

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 13.07.2016

1. CWP No.1982 of 2015

Nand Kishore Bansal and others
.....Petitioners

Versus

State of Haryana and others
.....Respondents

2. CWP No.9518 of 2014

J.P. Gupta and another
.....Petitioners

Versus

The State of Haryana and others
.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Umesh Narang, Advocate,
for the petitioners (In CWP No.1982 of 2015).

None for the petitioners (In CWP No.9518 of 2014).

Mr. Rajesh Gaur, Addl. A.G., Haryana.

Mr. Sharad Aggarwal, Advocate,
for Mr. Lokesh Sinhal, Advocate,
for respondent No.3.

Ritu Bahri, J.

This judgment shall dispose of CWP Nos.1982 of 2015 and 9518 of 2014 together, as common questions of law and facts are involved in both the petitions. For reference, facts are being taken from CWP No.1982 of 2015.

The petitioners (in CWP No.1982 of 2015) are seeking quashing of the condition in the order dated 12.10.2010 (Annexure P-4), whereby the benefit of qualifying service for grant of full pension after rendering 28 years to the lecturers working in Govt. Aided Colleges has been granted from a later date than granted to the Govt. College employees. They are further seeking to quash the order dated 16.01.2012 (Annexure P-5), whereby their claim has been rejected.

Pursuant to the direction given by this Court in CWP No.20876 of 2011, the respondents gave a personal hearing to the petitioners and thereafter, passed the impugned order dated 16.01.2012 (Annexure P-5). The petitioners were seeking the benefit of full pension after rendering 28 years of qualifying services in Non-Government Privately Aided Colleges of Haryana, at par with their counterparts working in Government Colleges. The State of Haryana had introduced a special Pension Scheme called as Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 (for short 'Pension Rules, 1999'), which was amended vide notification dated 24.01.2001 and revised on 12.10.2010 for the employees appointed against aided sanctioned posts in the Non-Government Aided Colleges. These Pension Rules, 1999 were introduced in lieu of Contributory Provident Fund (Employers Share). Rule 9 of these Rules, which existed at the time of retirement of the petitioners, reads as under:-

“9 (1). All employees shall be entitled to the superannuation pension from the date they attain the age of sixty years.

(2) Pension shall be calculated at the rate of fifty percent of the average pay of the last ten months. The admissibility of full pension shall be on completion of thirty three years qualifying service. The amount of pension is to be determined by length of service. The length of qualifying service for this purpose shall be calculated in terms of completed six monthly period and fraction of a year equal to three months or more shall be treated as completed six monthly

period.”

The petitioners have retired from service from 30.09.2009 to 31.07.2010 as Lecturers in Private Aided Colleges. The Haryana Government issued a notification on 17.04.2009 (Annexure P-3), whereby qualifying service for grant of full pension has been reduced from 33 years to 28 years. As per this notification, an employee is entitled to full pension, if he retires after rendering minimum qualifying service of 28 years. Vide impugned order dated 16.01.2012 (Annexure P-5), the respondents have denied to grant this benefit to the petitioners w.e.f. 17.04.2009 by taking a plea that the service conditions of Government College Lecturers and Non Government Private Aided College Lecturers are entirely different.

Learned counsel for the petitioner(s) has argued that similar question came up for consideration before this Court in **Dr. Karan Singh Rathee and others Vs. State of Haryana and others**, CWP No.3732 of 2001, decided on 02.08.2007 (Annexure P-6), wherein the dispute was that the Lecturers working in the Government Colleges were granted the benefit of enhanced limit of gratuity w.e.f. 01.01.1996, whereas in the case of Lecturers of Privately Managed Government Aided Colleges, the enhancement was to be implemented w.e.f. 11.05.1998. The said petition was allowed by this Court and thereafter, LPA filed by the State of Haryana was dismissed by a Division Bench of this Court vide order dated 21.01.2008 (Annexure P-7).

Learned counsel for the petitioners has argued that in view of the judgments dated 02.08.2007 and 21.01.2008 (Annexures P-6 & P-7), the condition imposed vide instructions dated 12.10.2010 (Annexure p-4), whereby the benefit of qualifying service for grant of full pension after rendering 28 years has been granted from a later date than granted to the

Government college employees i.e. 17.04.2009, is liable to be set aside. He has further referred to the decision dated 29.07.2010 (Annexure P-8) taken by the Technical Education Department, Haryana, whereby the benefit of 28 years qualifying service w.e.f. 17.04.2009 has been extended to the employees of the Affiliated Aided Technical Institutions like Chhotu Ram Polytechnic, College, Rohtak.

In their written statement, the respondents have taken a stand that the petitioners have retired prior to the date of notification dated 12.10.2010. Hence, this benefit is not admissible to them. The revised provisions for calculation of pension came into force with effect from the date of issue of notification dated 12.10.2010 and it shall be applicable to the Government Aided Colleges Employee retiring on or after that date. The petitioners have retired before 12.10.2010 and they are governed by the Haryana Government Aided College Pension Scheme notification 1999, revised in 2001 and after that on 12.10.2010.

