

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.5441 OF 2008

STATE OF HARYANA & ANR.

.....APPELLANTS

VERSUS

S.M.ACHARYA
NT

.....RESPONDE

O R D E R

The question that arises for consideration in the instant appeal is, whether the service of the respondent rendered with the D.A.V.College, Hassangarh, was liable to be taken into consideration along with the service rendered by him with C.R.K.College, Jind, as qualifying service. Rule 6 of the Haryana Affiliated Colleges

(Pension and Contributory Provident Fund) Rules, 1999 is the relevant provision, for the determination of the above issue. Rule 6

aforementioned is extracted hereunder:

"Rule 6. Qualifying Service.

Signature Not Verified

The service of an employee shall

Digitally signed by
Satish Kumar Yadav
Date: 2014.06.04

qualify for retrial benefits under this rule as

15:50:39 IST

under :-

Reason:

- i. xx xx xx
- ii. xx xx xx
- iii. xx xx xx

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iv. Service rendered in one or more private affiliated College, 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 further that the Contributory 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."

Under proviso to Clause (v) of Rule 6 extracted above, for

taking into consideration the qualifying service in an earlier

employment, it is imperative that there should be no break

service. A perusal of the impugned order however reveals that the

respondent continued to render service with the D.A.V.College,

Hassangarh, till 05.09.1983, whereafter he joined his employment

with the C.R.K.College, Jind. On his employment with the

C.R.K.College, Jind, deduction towards C.P.F. commenced

01.05.1984. The above factual position depicted in the impugned

order, gives an impression that, the respondent was unemployed from

06.09.1983 to 30.04.1984. The above break in service was not taken

into consideration by the High Court, while passing the impugned

order. The above factual position would have made the respondent's

service in his earlier employment, ineligible for computation

towards qualifying service.

During the course of hearing, learned counsel for the

appellant very fairly brought to our notice, that after being

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discharged from the employment of the D.A.V.College, Hassangarh, on

05.09.1983, the respondent commenced his employment with the

C.R.K.College, Jind, on the very next day i.e. on 06.09.1983. That

being the factual position, it is apparent that there was no break

whatsoever, when the respondent moved from D.A.V.College,

Hassangarh, to C.R.K.College, Jind.

In the above view of the matter, the second question which

arises for consideration is, whether in terms of Rule 6 extracted

hereinabove, the respondent was entitled to count the service

rendered by him in the D.A.V.College, Hassangarh, towards qualifying

service. Yet again, there is a predicament on account of the fact,

that the proviso under Clause (v) of Rule 6 also mandates that the

said service could be taken into consideration as qualifying service, subject to the condition, that the contributory provident fund account of the employee in the previous college, continued as such, in the subsequent college. Insofar as the instant aspect of the matter is concerned, learned counsel for the appellants invited our attention to a communication dated 10.07.1984 (appended to the instant civil appeal as Annexure P-1). The above communication is being extracted hereunder:

"Office of the Principal,
D.A.V College, Hassangarh,
(Rohtak)

Dated 10.07.1984

Certified that Sh. S. M. Acharya S/o Sh. Nanda Ram served this college as Lecturer in English from

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14.10.1974 to 5.9.1983 (A.N.). His application for the post of Lecturer in English at C.R.K. College, Jind was duly sponsored and having been selected, he was relieved on 5.9.1983 to join C.R.K.College, Jind. Since his salary for 28 months was outstanding to be paid, his CPF amount could not be transferred to C.R.K. College, Jind along with him. In the meantime the college was closed down by the management due to unavoidable circumstances, and we had to handover their C.P.F. deposits individually to each employee of the College.

It is further certified that D.A.V. College, Hassangarh (Rohtak) had been receiving grant-in-aid from Govt. Haryana since its very inception in 1970.

Sd/-
Principal
D.A.V. College
Hassangarh (Rohtak)"

(Emphasis is ours)

A perusal of the above communication reveals, that after the respondent had relinquished his employment with his erstwhile employer, namely, D.A.V College, Hassangarh, the same came to be closed down by the management, whereupon, rather than transferring the contributory fund account of the respondent, to the respondent's new employer, the same was released to the respondent himself. Since the contributory fund account of the respondent, had not been transferred to the C.R.K.College, Jind, yet again, the respondent was disentitled to count the service rendered by him at the D.A.V College, Hassangarh, as qualifying service.

Insofar as the second aspect of the matter is concerned, it was pointed out, that the 1999 Rules referred to hereinabove came to

be amended, whereupon, Sub-rules (3) and (4) of Rule 17 of the amended Rules, read as under:

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"The employees who have retired on or after coming into force of these rules and have already drawn the employer's share of Contributory Provident Fund together with interest accrued thereon and they (or in case of death of such an employee, his legal heirs) are not in position to refund the same in cash, may be allowed to adjust the same against the amount of gratuity or arrears of pension that may be admissible to them. In such cases the employer's share of Contributory Provident Fund together with interest accrued thereon shall be refunded with 12% interest on the amount actually drawn, calculated from the date of drawal of the same amount to the date of refund or adjustment and if there still remains any due amount it will be adjusted by non-payment of pension till recovery of the total amount is adjusted."

Sub-Rule (4) further provides that:

"The date of drawal and refund of the amount of employer's share together with interest thereon shall be recorded in the service book and the entry shall be attested after verification by the Directory. The concerned employee or their legal heirs, as the case may be, shall give an undertaking in writing to the effect that he has no objection to such recovery or adjustment."

The above amendment, would obviously relate to an employee, who retired from service after 24.01.2001. Since it is not disputed, that the respondent retired from service on 31.08.2003, Sub-rules (3) and (4) of Rule 17 were clearly applicable to the respondent. The impugned order notices, that the respondent in compliance of Sub-rules (3) and (4) of Rule 17 had undertaken to deposit, the management's share of the contributory provident fund amount, drawn by him from the D.A.V College, Hassangarh, along with 12% interest thereon. That being the admitted position, we find no infirmity in the impugned order, wherein, the High Court concluded that the respondent was entitled to count the service rendered by him at the D.A.V College, Hassangarh, as qualifying service.

For the reasons recorded hereinabove, we find no merit in this appeal and the same is accordingly dismissed.

.....J.
(JAGDISH SINGH KHEHAR)

.....J.
(C. NAGAPPAN)

NEW DELHI;
MAY 30, 2014.

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ITEM NO.103

COURT NO.3

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 5441/2008

STATE OF HARYANA & ANR.

Appellant(s)

VERSUS

S.M.ACHARYA

Respondents(s)

(With appln.(s) for vacating stay and Office Report)

Date : 30/05/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE C NAGAPPAN
(VACATION BENCH)

For Appellant(s) Ms.Nupur Chaudhary, Adv.
Ms. Naresh Bakshi, AOR (Not Present)

For Respondent(s) Mr. Jinendra Jain, AOR(Not Present)

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(SATISH KUMAR YADAV)
COURT MASTER

(PHOOLAN WATI ARORA)
ASSISTANT REGISTRAR

(Signed order is placed on the file)