(2011) 08 P&H CK 0258

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 12435 of 2010

Gajinder Trehan		APPELLANT
	Vs	
State of Haryana and Others		RESPONDENT

Date of Decision: Aug. 25, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 16(1), 226

Citation: (2012) 1 ILR (P&H) 743

Hon'ble Judges: M.M. Kumar, J; Gurdev Singh, J

Bench: Division Bench

Advocate: Dinesh Kumar, for the Appellant; Aman Chaudhary, Addl. A.G. Haryana for Respodent Nos. 1 and 3 and Suvir Sehgal, Addl. A.G, Punjab for Respodent No. 2, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

The instant petition filed under Article 226 of the Constitution prays for declaring Rule 6 of Haryana Affiliated Colleges (Pension & Contributory Provident Fund) Rules, 1999 (for brevity ''the 1999 Rules'') (as amended), insofar as it deprives the counting of past service rendered in other affiliated colleges belonging to other State for pension, as wholly illegal, unlawful, arbitrary and unconstitutional. As a consequence of the aforesaid declaration, a further prayer has also been made for quashing order 02.012.2008 (P-8) declining the request made by the petitioner for counting of her previous service rendered by her as a Lecturer in SDP College, Ludhiana. Facts in brief are that the petitioner was appointed as a Lecturer in History in S.D.P. College for Women, Ludhiana on 25.06.1968 (P-1 & P-2). She worked there till 1981. The S.D.P. College for Women, Ludhiana has been receiving grant-in-aid from the Punjab Government and the petitioner was a member of Contributory Provident Fund (for brevity ''CPF''), when she was serving at Ludhiana (P-4). She was paid CPF in the year 1982. She has offered to refund the amount of

employer''s share of the CPF along with interest which comes to ''5592.38/-, which she has got calculated from her earlier employer SDP College for Women, Ludhiana (P-9).

2. On 28.07.1981, she applied for the post of Lecturer in K.L. Mehta Dayanand College for Women, Faridabad through proper channel. She was selected and appointed on 29.07.1981 and joined her duty at Faridabad in July, 1981. The Government of Haryana introduced a Pension Scheme for the employees working in the affiliated colleges and notified the 1999 Rules on 31.05.1999. According to Rule 6(iv) of 1999 Rules, it is postulated that the service of an employee is to qualify for retirement benefits, even if it is in one or more private affiliated colleges, receiving grant-in-aid under the same management but the service rendered in other colleges would not count for pension. The Rules were amended on 24.01.2001 and it was clarified that only service rendered on aided sanctioned post in any aided college in the State of Haryana was to count. The service rendered by the petitioner at Ludhiana was not counted as qualifying service for grant of senior/ selection grade and as such she filed CWP No. 18159 of 1998, which was allowed on 09.10.2001. The learned Single Judge of this Court while disposing of her petition along with other bunch of petitions, had come to the conclusion that Haryana Government vide letter dated 27.02.2001 had accepted the guidelines of the University Grants Commission, issued on 27.11.1990. Accordingly, it has allowed the benefit of previous service to the Lecturers towards the grant of senior/selection grade after determining their past service as per Rules under the Career Advancement Scheme, subject to fulfillment of the conditions by the Lecturer. The order passed by the learned Single Judge reads as under:
CWP Nos. 3364, 3642, 18159, 15079, 14497 of 1998 and CWP No. 2366 and 10701 of 1999.

ORDER

N.K. SUD, J. (ORAL)

The petitioner in this bunch of writ petitions are teaching in the various departments of the Kurukshetra University. They have come up in these writ petitions claiming that the benefit of their past service rendered in different colleges be allowed to them for considering their claim for higher scales admissible on the basis of length of service. This claim is based on the instructions issued by University Grants Commission dated 27.11.1990. During the pendency of the writ petitions, the Haryana Government vide Memo No. 15/1-2000-CIV(3) dated 27.02.2001 (Annexure P/10 in CWP No. 3642 of 1998) has accepted the guidelines of the University Grants Commission and decided to allow the benefit of previous service to the lecturers towards the grant of senior scale/selection grade after determining the period of their past service as per rules under the Career Advancement Scheme provided certain conditions also fulfilled by the concerned Lecturer. The learned Councel for

the respondent -University states that in case the petitioners approach them on the basis of this circular and fulfill the prescribed conditions, they shall consider and allow their claim in accordance with memo.

In view of the above statement, these writ petitions are disposed of with a direction to the respondent-University that in case the petitioners make representations claiming the benefit of past service for the purpose of selection grade in accordance with memo dated 27.02.2001 and fulfill the prescribed conditions, the University shall dispose of their representations within three months from the date of receipt of such representations by passing a speaking order. The university shall also release the consequential financial benefits, if any, within the aforesaid period of three months.

