

(2019) 02 P&H CK 0174

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17197 Of 2015

Smt. Usha Rani Thakral

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 08-02-2019

Acts Referred:

Haryana Aided School (Special Pension and Contributory Provident Fund) Rules, 1999
— Rule 3

Citation : (2019) 02 P&H CK 0174

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Umesh Narang, Nidhi Garg

Final Decision : Allowed

Judgement

Harsimran Singh Sethi, J

In the present writ petition, the claim of the petitioner is that her service which she rendered from 5.11.1973 to 24.6.1996 in Yashoda Co-Educational High School, Hisar-respondent no. 3 should be treated as a qualifying service for computing her pensionary benefits.

As per the averments made in the writ petition, the petitioner was appointed as S.S. Mistress on a sanctioned post in respondent No. 3 School on 05.11.1973. It is an admitted position that respondent No. 3 School is a Government Aided School and 95% grant-in-aid was being given by the Government of Haryana. While the petitioner was working with respondent No. 3 School, the respondent-State of Haryana issued an advertisement for appointment to the post of Principal. The petitioner, who was fully eligible, applied in pursuance to the said advertisement through proper channel on 07.09.1993 and ultimately was selected as such and was appointed as a Principal with the Department of Education, Government of Haryana. In pursuance to the selection, the petitioner was relieved from respondent No. 3 School on 25.6.1996 and she joined on the

same day with the Department of Education, Government of Haryana at Government Girls Senior Secondary School, Agroha, Hisar.

Petitioner kept on working as a Principal till she superannuated on 30.11.2011. After her retirement, only the service, which the petitioner rendered from 25.6.1996 till 30.11.2011 with the Department of Education, Government of Haryana has been taken into account as a qualifying service for the purpose of granting the pensionary benefits to the petitioner. The claim of the petitioner in the present writ petition is that the petitioner is entitled for computing whole of the service as a qualifying service for the grant of pensionary benefits including the service which she rendered with respondent No. 3 School from 05.11.1973 till 24.6.1996. Petitioner had made representations for the said purpose to the respondents but the same were rejected initially on 26.2.2013 (Annexure P-8) and thereafter once again on 09.12.2013 (Annexure P-10). These orders are under challenge in the present writ petition.

Upon notice of motion, the respondents have appeared and filed the reply. Respondents have stated in the reply that the petitioner does not qualify for getting her service rendered with respondent No. 3 School as a qualifying service. The relevant paragraph of the reply is as under :-

"3. That as per the provisions made in Rule 3.12 of Punjab Civil Services Rule, Vol.2, the service of a Government employee does not qualify for pension unless it confirms the following conditions:-

- i) The services must be under Government.
- ii) The employment must be substantive and permanent.
- iii) The service must be paid by the Government.

It is further submitted that as per the provision made in note - I of Rule 3.16 of Punjab Civil Services Rule Vol-II, the service of the Government employee does not qualify unless he/she is appointed and his/her duties are regulated by the Government. It is specifically provided in the Rules, the employees of the municipality, Grant-in-aid schools and establishment paid from the household allowance of the Governor are not entitled for pension.

4. That it is pertinent to mention here that the pension scheme for the employees of the Government Aided schools was introduced w.e.f. 11.05.1998 by the State Government and the same is applicable to the employees of the Government Aided schools who retired after 11.05.1998. It is correct that the petitioner applied for the post of Principal in the Government schools through proper channel and she relieved from Govt. Aided Yashoda Co-educational High School, Hisar on 25.06.1996 F/N and also joined as Principal on same day A/N in Government school. It shows that petitioner rendered her services from 05.11.1973 to 24.11.1996 in Govt. Aided Yashoda Co-educational High School, Hisar under the Private Management of the School registered under Society Act. The Government is only provided Grant-in-aid to the Management of the school

for functioning of the school. Hence as per the provision made in Punjab Civil Service Rules, the period from 05.11.1973 to 24.11.1996 rendered by the petitioner prior to joining the Government service could not be taken into account for computing pensionary benefits.

