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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(216)

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Date of Decision:- 04.09.2024

Gulshan Satija

.....Petitioner

Versus

New India Assurance Co. Ltd. and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Aalok Jagga, Advocate with
Mr. Harkirat Jagdev, Advocate
for the petitioners.

Mr. Ashish Aggarwal, Advocate
for the respondents.

ALOK JAIN, J. (Oral)

1. The present Civil Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of writ of certiorari to quash the reply dated 14.12.2016 (Annexure P-8), vide which the claim of petitioner for counting past military service towards pension was rejected. Further, the petitioner seeks issuance of writ of mandamus directing the respondents to include his military service from 16.10.1978 to 30.04.1985 for calculating his length of service required for determining the qualifying service for pension and consequently re-fix the pension, and direct the payment of arrears with 12% interest per annum from the date of retirement



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until payment.

2. That factual narrative of the case as outlined by the counsel for the petitioner is that the Petitioner served Indian Army on Short Service Commission on 16.10.1978 and discharged his duties as Captain till 30.04.1985 (afternoon). Subsequently, the Respondent Company issued an advertisement for the post of Assistant Administrative Officer, and on being selected the petitioner joined the service on 01.05.1995(forenoon). Throughout his tenure, the petitioner received multiple promotions, notably to the post of Branch Manager in 1989, Deputy Manager in 2005, and ultimately Senior Divisional Manager in 2012.

2.1. That the counsel for the petitioner submits that the introduction of the General Insurance (Employees') Pension Scheme in 1995, allowed employees to opt for pensionary benefits. On 20.10.1995 (Annexure P-1) the petitioner exercised that option, with express stipulation that his military service from 16.10.1978 to 30.04.1985 would be counted towards his qualifying service for pension. The respondents tacitly accepted this condition, by transferring the petitioner's CPF (Central Provident Fund) contributions into the pension scheme but without any communication rejecting or objecting to the conditional option.

2.2. However, upon retirement on 31.08.2015, petitioner discovered that his prior military service had not been included while calculating his pensionable service, to which multiple representations were made and requisite supporting documents were also submitted by the petitioner, to which the respondents, vide their impugned communication



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dated 14.12.2016, rejected petitioner's claim, citing clause 24 of the Pension Scheme that excludes military service while counting qualifying service for the calculation of pension, if the employee already draws a military pension. However, the petitioner asserts that the same was never applicable in his case.

3. The learned counsel for petitioner in the opening of his arguments submits that the respondents have misconstrued *Clause 24 of the General Insurance (Employees') Pension Scheme, 1995*. The counsel asserts that the accurate interpretation of this clause does not bar an employee from receiving both military pension and pension benefits from the respondent department. Instead, it allows an employee to continue drawing a military pension while excluding military service from pension calculations only in such cases where the employee is already receiving such a pension. This interpretation was implicitly recognized by the respondents when they requested, through their reply dated 28.10.2016 annexed as Annexure P-6, that the petitioner should provide a certificate confirming that he was not drawing any military pension. Further, the counsel for petitioner maintains that *Clause 24* is designed to prevent dual benefits to ex-servicemen who are already receiving military pensions and such employees cannot get their past service counted again for pension fixation with the respondents. However, this clause is not applicable on ex-servicemen who are not receiving any military pension. The petitioner complied with the respondents' request by providing the requisite certificate; however, even then his claim was unjustly rejected vide the



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respondents' communication dated 14.12.2016.

4. The counsel for petitioner vehemently highlights that while submitting his pension option form he specifically mentioned that his military services shall be counted for pension scheme, and the acceptance of the same by the respondents created a binding effect between them. That is to say that respondents' acceptance of this form, without any objections at that time, constituted a contractual obligation. The principle of estoppel, as articulated in Section 115 of the Indian Evidence Act, thereby prevents the respondents from contradicting this acceptance later on.

5. To support his arguments and the claim the counsel for the petitioner relied upon the settled preposition of law as laid by this Court time and again in the following judgments:

- a) **Vijay Laxmi versus State of Punjab, 1994 (6) SLR 83 P&H**
- b) **Shadi Lal Malik versus State of Haryana, 2012(4) RSJ 31**
- c) **Puran Singh versus State of Haryana & Ors., 2016(1) SLR 263**
- d) **Karam Singh versus Union of India 2002 (3) SLR 214**
- e) **Mohinder Singh Ahalawat versus Haryana Urban Development Authority 2012 (5) SLR 746**, to contend that once the pay protection of the earlier service is granted then the length of service rendered by the employee with the past employer has to be considered for calculating the qualifying service for pensionary reliefs.

6. Furthermore, the counsel has placed reliance on the provisions of the Pension Scheme, and contends that the definition of "*qualifying service*" under the Pension Scheme should reasonably include the service



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rendered in the military, and not solely the service with the respondent department. The broader interpretation aligns with the scheme's intent and ensures equitable treatment. Moreover, even Clause 26 of the scheme, permits addition to the qualifying service in certain circumstances. With this the learned counsel for the petitioner concludes his arguments.

