(2019) 04 P&H CK 0214

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22558 Of 2016 (O&M)

Suraj Parkash Bajaj APPELLANT

Vs

State Of Haryana And Others RESPONDENT

Date of Decision : 29-04-2019

Acts Referred:
Pension Rules, 1999 — Rule 2(j)

Citation : (2019) 04 P&H CK 0214

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Puneet Gupta, C.S. Bakshi

Final Decision : Allowed

Judgement

Harsimran Singh Sethi, J

In the present writ petition, the grievance of the petitioner is qua the order dated 16.09.2016 (Annexure P-4) by which the case of the petitioner for taking into account full length of service as qualifying service for computing the pensionary benefits have been declined on the ground that as per Rule 2 (j) of the Pension Rules, 1999, only the service for which the deduction of CPF was made, is to be taken into consideration while calculating qualifying service.

The facts as mentioned in the writ petition are that the petitioner had joined as lecturer in Political Science in S.A. Jain College, Ambala City, which was a Government Aided Private College. He joined on the said post on 02.09.1974 and he was confirmed on the said post on 02.09.1974. He continued working there till 30.6.2006 when he retired from service after rendering 32 years of service. After the retirement, the petitioner was granted benefit of service starting from 01.04.1980 till 30.06.2006 instead of 02.09.1974 for computing the pensionary benefits. The petitioner started making representation that he was appointed on 02.09.1974 and was entitled for the benefit of the service from the said date. The said representation of the petitioner was rejected by the respondents vide impugned order dated 16.09.2016, which action is impugned by the petitioner in the present writ petition.

Upon notice of motion, the respondents have filed reply, in which the respondents have reiterated that their action of counting the service of the petitioner from 01.04.1980 as qualifying service is perfectly in consonance with the Haryana Affiliated Colleges (Security of Service) Act, 1979 and the Pension Rules framed. The State had framed pension Rules for employees which came into effect on 11.5.1998 and according to the said pension Rules, the qualifying service will only be the service for which the employee has made contribution to the contributory provident fund. Reliance has been placed upon Rule 2 (j) of the Pension Rules, 1999. The relevant portion of the reply of the respondents is as under:

"3. That the services of employees working in Government Aided Colleges in the State of Haryana are governed by the Haryana Affiliated Colleges (Security of Service) Act, 1979 and rules framed thereunder. The State Govt. vide notification dated 31.05.99 introduced the Pension Scheme first time to the employees working on aided sanctioned posts in the Non-Govt. Private Affiliated Colleges in the State of Haryna w.e.f. 11.05.1998, in lieu of Contributory Provident Fund. Prior to the introduction of Pension Scheme, the employees working in Non-Govt. Privately Managed Colleges were not entitled for any pensionary benefits, rather they were being given benefit of Contributory Provident Fund as per their service rules. However, keeping in view the long pending demand of the employees of Private Aided Colleges for introduction of pension scheme, the State Govt. while taking a sympathetic view to the aspirations of the employees appointed against the aided sanctioned posts in the Privately Aided Colleges, introduced the special pension scheme called as the 'Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules 1999", here in after called as Pension Rules 1999. This scheme is a special scheme which is distinct from any other scheme existing in other Govt/Semi Govt. organizations within or outside the State of Haryana as also mentioned in preamble of the Pension Rules. In this Pension Scheme i.e. 1999, the benefit of commutation of Pension, Medical and Leave Encashment has also been specifically denied. This Pension Scheme was further amended vide notification dated 24.01.2001. The relevant part of the Scheme is reproduced below:-

Section 2(j) of the Pension Rules 1999, defines the term "qualifying services" as under:-

"Qualifying service" means the service that qualifies for pension under these rules. It shall be reckoned in terms of completed half years, provided that the fraction equal to three months and above shall be treated as completed half year. However, the qualifying service will be taken into account with effect from the date an employee starts Contribution towards Contributory Provident Fund.

More over Rule-6 of the Pension Rules (amended up to date) prescribes for qualifying for service for entitlement of an employee for retiral benefits, which is reproduced as under:-

"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 uptill the attainment of superannuation age of sixty years.

(iii) The leave admissible under the Haryana Affiliated Colleges (Security of Service) Rules, 1979 and under instructions issued by 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 Colleges 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 services has been obtained from the Director.

Provided further that 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."

Counsel for the respondents states that as the contribution from the petitioner was deducted from 01.04.1980 onwards, only the said service can be treated as qualifying service for computing the pensionary benefits and, therefore, the claim of the petitioner for counting the total service as qualifying service is contrary to the Rules govering the service.

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

The factum that the petitioner was initially appointed on 02.09.1974 and continuously worked till 30.06.2006 has not been denied. The only objection taken is that only the service for which the contribution was deposited by the petitioner towards CPF is to be taken into account as a qualifying service under Section 2 (j) of Pension Rules, 1999 and, therefore, the petitioner is not entitled for treating the total length of service as qualifying service for computing the pensionary benefits.

