
(2019) 11 P&H CK 0169

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4271 Of 2015, 11643 Of 2016, 5851 Of 2017

Usha Wadhwa

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Punjab Private Recognized Aided School Retirement Benefit Scheme, 1992 — Rule 6

Citation : (2019) 11 P&H CK 0169

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Chirag Wadhwa, C.S. Bakhshi

Final Decision : Allowed

Judgement

Harsimran Singh Sethi, J

1. By this common order, the above mentioned writ petitions, the details of which have been given in the headings, are being disposed of as all the writ petitions involve the same question of law and similar facts. For the purpose of this order, the facts are being taken from CWP No. 4271 of 2015.

The grievance, which has been raised by the petitioner in this writ petition is that the petitioner has worked on ad-hoc basis with the Government Aided Institution before the regularization of her services, which period has not been taken into account as a qualifying service for computing the pensionary benefits on the ground that only the service for which the provident fund has been deducted, can be treated as a qualifying service for computing the pensionary benefits as envisaged under the Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001 (hereinafter referred to as '2001 Rules').

Petitioner was appointed as S.S. Mistress in Dayanand Arya Girls High School/ DAV Girls Senior Secondary School, Karnal on 19.10.1972, which is a Government Aided School. Petitioner was appointed on a sanctioned post and was put on probation for a period of one year. After the expiry of probation

period, petitioner was confirmed on the post of S.S. Mistress. On 22.12.1997, petitioner was promoted as a Head Mistress on which post she continued working till she retired on attaining the age of superannuation on 30.06.2008. After the retirement, the respondents calculated the pensionary benefits by taking into account only the service from 01.01.1979 till 30.06.2008 as qualifying service. The service which the petitioner had rendered from 19.10.1972 till 31.12.1978 was not taken into account as a qualifying service for computing the pensionary benefits. The prayer of the petitioner is that the total length of service for which she has served the respondents, should be taken into account as a qualifying service for computing the pensionary benefits.

Upon notice of motion, respondents have filed the reply. The factum that the petitioner worked on an aided post from 19.10.1972 till 30.06.2008 is not denied. It has been stated that the Contributory Provident Fund (CPF) of the petitioner was deducted by the Management from 01.01.1979 onwards only and, therefore, keeping in view of the provisions of 2001 Rules, only the service for which the CPF has been deducted, can be treated as a qualifying service and, therefore, no fault can be found with the action of the respondents in not extending the benefit of service which the petitioner had rendered from 19.10.1972 till 31.12.1978.

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

The question as to whether the service, which an employee has rendered with an Institution on an aided post, for which the CPF has not been deducted, can be taken into account as a qualifying service or not, has been settled more than once by this Court. For the first time, this question was raised before this Court in CWP No. 14051 of 2005 titled as Ram Lubhaya Khanna and others Vs. State of Punjab and another, which came to be decided on 17.05.2007. A similar Rule, as it exists in 2001 Rules, which also enumerated that only the service for which the CPF has been deducted, is to be treated as a qualifying service, was interpreted by this Court. Though, the Rule was not set-aside but the benefit was extended to the employees on the condition that the employees will deposit the CPF for the period it was not deducted alongwith interest so that the requirement of the Rule is fulfilled and the employees also get benefit of their total length of service.

The same question was again raised for the consideration of this Court in CWP No. 19292 of 2010, which was decided on 23.02.2012. The same relates to the employees of the Punjab Roadways Transport Corporation. A similar Rule as it exists in 2001 Rules, was again interpreted by this Court and a direction was given that total length of service is to be treated as a qualifying service subject to the condition that the employee have to deposit the contribution for the period the same was not deducted alongwith interest. This question of law was again reiterated by this Court while deciding CWP No. 24543 of 2016 titled as Gurdial Singh and others Vs. Pepsu Road Transport Corporation and others, on 27.11.2018.

Though, the above mentioned cases relate to the State of Punjab, but in the case of Haryana also, this Court had an occasion to interpret a similar Rule, which debarred the counting of the service for which the CPF was not deducted, as a qualifying service. While deciding CWP No. 8441 of 2015 titled as Devender Partap and others Vs. State of Haryana and another, on 05.01.2016, this Court held that once an employee makes good the deficiency of the contribution for the period it was not deducted alongwith interest, there is no reason why the total length of service which an employee has rendered be not taken as a qualifying service for computing the pensionary benefits. The relevant part of the said judgment 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 calculate 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 months along with retiral benefits, if any.

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

This question was again decided by this Court while deciding CWP No. 5897 of 2003 alongwith other connected cases, titled as Prem Chand Tagla and others Vs. State of Haryana and others, on 09.01.2019.

This Court again reiterated that once an employee deposits the provident fund for the period it was not deducted alongwith statutory interest, no prejudice will be suffered by the State but the employee will get the benefit of total length of service as a qualifying service for computing the pensionary benefits. The relevant portion of the said judgment is as under:-

"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.

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."

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.

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.

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.

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

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 calculate 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 months along with retirement benefits, if any.

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

In the present writ petitions, learned counsel for the petitioner (s) states that the petitioner(s) are ready to deposit the contribution of the CPF for the period, same was not deducted along with the statutory interest and, therefore, the respondents be directed to grant the petitioners the benefit of total length of their service while computing the pensionary benefits by treating the total service as a qualifying service.

Learned counsel for the respondents has no quarrel with the proposition of law as stated above that in case an employee deposits the contribution of the CPF for the period it was not deducted along with the statutory interest, the Government will have no objection to treat the total length of service as a qualifying service for computing the pensionary benefits.

In the present writ petitions, the petitioners have already offered to deposit the contribution for the period it was not deducted along with the statutory interest and, therefore, the respondents, keeping in view the settled principle of law noticed above, are under obligation to treat the total length of service as a qualifying service for computing their pensionary benefits.

Learned counsel for the respondents raises another objection that the petitioner was required to opt as to whether she wants to deposit the CPF or not keeping in view the Notification dated 19.01.2007, but the petitioner did not do so and, therefore, at this belated stage, the petitioner should not be allowed the benefits, especially, once, when the petitioner had the option to opt for this benefit and the same was not availed by her.

Learned counsel for the petitioner vehemently opposes the said plea of learned counsel for the respondents on the basis of the Option Form (Annexure P-8) attached with the replication, wherein, the petitioner had already submitted her willingness for depositing the provident fund from the period 19.10.1972 till 31.12.1978.

Once, the option was filled up by the petitioner and was duly submitted with the employer, no fault can be attributed to the petitioner in this regard, though, it is being disputed by the respondents-State now, that the School Authorities never forwarded the option of the petitioner. Once the petitioner had submitted her option, a legitimate benefit for which she is entitled, cannot be denied due to lapse on part of the School authorities.

Keeping in view the above, the writ petitions are allowed. Respondents are directed to take into account the total length of service of the petitioner(s) as a qualifying service for computing the pensionary benefits. This direction is, however, subject to the condition that the petitioner(s) deposit the CPF for the period it was not deducted alongwith statutory interest of 12% per annum.

Respondents shall calculate the arrears for which the petitioner (s) become entitled under this order after re-fixing their pensionary benefits within a period of two months from the date of receipt of certified copy of this order and the amount which the petitioner(s) are liable to pay as the provident fund share for the period it was not deposited alongwith statutory interest, will be deducted/adjusted from the arrears for which the petitioner (s) will be entitled. Remaining amount for which the petitioner(s) become entitled, shall be released to them within a period of one month thereafter.

Writ petitions are allowed in above terms.