7. The learned counsel for respondents on the other hand, at the very outset refutes the interpretation of Clause 24 of the General Insurance (Employees') Pension Scheme, 1995, as presented by the Counsel for the petitioner. The respondents maintain that the reply by the respondents dated 14.12.2016 to the legal notice served by the petitioner raising the same claim categorically explained that Clause 24 of the General Insurance (Employees') Pension Scheme, 1995, is dispositive of the issue. Clause 24 clearly stipulates that an employee who has rendered military service prior to joining the Corporation or the relevant Company may continue receiving a military pension, where applicable, but such military service will not count as a qualifying service for the purpose of the pension under this scheme. However, in the present case the petitioner, having served in the Indian Army for a duration insufficient to qualify for a military pension, now seeks to have his military service counted toward his service with the Insurance Company, a request that is untenable under the rules. The respondents argue that the petitioner's claims are entirely misconceived, and the writ petition is liable to be dismissed on this ground. The petitioner has already been granted all pensionary benefits due in respect of his service with the New India Assurance Company.



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8. The counsel for the respondents further argues that the petitioner was treated as a fresh appointee upon his direct recruitment as Assistant Administrative Officer on 01.05.1985, with no provision for including his military service in retiral benefits. His appointment letter, dated 27.03.1985 (Annexure R-1), contains no reference to count his military service. Furthermore, even though the petitioner had served in the Indian Army, he was required to undergo a pre-employment medical examination before joining the Insurance Company. The General Insurance Pension Scheme, 1995, does not provide for counting military service, and no such provision existed in the petitioner's appointment.

9. Further the counsel for the respondent contended that since the petitioner had not challenged the said action of the respondents at that point of time, therefore he cannot be permitted to raise the same issue now.

10. That respondent raised argument with regards to the fact that the General Insurance (Employees') Pension Scheme, 1995, is a self-contained legal framework, and the petitioner has not challenged its validity. Without questioning the scheme's legality, the petitioner cannot claim entitlements that contravene its express terms and summarized his arguments by maintaining that the petitioner's military service, rendered during a non-emergency period, does not qualify for adding them in the calculation of the length of service required for the entitled to any pensionary benefits under the rules unless specifically provided for. Moreso, the petitioner has already been released all his dues including his contribution which should have been deducted at the relevant point of time



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if the petitioner would have been entitled but the same was not done. Therefore, his claims are baseless and devoid of any legitimacy and the present petition should be dismissed in view of the objections so raised.

10.1 *De hors the above*, at this stage, learned Counsel for the petitioner reasserts that even today the petitioner is willing to deposit the amount so received from the respondent at the time of retirement with some notional interest so that his pension is re-fixed after counting his total service rendered by him in the Indian Army.

11. Heard the counsel for the parties at length, the core issue for determination boils down in the following question: -

Whether, under the provisions of the General Insurance (Employees') Pension Scheme, 1995, the petitioner is entitled to have his prior military service recognized/counted as qualifying service for the calculation of his pension on attaining superannuation from the respondent department. Especially in the light of the fact that the petitioner while applying under the scheme clearly mentioned that his length of service will be counted for his eligibility under the scheme?

12. Considering the above arguments raised by the counsel for the parties what comes out is that the relevant clauses for calculation of the qualifying service, which are dealt in ***Chapter 4 of the General Insurance Employees' Pension Scheme 1995***, are Clause 14 15, 24, 26 and 28, which are reproduced as follows:

Clause 14: Qualifying Service - *Subject to the other condition contained in this scheme, an employee who has rendered a minimum ten years of service in the*



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Corporation or a Company, on the date of retirement shall qualify for pension.

Clause 15: Commencement of - *Subject to the provisions contained in this Scheme, qualifying service of an employee shall commence from the date he takes charge of the post to which he is first appointed on regular basis.*

Clause 24: Military Service - *An employee who has rendered military service before appointment in the Corporation or the concerned Company shall continue to draw the military pension, if any, and the military service rendered by the employee shall not count as qualifying service for pension.*

Clause 26: Addition to qualifying service in special circumstances - *An employee shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of 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-eight years, or a period of five years, whichever is less, if the service or post to which the employee is appointed is one -*

(a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty-eight years of age are normally recruited, and

(c) for which the candidate was given age relaxation over and above the maximum age limit fixed by the



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Corporation or the Company on account of his possessing higher qualification or experience:

Provided that this concession shall not be admissible to an employee unless his actual qualifying service at the time he quits the service in Corporation or a Company, as the case may be is not less than ten years:

Provided further that this concession shall be admissible only if the recruitment procedure in respect of the said service or post contains a specific provision that the service or post is one which carries the benefit of this paragraph.

