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*Before S.S. Nijjar and S.S. Saron, JJ.*

OM PARKASH BANSAL AND OTHERS,—*Petitioner*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. NO. 18665 OF 2005

16th November, 2007

*Constitution of India, 1950—Art. 226—Direct recruitment of petitioners in Board on the post of Assistant pursuant to an advertisement—Petitioners required to possess experience of seven years as a Clerk in a Govt./autonomous department—Petitioners entitled to benefit of service rendered by them on the post of Clerk to be included in qualifying service for the purpose of pension—Petition allowed directing respondents to re-fix retrial benefits of petitioners.*

*Held*, that the petitioners were recruited in the Board on the basis of the qualifications mentioned in the advertisement published on 8th January, 1976. A perusal of qualification mentioned in the advertisement makes it abundantly clear that the petitioners were required to possess the experience of seven years as a Clerk in a Government department or some government/autonomous organization. Without these qualifications, the petitioners would not have been eligible for appointment on the post of Assistant. Therefore, the experience on the post of Clerk was an integral part of the essential qualifications. The petitioners would, therefore, clearly be entitled to the benefit of service rendered by them on the post of Clerk to be included in the qualifying service rendered by them in the Board for the purpose of pension.

(Para 10)

S.C. Pathela, Advocate, *for the petitioner.*

Charu Tuli, Sr. DAG, Punjab.

Kanwaljit Singh, Advocate.

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**JUDGEMENT**

**S.S. NIJJAR, J.**

(1) We have heard the learned counsel for the parties at length and perused the paper-book.

(2) In this petition under Articles 226/227 of the Constitution of India, the petitioners have prayed for the issuance of a writ in the nature of Certiorari quashing the orders dated 30th August, 2005 passed by the Chairman, Punjab School Education Board rejecting the claim of the petitioners for counting their service rendered with Guru Nanak Dev University, Amritsar and Punjab Agricultural University, Ludhiana (hereinafter referred to as "the University"), as part of the qualifying service, for the purposes of pension.

(3) The petitioners joined service as Clerks in the University on the following dates :—

Petitioner No.	Name	Name of University	Date of joining as Clerk
1.	Om Parkash Bansal	Punjab University Chandigarh	24-05-1970
2.	Gamdur Singh	Punjab University Chandigarh	2-06-1969
3.	Sardul Singh	Guru Nanak Dev University, Amritsar	21-10-1970
4.	Surinder Singh	Punjab Agricultural University, Ludhiana	10-6-1970

(4) The petitioners who were working on regular basis, had been contributing Contributory Provident Fund (in short "CPF") as at the relevant time, the service in the University was not pensionable. However, subsequently, the Pension Rules/Regulations have been framed by the University and the service in the University has been made pensionable and now the service in the University is pensionable.

(5) Subsequently, all the petitioners applied in response to advertisement dated 8th January, 1978 issued by the Board for filling up various posts. The petitioners were selected and appointed on the posts of Assistant. The petitioners were confirmed as Assistants by order dated 12th November, 1979 Endorsement No. 8866-PSEB-BC-79/39 dated 7th January, 1980. The petitioners had been contributing CPF under the Punjab School Education Board (Provident Fund) Regulations, 1970, as at the relevant time, the service in the Board was not pensionable. The service in the Board, however, became pensionable under the Punjab School Education Board (Employees Pension, Provident Fund and Gratuity) Regulations, 1991 (hereinafter referred to as "the 1991 Regulations") which were framed by the Board and came into force with effect from 1st April, 1991. All the employees of the Board who were employed after the inception of the Board were asked to give option to be governed by the Pension Regulations or the Provident Fund Regulations. All the petitioners opted to be governed by the Pension Regulations. In due course, they were promoted on the posts of Superintendent and Assistant Secretary. The petitioners retired from the Board on the post of Assistant Secretary on the following dates :—

Sr. No.	Name	Designation	Date of retirement
1.	Om Parkash Bansal	Assistant Secretary	28-2-2005
2.	Gamdur Singh	Assistant Secretary	30-9-2005
3.	Sardul Singh	Assistant Secretary	30-6-2005
4.	Surinder Singh	Assistant Secretary	31-7-2004

(6) At the time of retirement, the petitioners were in the pay scale of Rs. 7880—11669 plus Rs. 1,000. The order of retirement passed in the case of petitioner No. 1 is attached as Annexure P-7 to the writ petition. Since all the petitioners had been issued identical orders of appointment as well as retirement, the petitioners have only attached orders (Annexures P-3 and P-7), respectively, both pertaining to petitioner No. 1. All the petitioners have retired from service after serving the Board for a period of more than 26 years. Their experience

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of working as Clerk in the University was for the period of more than seven years. Thus, the total service of the petitioners was more than 33 years at the time of retirement. The petitioners are entitled to the pension under Regulation 6 of 1991 Regulations. Regulation 5.1 of the 1991 Regulations defines qualifying service as under :—

- “(i) “Qualifying service” generally includes all periods spent on duty without interruption and all periods of leave in which leave salary is paid.”