5. That as explained above, the pension scheme for an employee of Privately Managed Aided School working against sanctioned posts was introduced in the year 1998 in view of the Haryana Aided School (Special Pension and Contributory Provident Fund) Rules, 1999 and under the above Rules, the petitioner is not entitled to pensionary benefits by counting her service from 05.11.1973 to 24.06.1996. The operative part of the Rule 1999 Chapter-II point No. 3(1) towards pensionary benefits of the employees of Government Aided schools:-

3(1) Except as otherwise provided in any rule and subject to the condition that the Management of an aided school executes an agreement in Form I, duly supported by a resolution of the Management to abide by the provisions of these rules and undertaking of the employee in triplicate in Form II and instructions issued by the Government from time to time, these rules shall apply to all the employees who:-

(a) are appointed to the aided sanctioned post on or after the 11th day of May, 1988;

(b) were working on the aided sanctioned posts immediately before 11th day of May, 1998 and continue to work as such thereafter:

it is clear from the Clause 'B' of the above Rules, the petitioner is not entitled for the benefit of past service rendered by her in privately managed aided schools, because as per the above condition, an employee must be working on the aided sanctioned post immediately before 11.05.1998 and continue to work as such thereafter, but in the present case, the petitioner remained posted as S.S. Mistress in Govt. Aided Yashoda Co-educational High School, Hisar only up to 24.06.1996, thus was not working as teacher on sanctioned post in privately managed Govt. Aided School on 11.05.1998 is not entitled for pensionary benefits."

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Learned counsel for the petitioner contends that in the rejection order dated 26.2.2013 (Annexure P-8), it has been stated that the case of the petitioner is not covered under the Service Rules of the Haryana Aided School (Special Pension and Contributory Provident Fund) Rules, 1999 (hereinafter referred to as '1999 Rules'). The later rejection on 09.12.2013 (Annexure P-10) states that though similarly situated personnel have been granted the benefit but as the petitioner was not party in the said writ petition, judgment rendered by this Court in CWP No. 1722 of 2011 will not be applicable in the case of the petitioner.

Learned counsel for the petitioner further states that this Court has already held

in some what similar circumstances that the previous service rendered by the employees will be counted as a qualifying service for the grant of pensionary benefits. A Coordinate Bench of this Court in CWP No. 16817 of 2007, decided on 22.7.2009 titled as Vijay Singh Vs. State of Haryana and others, has held that an employee is entitled to count the service rendered in the Haryana Government Aided Private School against the sanctioned post for the grant of pension and retiral benefits.

Learned counsel for the respondents has not been able to rebut the said contention that in the similar circumstances, this Court has granted the benefit to the employees in respect of counting the past service rendered in Private Aided Schools as a qualifying service. This Court has noticed that though as per Rule 3 of 1999 Rules, the employees who were appointed against the sanctioned post on or after 11.5.1998 or working on the aided post on such date, will be entitled for the pensionary benefits but held that in case an employee would have continued in the aided post where he was appointed and the appointment was against a regular sanctioned post then he would have been granted the benefit of pension under 1999 Rules. The relevant portion of the said judgment is as under :-

"Counsel for the petitioner would contend that service rendered by the petitioner in Jat High School was on a post, which was receiving grant in aid. The petitioner, as per the counsel, had joined the Government department by applying through proper channel. As per the counsel, from the reading of Rule 3.12 in the light of Rule 3.16, it can be said that the conditions for counting the service for the purpose of pension would stand satisfied. As per the counsel, the three conditions contained in Rule 3.12 are explained in Rule 3.16 (a), and relevant aspect is as under:-

i. The service of a Government employee does not qualify unless he is appointed and his duties and pay are regulated by the Government or under conditions determined by the Government.

