

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 14408 of 2013 (O&M)

Date of decision : 26.8.2015

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Jagpal Singh Chahal

.....Petitioner

vs.

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Manish Dadwal, Advocate for the petitioner.

Mr. Vaibhav Sharma, Deputy Advocate General,
Punjab.

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1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

P.B. Bajanthri, J.

Petitioner in this petition has questioned the order dated 16.11.2012, communicated vide order dated 20.12.2012 by respondent No.2 (Annexure P-6) and further sought for a direction to the respondent to grant pension, compensatory allowance etc. He has also sought for interest on the aforesaid issues.

(2) Learned counsel for the petitioner submitted that on 29.1.1987, the petitioner was appointed as a Medical Officer in the Directorate of Health and Family Welfare Department, State of Punjab, on adhoc basis. On 26.8.1988, he was recruited to the post of Medical Officer through Punjab Public Service Commission.

(3) On 15.9.2001, the petitioner requested the respondents to permit him to resign from the post of Medical Officer w.e.f. 14.12.2001. On 14.12.2001 he was relieved from services. The resignation of the petitioner was accepted and communicated on 10.4.2002. Petitioner requested grant of pension for the services rendered in the Health Department for the period from 26.8.1988 to 14.12.2001. The petitioner obtained information under RTI on 30.11.2011 and pursued the matter by issuing notice on 7.1.2012. The said notice was issued to respondent No.1 and respondent No.1 directed the 2nd respondent to take a decision. Since no action was taken by the 2nd respondent, the petitioner approached this Court by filing CWP No. 16172 of 2012. The same was disposed of on 31.8.2012, directing the concerned respondent to consider the grievance of the petitioner.

(4) Pursuant to the directions of this Court dated 31.8.2012, grievance of the petitioner was rejected on 16.11.2012 vide Annexure P-6. Feeling aggrieved by the order dated 16.11.2012, the present writ petition has been filed.

(5) Learned counsel for the petitioner relied on Rule 4.2 (1), Rule 6.16-AA (1) of the Punjab Civil Services Rules (Volume II), and also pointed out under what circumstances, an employee is not entitled for pensionary benefits, while quoting Rule 2.5. Learned counsel for the petitioner relied on the definition of “resignation” and “retirement”. In other words, his contention is that if he has rendered qualifying service for the purpose of granting pension and thereafter

if he has resigned the post held by him, in such circumstances, he is entitled for pension for the intervening period of qualifying service i.e. 26.8.1988 to 14.12.2001, which is more than 10 years of service and thus petitioner is entitled for pension even though he has resigned from the post.

(6) The petitioner's counsel relied on the following decisions:-

1) 1997 (4) SCT 532, **Shagara Singh vs. State of Punjab ;**

2) 2007(2) SCT 422 **Om Parkash vs. Financial Commissioner and Principal Secretary to Govt. of Haryana and another.**

3) 2010 (4) SCT 145, **Gulab Singh vs. The State of Haryana and another;**

4) 2011 (4) SCT 34, **Sheel Kumar Jain vs. New India Assurance Co. Ltd. and others and**

5) **CWP No. 11258 of 1992, titled as Kabal Singh vs. State of Punjab, decided on 16.7.2014;**

(7) Per contra, the respondents' counsel vehemently contended that the petitioner who has resigned the post of Medical Officer, is not entitled for any service benefits like pension etc. In support of his contention, he relied on Rule 7.5 (1) (2) of Punjab Civil Service Rules, Volume I, Part I and Rule 5.1, Rule 6.16-AA (I) & (2) of Punjab Civil Service Rules, Volume II. He further contended that an employee who has resigned the post, relation between the master

and employee ceases. Therefore, question of any liability on the master towards employee is wiped of. Having regard to the provisions of law read with the reported decision viz., (2009) 14 Supreme Court Cases 506, **Ghanshyam Dass Relhan vs. State of Haryana and others**, paragraph 26, the petitioner is not entitled for the relief sought by him.

