

Arbitrator could not act as a judge in his own cause. The revisional authority was supposed to advert to the ground taken by the petitioner in his petition. However, the revisional order is silent on this issue. Even at the time of admission of this petition, this court had noted the contention of the petitioner that the Assistant Registrar was an *ex-officio* member of the managing committee of the aforesaid society and thus stayed recovery of the amount till further orders. For these reasons, the orders Annexures P-I, P-2 and P-3 are hereby quashed. The case is sent back to Registrar, Cooperative Societies, Punjab to act in accordance with provisions of Punjab Cooperative Societies Act, particularly Section 56 thereof. The parties are directed to remain present before the Registrar on 12th March, 2010.

(9) Allowed in aforesaid terms.

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*R.N.R.*

*Before Surya Kant, J.*

**SUKHDEV SINGH AND OTHERS,—Petitioners**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

**CWP No. 14238 of 1991**

10th March, 2010

*Constitution of India, 1950—Art. 226—Punjab Privately Managed Recognized Aided Schools Recruitment Benefits Scheme, 1992—Cls. 3 & 5—Punjab Civil Services Rules (Vol. II)—Rules 3.16, 3.17, 3.17A, 3.30 & 3.31—Petitioners rendering services in Government Aided Privately Managed Schools against posts duly sanctioned under Grant-in-Aid scheme—Whether service rendered by a Teacher/Master in a Government Aided Privately Managed School is countable towards pensionary benefits—Held, yes—Respondents directed to count services rendered by petitioners in Government Aided Privately Managed Schools against posts duly sanctioned Grant-in-Aid scheme towards their ‘qualifying service’ for pension subject to certain conditions.*

*Held*, that Rule 3.16 of the CSR provides that 'service' of a Government Employee does not qualify for pension unless he is appointed and his duties and pay are regulated by the Government or under the conditions determined by the Government. Note-I thereto excludes certain services including of a Municipality or the Grant-in-Aid Schools and Institutions, for the purposes of pension. Rule 3.17 contemplates that an employee holding substantively a permanent post on the date of his retirement, would be entitled to pension after including the 'temporary' or 'officiating' service rendered by him, towards 'qualifying service' except such temporary or officiating services in non-pensionable establishment or when it paid from the contingencies.

(Para 9)

*Further held*, that Rule 3.17A provides that all services rendered on establishment, interrupted or continuous the service rendered in work-charged establishment or paid from contingencies. Rule 3.30 describes the 'service' which satisfies the conditions for its inclusion as a 'qualifying service' and it is apparent from Rule 3.31 that those services which are paid from the Government Revenue qualify for pension. To be more explicit, the service not paid from the Government Revenue or paid from the funds in respect to which the Government holds the position of a Trustee or paid by fees levied by law or under the authority of the Government or by Commission or by the grant in accordance with law or custom of a tenure in land, or of any source of income or right to collect money or paid from local funds, does not qualify for pension.

(Para 10)

*Further held*, that from the scheme of the CSR, it is evident that resignation does not entail forfeiture of past service provided that such resignation is necessitated to enable the incumbent to join another appointment, temporary or permanent, for which he had applied through and with proper permission. Even an interruption in service on account of such resignation can be formally condoned by treating the period of leave of kind due to him.

(Para 13)

Ms. Alka Chatrath, Advocate, *for the petitioners*.

Ms. Charu Tuli, Senior DAG, Punjab.

**SURYA KANT, J. (ORAL)**

(1) This order shall dispose of Civil Writ Petition Nos. 14238, 14239 of 1991, 1087 of 1992, 9818 of 1994, 2190 of 2004, 15840 of 2009 and 3477 of 2010, as common questions of law and facts are involved in these cases.

(2) The issue that arises for consideration is as to whether the service rendered by a Teacher/Master in a Government Aided Privately Managed School, is countable towards the pensionary benefits on his retirement from the Government service ?

(3) For brevity, the facts are being extracted from Civil Writ Petition No. 14238 of 1991.

(4) This writ petition has been filed by 120 Teachers/Masters serving in various Government Schools run by the Education Department, Government of Punjab. Their precise claim is that before joining the Government service, they had rendered services in the Government Aided Privately Managed Schools against the posts duly sanctioned under the Grant-in-Aid Scheme in terms whereof, the State Government provides 75% to 95% grant-in-aid to the Institutions towards salary and other expenditure incurred by the Schools. The dates of their appointments or the posts held by them in Government-Aided-Schools, the dates when they were relieved from those Schools to enable them to join the Government Schools on their selection in Government Service as well as their respective dates of joining the Government Schools are fully described in tabulated form in Annexure P-1.