3. In pursuance of the aforesaid directions and upon consideration of the matter, the petitioner was allowed to count her past service rendered in SDP College, Ludhiana for the purposes of selection grade and revised selection grade was given to her, which is evident from the minutes of the meeting of the Screening Committee, M.D. University, Rohtak dated 17.06.2002 (P-5).

4. The petitioner retired on 31.10.2007 and was given pension vide order dated 02.04.2008 (P-6). However, on checking it was found that the service rendered by her from 10.07.1968 to 28.07.1981 at S.D.P. College for Women, Ludhiana was not taken into consideration. Accordingly, she sent a representation to the respondents to count her entire services as qualifying service for the purposes of calculating her pension and other retrial benefits (P-7). However, her representation had been rejected and she was informed vide letter dated 02.12.2008 (P-8) that the benefit of past service rendered by her at Ludhiana could not be given towards pension as her case was not covered under the 1999 Rules, as has already been noticed above. Feeling aggrieved by the bar created by Rule 6 of the 1999 Rules, the petitioner has challenged its constitutional validity in the instant petition.

5. The stand of respondent Nos. 1 and 3 is that the service of the employees working on aided sanctioned posts in the Non Government Private Affiliated Colleges in the State of Haryana are governed by the Rules which are distinct and separate from the service Rules applicable to such employees working in any other State. The rate of grant-in-aid and its terms and conditions for grant-in-aid to Non-Government Aided Colleges in different States are independent and separate. A reference has been made to the expression ''qualifying service'' as defined u/s 2(j) of the 1999 Rules, which provides that qualifying service will be taken into account with effect from the date an employee starts contribution towards CPF. The respondent has also placed reliance on Rule 6 of the 1999 Rules to assert that it does not suffer from any arbitrariness. It has been pleaded that it is only service rendered by a person on any aided sanctioned post in any aided college in the State of Haryana, which would count for retrial benefit and not the one rendered outside the State of Haryana. The respondent has also placed reliance on the judgment of this Court rendered by the

learned Single Judge on 07.08.2008 in CWP No. 16672 of 2002 (Rajeshwar Aggarwal v. State of Haryana) (A-2). The respondent has also asserted that the petitioner submitted her option to be governed by the 1999 Rules on 20.01.2000 (R-1) and there is estoppel against her. According to averments made in para 3 of the preliminary submissions, the petitioner cannot be permitted to challenge the provisions of the 1999 Rules on account of her own act and conduct.

6. We have heard learned counsel for the parties at some length and have perused the paper book with their able assistance. The following question of law would arise for determination of this Court:

Whether Rule 6 of the 1999 Rules as amended on 24.01.2001 is ultra vires of Article 14 and 16(1) of the Constitution where the CPF retiree constitute a separate class than the pensioners.

7. In order to appreciate the controversy, it would first be profitable to read Rule 2(j) and Rule 6 of the 1999 Rules, which read as under:

Section 2(j) of the pension Rules- 1999, defines the term "qualifying service" 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 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.

Rule 6:- The service of an employee shall qualify for retirement 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 up till 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 the Government from time to time, excluding the leave without pay and period of suspension, overstayal 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 colleges 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.

8. A perusal of the above quoted rules would show that the Rule has restricted the counting of service rendered in one or more affiliated colleges receiving grant-in-aid under the same management and it must be service rendered on aided sanctioned post in any aided college in the State of Haryana. According to proviso appended with Clause (v) of Rule 6 of the 1999 Rules, the official should be appointed through proper channel on aided sanctioned post and the approval of continuity of service must have been obtained from the Director of Higher Education. According to unnumbered second proviso, the CPF account of such an employee in the previous college must be continued in the subsequent college to which she/ he has been either appointed or transferred. The petitioner has superannuated on 31.10.2007 and the amendment made in the Rules on 24.01.2001 would be applicable. Accordingly, the service rendered by her on an aided post outside the State of Haryana would not qualify for pension as per Rule 6(v).