Regulation 6 was amended by the Board on 26th March, 1994 with effect from 1st April, 1991 which reads as follows :—

“An employee shall be eligible to add to his service qualifying for superannuation pension (but not for any other pension) the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty five years or a period of five years, whichever is less, if the post to which he is appointed is one :—

- (a) for which post-graduate research or specialized qualification, or experience in scientific technology or professional field is essential.
- (b) to which candidates of more than twenty five years of age normally recruited ;
- (c) for which special qualification and experience is required at the time of recruitment. The experience so prescribed shall be counted in full towards qualifying service.

Provided that this concession shall not be admissible to an employee whose actual qualifying service at the time of retirement is less than 10 years in the Board.”

(7) Learned counsel for the petitioners submits that the respondents have wrongly not given benefit to the petitioners of the service rendered in the University on the post of Clerk prior to their selection and appointment on the post of Assistant in the Board. The orders passed by the respondents on 30th August, 2005 are liable to be quashed. Again identical orders have been passed in the case of

the petitioners, and therefore, the petitioners have only attached the order passed in the case of petitioner No. 1 which is appended to the writ petition as Annexure P-12. Learned counsel submits that on a combined reading of Regulation 5 (1) and 6 (c), the petitioners would be entitled to the grant of pension on the basis of entire period of service i.e. the period of service in the University together with the period of service rendered in the Board. Learned counsel for the petitioners has relied on a earlier decision rendered by a Division Bench of this Court, of which one of us (S.S. Nijjar, J.) was a member, in the case of **Harlal Singh versus State of Punjab and others, (1)**. Learned counsel also submits that against the aforesaid judgment, the respondents-Board had filed Special Leave Petition CC No. 6333 of 2005 before the Supreme Court which has been dismissed by order dated 15th July, 2005.

(8) Mr. Kanwaljit Singh, learned counsel for the respondents, on the other hand, submits that the petitioners cannot be granted the benefit of service rendered in the University as the benefit of Regulation 6 could only be given to the employees who came to the Board on transfer or deputation and are subsequently absorbed in the Board. The Regulation would not apply in the case of the petitioners who are directly recruited on the post of Assistant. Furthermore, according to the learned counsel, the petitioners are disentitled to the concession in view of the proviso to Regulation 6. Mr. Kanwaljit Singh submits that the aforesaid judgment rendered in the case of **Harlal Singh (supra)** would not be applicable in this case as the petitioner therein had come to the Board on deputation and was subsequently absorbed in the service of the Board.

(9) We have considered the submissions made by the learned counsel for the parties. It is not denied by the respondents that the petitioners are entitled to pension under the Regulations. The only question is as to Whether the petitioners are entitled to add the entire service rendered with the Universities for the purposes of qualifying service on the posts, on which the pension and retiral dues are to be computed. It is not disputed that earlier the petitioners had been serving in the two Universities since 1969-1970. It is also not disputed that the petitioners were directly appointed on regular selection pursuant to the advertisement dated 8th January, 1978. They joined

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the posts of Clerks in the years 1969-1970. It is also not disputed that the petitioners are regular/confirmed employees of the Board. They were recruited in the Board on the basis of the qualifications mentioned in the advertisement published on 8th January, 1976 which were as under :—

“4) Assistants (Rs. 225—500)

Qualifications :

Graduate of a recognized University with at least 7 years service as a Clerk in a Govt. department or Semi-Govt./Autonomous Organization.

(10) A perusal of the aforesaid qualification makes it abundantly clear that the petitioners were required to possess the experience of seven years as a Clerk in a Government department or some government/autonomous organization. Without these qualifications, the petitioners would not have been eligible for appointment on the post of Assistant. Therefore, the experience on the post of Clerk was an integral part of the essential qualifications. The petitioners would, therefore, clearly be entitled to the benefit of service rendered by them on the post of Clerk to be included in the qualifying service rendered by them in the Board for the purpose of pension. We are unable to accept the submissions of Mr. Kanwaljit Singh that the petitioners would not be entitled to the concession in view of the Proviso to Regulation 6(c). A perusal of the aforesaid proviso makes it abundantly clear that the benefit of the concession under Regulation 6(c) shall not be admissible to an employee whose actual qualifying service at the time of retirement is less than 10 years in the Board. In the present case, all the petitioners have more than 26 years of qualifying service in the Board prior to retirement. We, therefore, see no justification in the denial of the benefit of service rendered by the petitioners in the two Universities for the purposes of pension.

(11) In view of the above, we allow the writ petition and quash the impugned orders dated 30th August, 2005 and direct the respondents to re-fix the retiral benefits of the petitioners. Consequential benefits be released to the petitioners within a period of two months of the receipt of a certified copy of this order. No costs.

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*R.N.R.*