(5) It is the pleaded case of the petitioners that since they were appointed against the posts duly sanctioned under the Grant-in-Aid Scheme, they would have been entitled to the pension and gratuity in lieu of the Contributory Provident Fund as provided by the Government of Punjab firstly *vide* Circular dated 25th May, 1989, the relevant part whereof reads as follows :—

“The Punjab Government is already paying grant-in-aid @ 95% of the deficit to the management of the aided schools in the State with effect from 1st December, 1967. This grant in aid scheme

was introduced *vide* government letter No. 932-EDU-III-I-E-68/5360, dated 20th February, 1968. The employees of these privately managed aided schools have been demanding for the some time past the grant of retirement benefits like pension and gratuity in lieu of contributory provident fund. This matter has been under consideration of the Government. It has now been decided to grant D.C.R.G/Pension/Family and other related benefits in lieu contributory provident fund to the employees of privately managed aided schools with effect from 5th February, 1987 at the relevant rates admissible to the employees of the State Government holding corresponding posts in the schools run by the Government in accordance with the procedure to be prescribed by the Government and further subject to the following conditions :—

- (1) These instructions shall be applicable to those whole time permanent employees, employed against posts of the aided posts of the aided schools who were appointed on or after 5th February, 1987 and also to such existing employees who have not attained the age of superannuation on 5th February, 1987 and who opt for the pension and gratuity scheme within the stipulated period in the prescribed proforma.
- (2) The Managing Committee of the school shall continue to contribute 5% to 10% or such rates, as may be fixed from time to time of the pay as their share of contributory Provident Fund, as if employees are not opting or had not opted for the scheme....”

(6) There is no denial to the fact that besides the above-stated Policy Circular, the Government of Punjab notified a Scheme in the year 1992, namely, the Punjab Privately Managed Recognized Aided Schools Recruitments Benefits Scheme, 1992 (for short the ‘1992 Scheme’) to grant pensionary benefits like pension and gratuity in lieu of the Contributory Provident Fund to the Teachers of the Privately Managed Government Aided Schools in the State of Punjab retrospectively from the year 1987

i.e., the cut off date given in the Circular dated 25th May, 1989. Clause 3 and 5 of the 1992 Scheme read as under :—

“3. (1) Application.—This scheme shall apply to all the employees, excepting those who do not opt in terms of Clause 3 (subject to the condition that the Managing Committee of a Privately Managed Recognized Aided School executes an agreement in Form-1 duly supported by resolution of the Managing Committee to abide by the provisions of this Scheme and Instructions, issued by the Department from time to time), who :—

- (a) are appointed to the aided posts on or after the fifth day of February, 1987 ; and
- (b) were working on aided posts immediately before the fifth day of February, 1987 and continue to work as such after that date :

Provided that the employees who were appointed to the aided posts—

- (i) before the fifth day of February, 1987 and who have attained or will attain the age of superannuation on or after that date ; and
- (ii) on or after the fifth day of February, 1987 but before the 16th day of January, 1991 ;

shall have the right to opt within a period of four months from the date of publication of this scheme to be or not to be governed by the provisions of the scheme.

(2) The scheme shall not apply to—

- (i) the employees appointed on part time basis against posts ;
- (ii) the employees who retired from the aided posts before the 5th day of February, 1987 and the employees who attained the age of superannuation before the fifth day of February, 1987 and were re-employed on aided posts ;

- (iii) the employees who are governed by the Contributory Provident Fund ; and
- (iv) the employees employed on a leave gap arrangement on *ad hoc* basis.

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- (5) **Benefits under the Scheme.**—The following retirement benefits shall be granted under the Scheme namely :
- (a) Superannuation pension ;
  - (b) Death-cum-retirement gratuity ;
  - (c) Family pension ;
  - (d) Invalid pension ;
  - (e) Compensation pension ;
  - (f) Compassionate allowance ; and
  - (g) Retiring pension.”

(7) Some of the petitioners who have retired from service during the pendency of this writ petition, are aggrieved at the fact that since they had resigned from the Government Aided Schools so as to join the Government service as Teachers/Members before the 1992 Scheme came into force, its benefits have not been extended to them on the premise that they had not rendered the pensionable service' in the Government Aided Schools before “the 1992 Scheme” came into force. Similarly, such retirees have granted the pensionary benefits only by taking into account the 'Government service' rendered by them. In other taking into account the 'Government service' rendered by them. In other words, the service rendered by the retired petitioners in the Privately Managed Government Aided Schools against the posts duly sanctioned by the Government under the Grant-in-Aid Scheme, has not been taken as the 'qualifying service' for the purpose of grant of pension.