The counsel has referred to some judgments in support of his contention. He has placed reliance on a Division Bench judgment of Rajasthan High Court in the case of Union of India and others Vs. Jawahar Lal Sharma, 2003 (3) RSJ 672. Division Bench in this case has held that previous service rendered in Government aided institution receiving more than 50% grant in aid shall be counted in future Government employment. The counsel also seeks support from two Division Bench judgments of this Court in the cases of Harnandan Singh Vs. State of Punjab and others, 2007 (2) RSJ 437 and Charan Singh Vs. State of Punjab and others,, 2006 (6) SLR 624. In Harnandan Singh's case (Supra), counting of past service rendered in a privately managed aided Institution after it had been taken over was held entitled to be counted for pension. The letters vide which the schools were taken over were ignored while allowing the period to count towards the pension. While allowing to count this service for pension, reference has been made to scheme prepared in the year 1992 by the Punjab Government, whereby

the Government had granted pensionary benefits like gratuity to the teachers of the privately managed aided school in the State of Punjab. Somewhat similar view was taken by the Division Bench in the case of Charan Singh (supra). The petitioner therein was denied pension on the ground that the service rendered in the school while it was run by private management though receiving aid can not be counted as service for the purpose of grant of retiral benefits. The Court held the petitioner therein entitled to pension and retiral benefits as his service in the school prior to its taking over by the Government was made pensionable one. The Division Bench in this case had relied upon a Supreme Court decision in the case of Chander Sain Vs. State of Haryana and others, AIR 1994 Supreme Court 972. In the case before Hon'ble Supreme Court, the appellant therein had joined the service as Director, Physical Education in Government aided College, which was subsequently taken over by the State Government and he was absorbed in the service of the Government. The question arose whether gratuity payable to him was required to be counted on the basis of the entire period of service rendered by him while serving in the College privately managed or only by counting the service from the date the College was taken over by the State Government. The Supreme Court held as under:-

"The mere fact that appellant did not retire prior to the take over of the college by the State Government, but retired after it was so taken over, does not mean that he is not entitled to claim gratuity in respect of the period of service rendered by him before the college was taken over by the State. If the appellant would have been entitled to payment of gratuity on the basis of the service rendered by him when the college was under private management if he had retired prior to the college being taken over by the State Government, there appears to be no reason, why the said period of service of the appellant while the college was under private management should be ignored for the purpose of computing gratuity payable to him. Merely because he retired after the college had been taken over by the State Government that shall not make any difference."

I am conscious of the fact that in the cases of Harnandan Singh and Charan Singh (Supra), the school/Colleges where the services were rendered had been taken over subsequently by the Government and in this background, the Court had come to the conclusion that the service rendered in the aided school was required to be counted for the purpose of pension and retiral benefits. However, the ratio that can be culled out from these judgments and that of the Supreme Court is that if the service rendered in a privately managed school on an aided post is made pensionable, then that benefit can not be denied to him merely after appointment on a Government post on the ground that the service rendered was in a privately managed school. The plea is that if the service rendered by the petitioner in a Jat High School is made pensionable, then equity and fairness would demand that this should be counted towards his pension as well.

Reference here may be made to a notification issued by the Haryana Government on May 31, 1999, whereby Government has made Rules regulating the pension and contributory fund for the aided schools. These rules are called Haryana Aided Schools (Pension and Contributory Provident Funds) Rules, 1999. As per Rule 3 of the said Rules, these Rules are to apply to all the employees who are appointed on a aided sanctioned post on or after 11th May, 1998 and to those who were working on the aided sanctioned post immediately before 11th day of May, 1998 and continuous to work as such thereafter. Rule 4 provides the nature of retirement benefits that shall be admissible and these are pension, death-cum-retirement gratuity, service gratuity and family pension. The qualifying service for grant of retiral benefits is regulated by Rule 5, which provides that service rendered on attaining the age of 58 years on approved post admitted for grant in aid and the service on an aided sanctioned post on regular basis, the service rendered until the attainment of 60 years in the case of Group D employees and in case of other service rendered until the attainment of 58 years. In short, the service rendered by an employee on the Government aided post has now been made pensionable in terms of these rules.

