.e. on 31.05.2001, therefore, the petitioner should also be paid salary for the period from 18.05.2001 to 31.05.2001.

Insofar as the first relief claimed by the petitioner is concerned, it is not in dispute that as per Rule 5(ii) of the Haryana Aided Schools (Special Pension & Contributory Provident Fund) Rules, 2001, the period is to be counted only upto the normal age of superannuation which was 58 years in the case of the petitioner. On the application of this Rule, the respondents rightly took into consideration period of service only upto 31.05.1997. Conscious of the fact that this Rule comes in his way, the petitioner has challenged the vires of this Rule. The contention in this behalf is that in case of Government employees, when extension is given, extended period of service is also taken into consideration for the purposes of pension and denying this to the employees of the aided schools amounts to invidious discrimination thereby infringing the provisions of Article 14 of the Constitution of India.

2. In the counter affidavit filed on behalf of respondent Nos. 1 to 3, justification for incorporation of such a provision is given. In the said counter affidavit, it is stated as under:-

However, only contributory Provident Fund was to be granted at that time. Thereafter in the welfare of teachers of aided Schools, the State of Haryana has framed rules for pension & pensionary benefits in the year-1999, which may called the Haryana Aided Schools (Pension and Contributory Provident Fund) Rule-1999. It has come in to force w.e.f. 11.05.1998. Afterwards, the State of Haryana has repealed the Rules-1999 and had framed pension Rules-2001 for teachers of aided schools for granting pension and pensionary benefits vide notification Dated 29.3.2001. Which is called as "Haryana Aided Schools (Special Pension and Contributory Provident Funds) Rules-2001.

3. That, the object of the above-mentioned Pension Rules was to grant improved retrial benefits to the employees of Government Aided privately managed Educational Institution. It is also necessary to mention here that the State of Haryana has been sympathetic to the aspiration of the employees appointed against aided sanctioned posts of the aided institution while being conscious of the fact that there can not be parity between the employees of Government Educational Institution and the employees appointed against aided sanctioned posts of the aided institutions of the State. Employees appointed against aided sanctioned posts of the aided private institutions are governed by a set of service conditions, which are district from those governing the Government employees. The post of the employees of aided educational institution is non-transferable, whereas the Government employees on the other hand are subject to transfer throughout the State.

It is further submitted that the employer in the case of aided educational institution is different from the employer in the case of Government Educational Institution. In the case of aided Educational Institution, the managements are separate, independent legal entities, taking independent decisions in respect of their respective Institution. The Government plays only limited and facilitating role by releasing them grant-in-aid to the extent of 75% of deficit against sanctioned posts only. The sole object behind the grant-in-aid by the Government for a limited number of posts is to promote expansion of education in the State of Haryana without interfering day-to-day management and running of these private institutions.

4. That it is necessary to clear here that the Government was not oblivious to the fact that there was no obligation placed on the Government to necessarily introduce a pension scheme for the employees appointed against aided sanctioned posts of aided institutions, receiving grant-in-aid. However, driven by a desire to improve the existing service conditions of the employees appointed against aided sanctioned posts working in the aided educational institutions, the Government has decided to provide additional grant-in-aid for the purpose of special pension scheme for them, which is different from the one applicable to Government employees by which at the same time results in improving retrial benefits to them.

It is worthwhile to mention here that the Government is clearly not in a position to take on and sustain un-limited financial liability on account of introduction of a pension scheme for the employees appointed against aided sanctioned posts of the aided institutions receiving grant-in-aid. Thus, it was therefore desirous of assisting and supporting a scheme specific to the employees appointed against aided sanctioned posts of these from all institutions, which would enable such employees to enjoy substantially improved benefits after retirement without causing a staggering financial liability on the part of the State Government.

It is also necessary to mention here that "In fact at the time when the demand for a pension scheme was made to the Government, then the Government was

made understand by the representative bodies of the employees etc., that a pension scheme specific to the employee appointed against sanctioned posts of the aided institutions, could be framed on a self sustainable/self-financing basis without any additional liability on the part of the State Govt., because the share of employer available in contributory Provident Fund helps to meet all future benefits.

This scheme is distinct from any other scheme which may be in existence of any other Government/Semi-Government organization within or outside the State of Haryana. However, the Government also reserve the right to review or modify the scheme depending upon the State of Finance of the Government. As such, the claim of the petitioner to treat him at par with the pension Rules of Govt., employee is not sustainable; hence the present petition is liable to be dismissed.

3. For the aforesaid reasons, we are of the view that the petitioner cannot equate himself with the Government employees. There is a reasonable classification founded on intelligible different with rationale nexus. We, thus, reject the contention of the petitioner that the aforesaid Rule is violative of Article 14 of the Constitution of India.

4. Insofar as the relief of payment of interest on belied realization of payment of gratuity is concerned, we are of the opinion that the petitioner has been able to make out a case of grant of interest on the delayed payment. As already noted above, the petitioner was relieved on 17.05.2001. Sanction orders in respect of pension were issued on 06.03.2002, still the respondents released the arrears of pension only on 06.08.2002. The petitioner shall, therefore, be entitled to interest @ 9% per annum from 06.03.2002 to 06.08.2002, i.e. 5 months, on a sum of Rs. 32,983/-. Likewise, sanction for gratuity was accorded on 05.10.2001 but it was released only on 26.03.2002. Thus, the petitioner shall also be paid interest @ 9% per annum on Rs. 1,14,000/- from 05.10.2001 to 26.03.2002.

5. Insofar as the salary for the period 18.05.2001 to 31.05.2001 is concerned, there is no sufficient material produced by the petitioner to justify this scheme. In the first instance, the orders/communications, by which the petitioner's services were extended, are not produced. Likewise, no provision of any Rule etc. is produced to show that even for the extended period, the relieving date has to be the last date of the month. For these reasons, we are unable to grant this claim to the petitioner.

6. The result of the aforesaid discussion would be that this petition is allowed partly granting the benefit of interest on pension and gratuity, as directed above. This interest shall be calculated and paid to the petitioner within a period of one month from today. The writ petition is disposed of.