(8) Before adverting to the cited decisions relied upon by learned counsel for the parties, it may be noticed here that had the petitioners continued to serve in the Government-Aided Privately Managed Schools, they would have got the retiral benefits like the pension and gatuity subject to,

however, fulfillment of the eligibility conditions laid down in 'the 1992 Scheme', Similarly, the service rendered by them in the Education Department Government of Punjab, after resigning from the Government Aided Privately Managed Schools, is also a 'qualifying service' for the purpose of Pension under Rule 3.16 read with Rule 3.17, 3.17A, 3.30 & 3.31 of the Punjab Civil Services Rules (Vol. II) (hereinafter referred to as the 'CSR').

(9) Rule 3.16 of the CSR provides that 'service' of a Government Employee does not qualify for pension unless he is appointed and his duties and pay are regulated by the Government or under the conditions determined by the Government. Note-I thereto excludes certain services including of a Municipality or the Grant-in-Aid School and Institutions, for the purposes of pension. Rule 3.17 contemplates that an employee holding substantively a permanent post on the date of the retirement, would be entitled to pension after including the 'temporary' or 'officiating' service rendered by him, towards 'qualifying service', except such temporary or officiating services in non-pensionable establishment or when it is paid from the contingencies. Initially, the period of service rendered in the work-charged establishment who also excluded for the purpose of pension but the provision to that effect was struck down by a Full Bench of this Court in **Kesar Chand versus State of Punjab and others (1)**.

(10) Rule 3.17A provides that all services rendered on establishment, interrupted or continuous, shall count as qualifying service except in the cases mentioned below, including the service rendered in work-charged establishment or paid from contingencies. Rule 3.30 describes the 'service' which satisfies the conditions for its inclusion as a qualifying service' and it is apparent from Rule 3.31 that those services which are paid from the Government Revenue qualify for pension. To be more explicit, the service not paid from the Government Revenue or paid from the funds in respect to which the Government holds the position of a Trustee or paid by fees levied by law or under the authority of the Government or by Commission or by the grant in accordance with law or custom of a tenure in land, or of any source of income or right to collect money or paid from local funds, does not qualify for pension.

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(1) AIR 1988 Pb. & Hy. 265

(11) Rules 3.16, 3.17, 3.17A, 3.30 and 3.31 (relevant extracts only) read as follows :—

"3.16. (a) The service of a Government employee does not qualify unless he is appointed and his duties and pay are regulated by the Government or under conditions determined by the Government.

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Note 1 : The following are examples of Government employees excluded from pension by this rule :—

- (1) Employees of a Municipality ;
- (2) Employees of grant-in-aid schools and institutions ;
- (3) Subordinates appointed by Treasurers on their own responsibility ;
- (4) Service on a establishment paid from a Contract Establishment Allowance, with the detailed distribution of which the Government does not interfere, whether such contract allowance is a fixed amount or consists of fees.
- (5) Service on an establishment paid from the House-hold Allowance of the Governor."

"3.17. If an employee was holding substantively a permanent post on the date of his retirement his temporary or officiating service under the State Government followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of :—

- (i) period of temporary or officiating service in non-pensionable establishment ;
- (ii) periods of service in work-charged establishment and
- (iii) periods of service paid from contingencies."



"3.17A(1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service :—

- (i) Service rendered in work-charged establishment;
- (ii) Service paid from contingencies..."

"3.30 Service which satisfies the conditions prescribed in sub-section B and C of this section qualifies, or does not qualify according to the sources from which it is paid. With reference to this Rule, service is classified as follows :—

- (a) Paid from the Government revenues.
- (b) Paid from funds in respect to which the Government hold the position of Trustee.
- (c) Paid by fees levied by law, or under the authority of the Government or by Commission.
- (d) Paid by the grant, in accordance with law or custom, of tenure in land, or of any source of income, or right to collect money.
- (e) Paid from Local Funds."

"3.31. Service paid from the Government qualifies. The fact that arrangements are made for the recovery, on the part of the Government, of the whole, or part of the cost of an establishment of Government employees, does not affect the operation of this principle, provided that the establishment or Government employee is appointed, controlled and paid by the Government e.g. Police Establishment entertained as the cost of individual and corporate bodies."

(12) At this stage, reference is also made to Rule 7.5 (2) of the Civil Service Rules, which reads as follows :—

"7.5. (1)       xx       xx       xx

- (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension....."

(13) Form the scheme of the CSR, it is evident that resignation does not entail forfeiture of past service provided that such resignation is necessitated to enable the incumbent to join another appointment, temporary or permanent, for which he had applied through and with proper permission. Even an interruption in service on account of such resignation can be formally conducted by treating the period of leave of kind due to him.

(14) With the introduction of 'the 1992 Scheme' retrospectively from the year 1987, the exception provided at Sr. No. 1 of Note-1 of Rule 3.16, can no longer be said to be in existence and stands deleted by implication.