It is, thus, to be seen whether this service now can be excluded for the purpose of grant of pension. If the petitioner had continued to serve on an aided post in a private school, he would have been entitled to count his service rendered therein for the purpose of pension and other retiral benefits. Would that service be lost to him for the purpose of pension because he has subsequently gone on to join a Government job, which is again a pensionable one? If the result is allowed to operate in this manner, it will be unfair, inequitable and harsh. The ratio of law as laid down in the case of Harnandan , Singh, Charan Singh and Chander Sain (supra) in this background would apply to the facts of the present case. Similar view has clearly been taken by the Division Bench of Rajasthan High Court in the case of Jawahar Lal Sharma Supra. In fact, the Division Bench of this Court in Charan Singh's case (supra) has observed that service rendered by a teacher in private school receiving aid is made pensionable and as such this service can not be ignored for grant of pension. The same is the situation here. Accordingly, I am of the view that the petitioner has made out a case for counting his service rendered on aided post in a private school for the purpose of pension and retiral benefits.

The writ petition is, therefore, allowed and the respondents are directed to count the entire service rendered by the petitioner in a privately managed school and in the Government School for the purpose of pension and retiral benefits. The needful be done within a period of three months from the date of receipt of copy of this Order. All amounts due to the petitioner be released within this period, failing which the petitioner will be entitled to interest @ 6% per annum from the date it is due to the date of payment."

A bare perusal of the above would show that similarly situated employees have been granted the benefit of counting the service rendered with the Private Aided

College as a qualifying service. Learned counsel for the respondents have not been able to dispute that the case of the petitioner is not covered by the above said judgment.

Not only this, this Court in CWP No. 20582 of 2006 decided on 12.10.2012, after relying upon Vijay Singh's case (supra) allowed the same benefits to other employees, who were also similarly situated. The relevant portion of the order passed in CWP No. 20582 of 2006, decided on 12.10.2012 is as under :-

"Counsel for the respondents has stated that the claim as made by the petitioner in the present writ petition can not be granted to them on the ground that the petitioners have joined the government service prior to the coming into force of the Haryana Aided Schools (Pension and Contributory Provident Funds) Rules, 1999, under which for the first time pension was granted to employees of the Government Aided Schools, who were working on aided posts. When the petitioners have joined prior to the date of notification of the statutory Rules under which pension can be granted, no benefit can be granted to the petitioners for the service they have rendered prior thereto as they were not even entitled to grant of pension. She accordingly contends that the writ petition deserves to be dismissed.

Petitioners in the present writ petition have approached this Court, who admittedly were working on the Government Aided posts in Aided Schools prior to their joining of the Government service. The only ground why the petitioners were denying the benefit of counting the service rendered by them against those posts was that they have joined Government service prior to coming into force of the Haryana Aided Schools (Pension and Contributory Provident Funds) Rules, 1999. This plea as has been raised by the counsel for the respondents during the course of the hearing and has been dealt with in the judgment passed by this Court in Vijay Singh's case (supra) (Annexure P-11) and the same was rejected. This Court is of the considered view that the present case of the petitioners on facts and as well as on the ratio as laid down in Vijay Singh's case (supra) covers the claim of the petitioners on all folds and, therefore, the writ petition deserves to be allowed in the same terms.

The present writ petition is, thus, allowed. The impugned order dated 12.3.2013 (Annexure P-4) and order dated 25.8.2005 (Annexure P-5) are hereby quashed. Petitioners are held entitled to the counting of their earlier service rendered in the Haryana Government Aided Private Schools against the sanctioned posts for the grant of pension and retiral benefits. Consequential benefits be granted to the petitioners in accordance with law within a period of three months from the date of receipt of certified copy of the order."

Learned counsel for the petitioner further states that whosoever has approached this Court, the benefit has been granted by the respondent.