Clause 28: Counting of service rendered on permanent part time basis in certain cases- (1) *In the case of an employee, who immediately prior to his appointment on a whole-time basis was employed on a permanent part-time basis in the service of the Corporation or a Company and was contributing to the Provident Fund, such service rendered by him on permanent part-time basis shall be counted as qualifying service;*

(2) The length of qualifying service of the employee referred to in sub-paragraph (1) for the purpose of calculating the amount of pension shall be determined in accordance with Appendix II.

13. In light of the submissions made by counsel for the parties, it comes up that the authorities do not dispute the petitioner's service with the Indian Army from 16.08.1978 to 30.04.1985. It is also undisputed that the petitioner's pay was duly protected while joining the respondent department. Throughout his service tenure petitioner made numerous representations to the authorities sought clarification, with regard to the



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transfer of his provident fund from his previous employer, after exercising the option for the same pursuant to the 1995 Rules explicitly stating the condition of acknowledging his past service with the Indian Army and acceptance of the option form coupled with the fact that respondent company neither raised any objection nor clarified the status on it, shall impliedly mean the unconditional acceptance by the respondents. Therefore, the subsequent denial of permission cannot justifiably be held against the petitioner.

14. It has also been observed by this Court, that the provisions of 1995 Rule, should not be read in isolation and rather be read co-jointly for the true interpretation of the clauses that aligns with the object of the same and further that the respondents did not adhere to the provisions of 1995 Rule, wherein Clause 28 clearly stipulates that any service rendered on a permanent part-time basis by an employee, provided they were contributing to the Provident Fund and subsequently transitioned to a full-time role, shall be recognized as qualifying service. The specific duration of this qualifying service is crucial for determining pension entitlements and shall be calculated in accordance with the provisions laid out. It has been observed that the petitioner repeatedly approached the Authorities seeking transfer of his provident fund account, with his condition, which demonstrates that the petitioner was contributing to the provident fund and the company had transferred his provident fund only for the period from 01.05.1985 onwards when the petitioner joined the respondent company, however it was only on account of non-acceptance of his previous services



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rendered in Indian Army to be counted for determining the length of qualifying service by the Authorities at that point of time that the said amount of provident fund was not transferred by the respondent company.

15. The judgments relied upon by the petitioner relate to a factual position whereby a person serving in a government department switches over to another government department then his pay as well as length of service is to be protected for considering them for the eligibility of the petitioner for other reliefs too. However, in the present case the distinguishing factors are that not only the pay of the petitioner was protected when he joined the service but he specifically clarified while applying under the scheme that his length of service with the Indian Army should be counted for calculating the qualifying service which clearly demonstrate that the petitioner was aware of the fact that in case his service in Army was not to be counted, he would not qualify for the scheme. The petitioner was honest and the respondents right from 1995 knew about the said fact but never objected to the same which caused reasonable expectation to the petitioner that his claim has been accepted. Therefore, the authorities cannot now be permitted to turn around and dislodge the claim of the petitioner.

16. It is imperative to hold that the pension scheme is benevolent in nature and the objective of such schemes is to provide economic support to the retired employees for which the employees have contributed although their service. The scope and the interpretation of such piece of legislature



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has to be wide, however subject to such check and balances, such as that the person should not be withdrawing double pensions or any other restrictions which are required to be put in place so as to avoid the scheme to be misuse or make it fail and fall by rendering it redundant.

17. Moreso, another aspect of the matter is that, in clause 9 of the appointment letter issued by the respondents dated 27.03.1985 (Annexure R-1) clearly states as follows:

“You shall submit the discharge certificate secured from your employer, on the date of your reporting. In case you have executed any lien/bond to retain your substantive post with the present employer, company/corporation shall not contribute towards Pension or leave salary since you are a direct recruit.”

17.1. However, in the present case the petitioner did not execute any lien/bond to retain his substantive post and therefore the respondent authorities duly contributed towards his Pension and Leave salary etc. all during his tenure with the respondents.

18. Be that as it may, considering the facts and circumstances of the case and in the interest of justice, the present petition is allowed and the respondents are directed to re-fix and re-calculate the pension of the petitioner by adding the length of the previous service rendered with the Indian Army, however, subject to the condition that the maximum service period as provided in the Rule 26 or other rule which shall be in force, would be taken into consideration.



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19. Subsequent to the re-calculation, the additional amount which the petitioner would be found entitled to shall be released after deduction of the contributory fund, he received from his previous employer with interest for all this period @6% per annum. The same will be deducted from the total calculation and the remaining amount shall be released to the petitioner with interest @6% per annum.

20. Needful be done within four months from today, in accordance with the law, however, in case, this order is not complied with, the pay of the concerned official shall remain stayed immediately thereafter.

(ALOK JAIN)
JUDGE

04.09.2024
Parul

Whether speaking/reasoned:- Yes
Whether Reportable:- Yes