This Court had an occasion to deal with the same question of law while deciding bunch of writ petitions being CWP No.5897 of 2003 and other connected cases titled as Prem Chand Tagla and others Vs. State of Haryana and others. While deciding the said question of law in Prem Chand Tagla's case (supra), this Court relied upon the interpretation given by this Court to a similar provision of Rule while deciding CWP No.14051 of 2005, titled as Ram Lubhaya Khanna and others Vs. State of Punjab and another decided on 17.05.2007. In the Rules which were there in Ram Lubhaya's case (supra) also stipulated that the qualifying service will be only the service for which the contribution for contributory fund was deducted. While interpreting the said Rule, this Court had held that the entire/ total length of service needs to be calculated as qualifying service subject to the condition that the contribution for the period, for which the same was not deducted, should be deposited by the employee concerned. This Court by relying upon the said judgment allowed the relief while deciding the case of Prem Chand Tagla and others (supra). The relevant portion of the order is as under:-

"It is a matter of fact that the petitioners were appointed on regular basis and they continued working uninterruptedly without any break. The deduction of the contribution was to be done by the employer and there is no role to be played by the employee in this regard. Once, the respondents authorities failed to make deductions, the same act cannot cause prejudice to the claim of the petitioners to claim for treating the total length of service which they have rendered as a qualifying service. This is especially in view of the fact that there has been no opposition from the petitioners to pay the contributory provident fund for the period the same has not been deducted by the respondents. The Rule only postulates that the service for which the contributory provident fund is deducted, is to be treated as a qualifying service, Rule does not prohibit that in case there is a default by the authorities in deducting the provident fund from the employees, the same cannot be deposited at a later stage so as to fulfill the requirement of the Rule. Further, this aspect has already been considered by this Court more than once.

9. A similar Rule, which provides for only taking into account the service in which the contributory provident fund was deposited has been interpreted by this Court in CWP No.14051 of 2005 titled as Ram Lubhaya Khanna and others Vs. State of Punjab and another, decided on 17.05.2007. The similar Rule as in Punjab Private Recognized Aided School Retirement Benefit Scheme, 1992, has been interpreted to mean that total service of an employee is to be counted subject to the condition that the employee deposits the contributory provident fund for the period which the same was not deducted by the authorities.

10. The relevant Rule 6 of 1992 Scheme, as interpreted by this Court in Ram Lubhaya Khanna's case (supra) is as under:-

"6. Qualifying service- (1) The service of an employee shall not qualify for retirement benefits under this Scheme unless-

(i) he attains the age of eighteen years;

(ii) he takes charge of the aided post to which he is first appointed except for which it is otherwise provided by special rules or contract; and

(iii) the service is on an aided post on regular basis

xx xx xx

(6) The qualifying service will be taken into account with effect from any employee started contributing towards the Contributory Provident Fund."

11. By interpreting the above Rule, which is similar to Rule in the present case, this Court allowed the benefit of counting of total service rendered by an employee subject to the condition that the employee was to deposit the contribution for the period the same was not deducted.

12. Not only this, this question again came for consideration in CWP No.19292 of 2010 decided on 23.02.2012. The same relates to the employees of the Punjab Roadways Transport Corporation. In the Rules governing the service of the said Corporation, the Rule 6 which was also similar to the Rule in the present case, was interpreted by this Court and the writ petitions were allowed with a direction to treat the total length of service as a qualifying service subject to the condition that the employee will deposit the contribution for which it was not deducted.

13. Again, this Court while deciding CWP No.24543 of 2016 decided on 27.11.2018 consider the same question of law wherein, the similar Rule as it exist in the present case was pressed into service for denying the benefit. This Court passed an order allowing the said writ petition and again a direction was given to compute total length of service as a qualifying service for computing the pensionary benefits subject to the condition that the petitioner therein to deposit the contribution for the period the same was not deducted.

14. All the above mentioned cases related to the State of Punjab.

15. In respect of the State of Haryana also, this Court allowed the writ petition bearing CWP No. 8441 of 2015, decided on 05.01.2016 by giving a direction to treat the total length of service as a qualifying service subject to the condition that the petitioners were required to make good the contributory provident fund for the period when the same was not deducted. The relevant part of the order is as under:-

"Applying the ratio of judgments mentioned above, impugned orders dated 15.07.2013 and 02.08.2013 in CWP No.8441 of 2015, impugned order dated 10.10.2013 (P-4) in CWP No.8442 of 2015 are set aside and a direction is issued to the respondents to grant to the petitioners benefit of service rendered by them by treating the same as qualifying service for the purposes of pension from the date of their appointments. However, the contribution to 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 calculated the pension of the petitioners and fix the same within a period of two months from the date of receipt of certified copy of this order. The arrears after calculation in the aforementioned manner be paid to them within a period of three month along with retiral benefits, if any.

The writ petition stands disposed of in the above terms."

Counsel for the respondents is unable to pin point any distinguished factor between the petitioner herein and the petitioners in Prem Chand Tagla and others case (supra) so as to deny the benefit of the said judgment to the petitioner. Rather, he very fairly states that the case of the petitioner is also covered by the said judgment in his favour.

In view of the above, the present writ petition is allowed.

The respondents are directed to take into consideration the total length of service rendered by the petitioner as qualifying service and then compute the pensionary benefits for which the petitioner is entitled for.

The fixation of the pensionary benefits of the petitioner in terms of the present order be done within a period of two months from the date of receipt of the copy of this order. Whatever the contribution the petitioner is liable to pay from the year 1974 onwards till 31.3.1980, the petitioner will be informed about the same and the petitioner will deposit the same alongwith interest @ 6% per annum within a period of one month from the information supplied to him about the total amount to be deposited by him. After the petitioner deposit the contribution as asked by the respondents-department, the petitioner shall be released the arrears of pensionary benefits computed in terms of this order along with interest @ 6% per annum within a period of one month thereafter.

The present writ petition is allowed in the above terms.