Learned counsel states that rather than allowing the similarly situated personnel the benefit, the respondents are making everyone rush to this Court for the

grant of some relief, which is also clear from the impugned order dated 09.12.2013 (Annexure P-10). Learned counsel for the petitioner relies upon order dated 22.06.2011 (Annexure P-15) and 22.06.2012 (Annexure P-16) to contend that the similarly situated personnel, who had filed CWP No. 1722 of 2011 and CWP No. 7281 of 2011 respectively have been allowed the same benefit of counting their service rendered in the Private Aided School as a qualifying service. The order dated 22.06.2011 (Annexure P-15) passed by the respondents in those cases are as under :-

"Consequent upon the Civil Writ Petition No. 1722 of 2011 filed by Smt. Sushila Chaudhary, Principal, Govt. Girls Sr. Sec. School Badya Brahmana (Hisar) in the Hon'ble Punjab and Haryana High Court, the claim of the petitioner has been considered and it was found that she is entitled for the benefit of Aided School Service rendered by her in Aided School, accordingly sanction is hereby accorded for counting services rendered in the privately aided school by Smt. Sushila Chaudhary, Principal, Govt. Girls Sr. Sec. School Badya Brahmana (Hisar) for the period from 03.08.1983 to 31.03.1989 towards pensionary benefits provided she will have to be deposited management share alongwith 10% annual compounded interest into Govt. Treasury upto the date of depositing.

This is issued with the concurrence of the Finance Department conveyed vide U.O. No. 6/2/1/2FD-II/87-A dated 31.05.2011."

Learned counsel for the respondents have not been able to rebut even this argument that the similarly situated personnel have already been extended the relief, which the petitioner is seeking in the present writ petition.

It is a settled principle of law settled by the Division Bench of this Court in Satbir Singh Vs. State of Haryana, 2002(2) S.C.T. 354 that the State should implement a decision in respect of all the similarly situated personnel once the said decision had already attained finality. Division Bench was categorical to hold that all the similarly situated employees should not be forced to approach this Court and the benefit should be extended by the Government on its own. The relevant portion of the said judgment is as under :-

"11. State has pervasive obligations to discharge in relation to maintaining its expected standards of employer-employee relationship. As already noticed, once of the important facets of such obligations is to be reasonable and fair in granting service benefit to its employees in accordance with service rules and the principles enunciated on pronouncement of judgments by the Courts. When judgments attain finality to which the State is a party, duty is casted upon the State to grant relief to its employees who are similarly situated and on identical facts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is not necessary for the State to require each one of its employees to approach the Courts of law for grant of a relief which the State ought to grant to the employees in normal course of its administration, particularly, the cases of the kind afore-referred. Such principles is well known

and accepted for years now. By referring to few judgments we would only predicate the principle with greater emphasis of its application in the day-to-day affairs of the State. In the case of Dr. (Mrs.) Santosh Kumari V. Union of India and others, JT 1994 (7) SC 565: 1995(1) SCT 527 (SC) the Hon'ble Apex Court held as under :-

"The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means of approach the Court."

In the present writ petition, the respondents have not followed the said dictum of the Division Bench and are rather forcing everyone to approach this Court for the release of the benefits, which have already been extended by the respondents themselves to the other similarly situated employees.

Keeping in view the above, the present writ petition is allowed and impugned orders dated 26.02.2013 and 09.12.2013 (Annexures P8 and P-10) respectively are set-aside. The respondents are directed to give the benefit of the service which the petitioner rendered in Govt. Aided School-respondent No. 3 from 05.11.1973 till 24.6.1996 by treating the said period as a qualifying service for the grant of pensionary benefits. Let the pensionary benefits of the petitioner be re-calculated within a period of two months from the receipt of certified copy of this order and the arrears so computed by the respondents on account of the grant of relief mentioned above, shall also be released to the petitioner within a period of two months thereafter. It is made clear that the petitioner shall be entitled for interest @ 9% per annum on the said amount from the date it became due. It is argued by the counsel for the petitioner that whatever amount the petitioner had received from respondent No. 3-School, after she was relieved from the same, the same shall be deposited back by the petitioner alongwith interest @ 10% per annum.

Let the calculation be done by the respondents about the amount to be deposited by the petitioner and the petitioner shall be informed about the same within a period of one month of the calculation done. After the petitioner deposits her contribution, she shall be paid the difference of the pensionary benefits, which the respondents would have calculated in terms of the present order. The said difference shall carry interest @ 9% per annum as ordered earlier.