9. It has come on record that the petitioner had received her CPF from her previous employer in the year 1982. It is well settled that once a person has received payment of CPF then in the absence of any statutory Rules, he cannot be permitted to switch over to pension scheme as a matter of right. The question has been decided in the authoritative pronouncement of Hon''ble the Supreme Court by a five-Judge Bench in Krishena Kumar and Others Vs. Union of India and others, In that case, the retired railway employees who were covered by the Railway Contributory Provident Fund Scheme had approached Hon''ble the Supreme Court for switching over to Pension Scheme by challenging the cut-off date fixed for option. Repelling the argument in para 34 of the judgment their Lordships'' of Hon''ble the Supreme Court observed as under:

34. The next argument of the petitioners is that the option given to the P.F. employees to switch over to the pension scheme with effect from a specified cut-off date is bad as violative of Article 14 of the Constitution for the same reasons for which in Nakara the notification were read down. We have extracted the 12th option letter. This argument is fallacious in view of the fact that while in case of pension retirees who are alive the Government has a continuing obligation and if one is affected by dearness the others may also be similarly affected. In case of P.F. retirees each one''s rights having finally crystallized on the date of retirement and receipt of P.F. benefits and there being no continuing obligation thereafter they could not be treated at par with the living pensioners. How the corpus after retirement of a P.F. retiree was affected or benefitted by prices and interest rise was not kept any tack of by the Railways. It appears in each of the cases of option the specified date bore a definite nexus to the objects sought to be achieved by giving

of the option. Option once exercised was told to have been final. Options were exercisable vice versa. It is clarified by Mr. Kapil Sibal that the specified date has been fixed in relation to the reason for giving the option and only the employees who retired after the specified date and before and after the date of notification were made eligible. This submission appears to have been substantiated by what has been stated by the successive Pay Commissions. It would also appear that corresponding concomitant benefits were also granted to the Provident Fund holders. There was, therefore, no discrimination and the question of striking down or reading down clause 3.1 of the 12th Option does not arise.

10. The five-Judge Bench also exhorted that in the matter of financial implication, Hon''ble the Supreme Court would be loath to pass any order or direction and proceeded to observe as under in para 45 of the judgment which reads as under:

45. We are not inclined to accept either of these submissions. The P.F. retirees and pension retirees having not belonged to a class, there is no discrimination. In the matter of expenditure includable in the Annual Financial Statement, this Court has to be loath to pass any order to give any direction, because of the division of functions between the three co-equal organs of the Government under the Constitution.

11. The view of the Constitution Bench of Hon''ble the Supreme Court that the pension scheme and the Provident Fund Scheme are structurally different as is evident from the reading of paras 38 and 39 which read as under:

38. That the Pension Scheme and the P.F. Scheme are structurally different is also the view of the Central Pay Commissions and hence ex gratia benefits have been recommended, which may be suitably increased.

39. In the report of the Third Central Pay Commission 1973 4 49 dealing with State Railway Provident Fund it was said:

49. Both gazetted and non-gazetted Railway employees with a service of not less than 15 years who are governed by the State Railway Provident Fund Scheme are at present allowed a special contribution at the rate of 1/4th of a month''s pay for each completed 6 monthly period of service but not exceeding 15 months'' pay or Rs. 35,000, whichever is less. We have been informed by the Railway Board that for such employees the Government contribution and the special contribution to the Provident Fund 384 together constitute the retirement benefits which in other civil departments are given in the shape of pension and death-cum-retirement gratuity. Accordingly, when pensionery benefits to the other civil employees were improved in 1956 and 1957, the maximum of the special contribution to the provident fund for the Railway employees was also increased from Rs. 25,000 to Rs. 35,000. We have not examined whether and to what extent any further increase in this contribution should be made consequent upon the enhancement of the maximum pension and gratuity being recommended by us for pensionable employees. The Government

may decide the same as they deem fit.

12. Once the aforesaid constitutional position is clear then to accept the offer made by the petitioner that she can return the amount of CPF received by her to the extent of employer''s contribution, would be wholly unwarranted and unsustainable in the eyes of law, in the absence of any statutory provision. The statutory provision which is available under Rule 6(iv) of 1999 Rules is that the only service qualified for pension rendered by an employee in the State of Haryana on an aided post in any affiliated college under the same management would qualify for pension. Such a course as offered by the petitioner is available under Rules 17 and 18 of the 1999 Rules to the employees who have worked in the State of Haryana on an aided post. Therefore, it is not possible to declare the Rules as violative of Article 14 and 16(1) of the Constitution.

13. There is another aspect of the matter, which would in any case disentitle the petitioner. Admittedly, the petitioner has rendered service on an aided post in the College at Ludhiana in Punjab State from 10.07.1968 to 28.07.1981. For the purposes of Career Advancement Scheme, the benefit of past service has been given to her and she has been paid senior scale/ selection grade. Accordingly; she has already been given the benefit of past service and her pay has been upgraded by taking into account that service. Once it is so, then a substantive relief stand granted to her. The aforesaid issue has attained finality and therefore, she should feel content with the benefit already given to her. Moreover, the judgment of the learned Single Judge in Rajeshwar Aggarwal''s case (supra) has already decided the issue. As a sequel to the above discussion, this writ petition fails and the same is dismissed.