In the replication, the petitioners have referred to the recommendations of the Committee, whereby the benefit of full pension on completion of 28 of qualifying service has been allowed to the retirees of Aided Colleges from the date of issue of notification i.e. 17.04.2009. The said recommendations are reproduced as under:-

“The Govt. of Haryana ha decided to calculate pension on the last pay drawn from 30.11.2007 instead of existing provisions of ten months average emoluments and reduced the qualifying service from 33 years to 28 years for full pension w.e.f. 17.04.2009. The committee recommends that the benefit of full pension on completion of 28 years of qualifying service and benefit of last pay drawn may also be allowed to the employees of these Aided colleges from the date of issue of notification. However, the entitlement to pension on superannuation shall be after completion of 10 years of qualifying service.

The formula for calculation of ratio of proportionate admissibility

of pension in all such cases where the said qualifying period of full pension benefits have so reduced to 28 years shall be made in the manner specified below:

(i) In cases of qualifying service being 28 years or above '56/112'.

In cases where the actual qualifying service falls short of 28 years but happens to be more than 10 years 'Number of qualifying service in half years (HY/112 i.e. 56 HY/112 or 46 HY/112 etc.)'

Learned counsel for the petitioner has placed on record proceedings/report of the Committee dated 20.08.2010 (Annexure P-9), whereby it was recommended to give the benefit of 28 years of qualifying service benefit for full pension w.e.f. 17.04.2009. After this report was submitted to the Government, the Financial Commissioner and Principal Secretary to Government of Haryana, Finance Department, vide letter dated 30.09.2010 (Annexure P-10) directed the Administrative Department to issue necessary notification/instructions. Thereafter, the Financial Commissioner and Principal Secretary to Government of Haryana, Higher Education Department, issued instructions dated 12.10.2010 (Annexure P-4).

Learned counsel for the petitioners has further argued that the recommendations of the Committee (Annexure P-9), which were accepted by the Financial Commissioner vide letter dated 30.09.2009 (Annexure P-10), have been the basis for issuing the instructions dated 12.10.2010 (Annexure P-4). The recommendations were rightly based on the earlier decision taken by the State Government on 17.04.2009 in favour of the Lecturers of the Government institutions.

Learned counsel for the respondents do not dispute that the recommendations had been made for giving the benefit of full pension after reducing the qualifying age from 33 to 28 years in favour of the employees

of Non-Government Privately Aided Affiliated Colleges as per instructions (Annexures P-9 and P-10). The petitioners have further placed on record a letter (Annexure P-11) written by the Director, Technical Education, Haryana to the Registrars/Principals of four Universities/Colleges giving direction to grant Pension/Family Pension and Gratuity to the retirees of Haryana Affiliated Aided Technical Institutions as per notification dated 17.04.2009. Learned counsel for the respondents have not been able to distinguish the case of the petitioner(s) when similar benefit has also been extended to technical institutes by the Director, Technical Education, Haryana.

After going through the contents of both the petitions, written statement and replication, it is established that the Committee constituted by State of Haryana has taken a conscious decision on 20.08.2010 (Annexure P-9) to extend the benefit of notification dated 17.04.2009 to the Non-Government Privately Aided Colleges and the recommendations of the Committee were accepted by the Financial Commissioner and Principal Secretary to Government of Haryana, Finance Department on 30.09.2010 (Annexure P-10) and thereafter, notification dated 12.10.2010 (Annexure P-4) was issued. It is not the case of the respondents that this benefit has not been extended at par with the lecturers of the Government Colleges. Reference can be made to a judgment passed by this Court in this Court in **Dr. Karan Singh Rathee's** case (supra) (Annexure P-6). That was a case where the benefit of enhanced gratuity was given w.e.f. 01.01.1996 to the Lecturers of Government Colleges, however, in the case of the Lecturers of Privately Managed Government Aided Colleges, the enhancement was to be implemented w.e.f. 11.05.1998. The writ petition was allowed by holding that the State could not create a disparity of grant of enhanced gratuity

amongst the persons who had retired between 01.01.1996 to 11.05.1998.

In view of the above discussion and by following the ratio of the judgments dated 02.08.2007 and 21.01.2008 (Annexures P-6 & P-7), the condition imposed in the instructions dated 12.10.2010 (Annexure P-4) restricting the benefit of grant of full pension after rendering 28 years of service to the persons retiring after 12.10.2010, is set aside and the respondents are directed to grant this benefit to the petitioners (in both the petitions) at par from the date when this benefit was granted to the Government College employees.

Both the petitions i.e. CWP Nos.1982 of 2015 and 9518 of 2014 are allowed accordingly.

13.07.2016
ajp

(RITU BAHRI)
JUDGE

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