(15) The respondents have no where averred that the financial aid under the Grand-in-Aid Scheme is not provided to the School/Institutions out of the State Revenue. The service rendered by an employee of the Government Aided/Institution against a sanctioned post under the Grant-in-Aid-Scheme and subject to fulfillment of other eligibility conditions as laid down in 'the 1992 Scheme', shall have to be counted towards qualifying service for the purpose of 'pension' under Rule 3.16 read with Rule 3.17 of CSR (Volume-II).

(16) In **State of Punjab and others versus Dev Dutt Kaushal and others (2)**, the pensionable service rendered in a private college which was taken over by the Government and the teachers working therein were absorbed in the Government service, was held to be 'qualifying service' for the purpose of pension under the Government.

(17) In **Chander Sain versus State of Haryana, (3)** also the service rendered in a Government-Aided-Private College which was later on taken over by the State of Haryana, was held to be countable towards pension, keeping in view the terms and conditions laid down while taking over the said College.

(18) In **Charan Singh versus State of Punjab and others, (4)**, a Division Bench of this Court took the same view and placed reliance on the above-cited two decision of the Supreme Court.

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(2) AIR 1996 SC 85

(3) 1994 (1) SCC 750

(4) 2006 (6) SLR 624

(19) In **Harnandan Singh versus State of Punjab (5)** the service rendered in a Privately Managed Government Aided School before it was taken over by the State Government, was permitted to be computed towards pensionary benefits in terms of 'the 1992 Scheme'.

(20) The above stated decisions are the cases where the Privately Managed Government Aided Institutions were later on taken over by the State Government alongwith the staff. The uninterrupted service in the same Institution before and after taking over by the State Government was pensionable and therefore, it was ruled that the service rendered with the Institution before it was taken over by the State Government, was also the 'qualifying service' for the purpose of pension and other retiral benefits.

(21) Civil Writ Petition No. 16817 of 2007 (**Vijay Singh versus State of Haryana and others**), decided on 22nd July, 2009, is an instance where the writ petitioner was serving in a Government Aided Privately Managed School before he resigned and joined the Education Department, Government of Haryana. A Co-ordinate Bench accepted his claim for counting the service rendered by him in the Government Aided Privately Managed School for the purpose of pension etc. on the premise that had he continued to serve on the said post in the Government Aided Privately Managed School, he would have been entitled to count his entire service for the purpose of pension and other retiral benefits.

(22) As has already been held that after 'the 1992 Scheme' came into force retrospectively with effect from 1987, Rule 3.16, Note-1 (Sr. No. 2) is deemed to have been omitted and/or relaxed and the service rendered by the Teachers like the petitioners, subject to fulfillment of the conditions laid down in Pension Scheme 1992 itself, would be countable as 'qualifying service' towards pension etc. in Government service.

(23) For the reasons afore-stated, the writ petitions are allowed and the respondents are directed to count the services rendered by the petitioners in Government Aided Privately Managed Schools against the posts duly sanctioned under the Grant-in-Aid Scheme, towards their 'qualifying service' for pension subject to, however, following conditions :—

- (1) The respondents shall call upon the petitioners to furnish their exact service particulars in respect of the service rendered by them in the Government Aided Privately Managed Schools.

Such an information shall be called within a period of two months from the date of receiving a certified copy of this order and the petitioners shall furnish the same within one month thereafter ;

- (2) The respondent shall call upon the records of the Government Aided Privately Managed Schools and verify as to whether or not the petitioners have served in such Government Aided School against the posts duly sanctioned ;
- (3) The respondents shall be at liberty to ascertain as to whether or not the petitioners had resigned from the Government Aided Privately Schools to enable them to join the Government service ;
- (4) The insignificant or small break between the two services shall be condoned in terms of Rule 7.5 (3) of CSR (Volume-I) ;
- (5) The benefits of service rendered in Government Aided Privately Managed Schools shall be extended strictly as per the terms and conditions contained in the 'the Pension Scheme 1992' ;
- (6) If some of the petitioners who are still in service are found to be not entitled to the benefit of their previous service in Government Aided Schools, necessary speaking orders to this effect shall be passed by the respondents ;
- (7) This order shall not be construed to mean acceptance of claim of the petitioners to count the service rendered by them in Government Aided Privately Managed Schools, towards their seniority, proficiency step-up or ACP etc. as the claim in the present writ petitions is confined *qua* pensionary benefits only ;
- (8) The entire exercise including the payment of consequential arrears shall be completed as early as possible, preferably within a period of one year from the date of receiving a certified copy of this order.

(24) *Dasti.*

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**R.N.R.**

***Before K. Kannan, J.***