(2016) 11 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 2260 of 2016 (O&M)

State of Haryana — APPELLANT

Vs

Dr. B.D. Vij — RESPONDENT

Date of Decision : 21-11-2016

Acts Referred:

Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 — Rule 2(j)

Citation : (2017) 3 SCT 192

Hon'ble Judges : Surya Kant and Sudip Ahluwalia, JJ.

Bench : Division Bench

Advocate : Ms. Palika Monga, Deputy AG, Haryana, for the Appellants

Final Decision : Dismissed

Judgement

Surya Kant, J. (Oral)—State of Haryana has preferred this letters patent appeal against the order dated 21.03.2016 vide which the learned Single Judge has directed the appellants to club two spells of services rendered by the respondent towards `qualifying service'' for the purpose of grant of pensionary benefits.

2. The question that falls for consideration is whether the services rendered by the respondents as Lecturer w.e.f. 24.10.1968 to 10.04.1973 in a Government Aided Privately Managed College, deserves to be counted as his `qualifying service'' for the purpose of pension and other retiral benefits, along with the service rendered by him as Lecturer w.e.f. 01.08.1973 till he retired on attaining the age of superannuation on 30.06.1998 from another Government Aided Privately Managed College?

3. The facts are not in dispute. The respondent joined Nehru College, Ajronda in district Faridabad as a Lecturer in Hindi & Sanskrit on 24.10.1968. He was confirmed on 11.08.1970. The College was admittedly governed under the 95% grant in aid scheme though was privately managed. The Panjab University

disaffiliated that Collage on 10.04.1973 as a result of which it was closed down. The respondent was thus relieved from service on 14.04.1973. The Provident Fund was also paid to him.

4. The respondent then joined as a Lecturer in Hindi & Sanskrit in Dyal Singh College, Karnal w.e.f. 01.08.1973, which was also a Privately Managed Government Aided College. The respondent served in the said College till his retirement on 30.06.1998.

5. It was after retirement of the respondent that the Haryana Government notified the `Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999''. These Rules were further amended in the year 2001. As per Rule 2(j) of 1999 Pension Rules, the `qualifying service'' means the service'' is to be taken into account from the date an employee starts contribution towards Contributory Provident Fund.

6. Rule 6 of the 1999 Pension Rules further contemplates as follows:-

"....Rule 6. The services of an employee shall qualify for retiral benefits under these rules as under:-

(i) The service rendered on attaining the age of 18 years on approved post admitted for grant-in-aid;

(ii) The service rendered till the attainment of superannuation age sixty years;

(iii) The leave admissible under the Haryana Affiliated Colleges (Security of Service) Rules, 1979 and under instruction issued by the Government from time to time, excluding the leave without pay and period of suspension, over-stay of leave not subsequently regularized and period of break in service;

(iv) Service rendered in one or more private affiliated colleges, receiving grant-in-aid under the same management.

(v) Service rendered on aided sanctioned post in any aided college in the State of Haryana;

Provided that the official has been appointed through proper channel on aided sanctioned post and the approval of continuity of service has been obtained from the Director:

Provided further that the Contributory Provident Fund account of the employee in the previous college continued as such in the subsequent college to which he is transferred or appointed and there is no break in service or the service condition as modified by the Government from time to time....."

(emphasis applied)

7. It is an admitted fact that no sooner did the Rules are notified then the respondent gave an undertaking on 07.12.1999 to opt for pension and to refund the Provident Fund amount received by him from the previous College along with

interest. He requested the Director, Higher Education to determine the amount which he was required to refund.

8. No decision was taken on the respondent''s representation. Meanwhile, Rule-6 of the 1999 Pension Rules was amended in the year 2001 and as per the amended provision, even after retirement, if the amount of Contributory Provident Fund is returned along with interest, such period shall be counted for pensionary benefits. That is precisely the respondent''s case. It is in this backdrop that the learned Single Judge vide order under appeal has directed that the respondent would refund the amount of Contributory Provident Fund along with interest @ 12% per annum and on doing so, the service rendered by him in the first college, namely, Nehru College, Ajronda (Faridabad) shall also be counted towards qualifying service for the purpose of pension and other retiral benefits.

9. We have heard learned State counsel in support of the appeal. It is urged that there is a break in the first and second service rendered by the respondent, hence, he does not fulfil the eligibility condition in terms of Rule 6 of the 1999 Pension Rules, as reproduced above.

10. We find no merit in this contention. Firstly, the break in service is not attributable to the respondent as it was because of the reasons beyond his control. Secondly, the Rule is to be construed with ta view to achieve the object for which the Pension Scheme was notified. The Rule cannot be interpreted to defeat the Pension Scheme as in that case the Rule itself shall break down. Thirdly, the break of four months or so is not otherwise fatal to the claim of the respondent. It is only the actual service rendered by him in the first college which is to be added in his qualifying service excluding the break period.

11. Faced with this, learned State counsel argued that the respondent did not formally opted for the pension till the year 2013 as in the year 1999, only gave an undertaking in writing.

12. We are not impressed by the contention. The respondent admittedly gave an undertaking in writing requesting the Director, Higher Education to determine the amount of Contributory Provident Fund which he was liable to refund along with interest. It was surely his option for grant of pension by taking into account both the services rendered by him on regular basis in Privately Managed Government Aided Colleges. No fault thus can be found with the order under appeal.

13. The appeal stands dismissed accordingly.