Extract of the aforesaid judgment is reproduced hereunder:-

“26 In our view, Rule 4.19 (a) has to be read and understood differently from what has been urged by Mr. Dholakia. The expression "esignation from public service" will have to be read disjunctively from "dismissal or removal from it". The expression "resignation from public service" will not be qualified by the subsequent references relating to anti- national activities. On the other hand, the expression "dismissal or removal from it" will be qualified by the said expression which would in both cases entail forfeiture of past service and disqualification so far as payment of pension is concerned. In other words, read disjunctively, resignation simpliciter from public service would entail forfeiture of past service and no pension is to be granted in the aforesaid circumstances.”

(8)

Heard learned counsel for the parties.

(9) The petitioner tried to build up a case that in the absence of legal definition of “voluntary retirement” or in the absence of prescribed consequences of “resignation”, it must be understood in the sense of voluntary relinquishing of services. It was pointed out that there can be no distinction between voluntary retirement and resignation. The words “resignation” and “retirement” carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment, but in the case of retirement, he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is a severance of employment but in service jurisprudence both the expressions are understood differently. It is to be noted that resignation brings about complete cessation of master and servant relationship. On the other hand voluntary retirement maintains said relationship for purposes of grant of retiral benefits, in view of the service rendered by such employee. It is also to be noted that resignation can be tendered irrespective of the length of service but as in the case of voluntary retirement, the employee has to complete qualifying service for the purpose of retiral benefits. The word “resignation” means a spontaneous relinquishment of ones own right and in relation to an office. It connotes the act of giving up or relinquishment of the office. In the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of

its relinquishment.

(10) The dictionary meaning of “resignation” means, a spontaneous relinquishment of one's own right. It is conveyed by the Latin maxim *Resignatio est juris propii spontanea refulatio*. “To relinquish an office” means “to cease to hold the office” or “to leave the job” or “to leave the position”. “To cease to hold office” or “to lose hold of the office” implies to “detach”, “unfasten”, “undo” or “untie” “the binding knot or link” which holds one to the office and the obligations and privileges that go with it”. In this background, I have to examine Rule 4.2 (1), Rule 5.1, Rule 6.16 A (1) (2), 6.16-AA (1) (2) of Punjab Civil Service Rules, Volume II and Rule 7.5 (1) Punjab Civil Service Rules, Volume I, Part I. An extract of the aforesaid provisions of law are reproduced hereunder:-

“4.2. (I) A Government employee appointed to a service or post after the twenty- sixth day of October , 1960 , 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 – five years , or a period of five years, whichever is less, if the service or post to which the Government 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 – five years of age are normally recruited;

Provided that this concession shall not be admissible to a Government employee unless his actual qualifying **service at the time he quits Government service is not less than ten years :**

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post in one which carries the benefit of this rule .

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5.1 Pension are divided into four classes, the rule for which are prescribed in the following section of this Chapter :-

- (a) Compensation Pensions (See Section II).
- (b) Invalid pensions (See Section III).
- (c) Superannuation Pensions (See Section IV)
- (d) Retiring Pensions (See Section V)

Note. –Besides the classes of pensions mentioned in this rule, special additional pensions are also granted to certain classes of Government

employees under special circumstances (Vide rule 4.14 and 6.15).

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6.16-A(1) Notwithstanding anything contained in rule 6.16, the superannuation, retiring and invalid pension, to be calculated on the basis of the provisions of sub rule (3) shall be the appropriate amount indicated below for Government employees referred to in rule 1.2-B who were in service of Government on the first day of January 1978 and retire on any date thereafter:

- (i) Fifty percent of first one thousand rupees of average emoluments reckonable for pension;
- (ii) forty five percent of next five hundred rupees of average emoluments reckonable for pension" and
- (iii) forty percent of average emoluments reckonable far pension left after deducting the average emoluments specified till items (i) and (ii) above;

(2) A Government employee referred to in sub rule (1) shall also be allowed an additional pension at the following rate:

- (i) fifteen rupees per mensum, if the average emoluments reckonable for pension do not

exceed one thousand rupees.

(ii) twenty one rupees per mensem of the average emoluments reckonable for pension do not exceed one thousand and five hundred rupees.

(iii) twenty seven rupees per mensem if the average emoluments reckonable for pension exceed one thousand and five hundred but does not exceed two thousand and three hundred rupees; and

(iv) thirty five rupees per mensem if the average emoluments reckonable for pension exceed two thousand and three hundred rupees.

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6.16-AA (1) An officer who has become eligible for pension or gratuity under the rule applicable to him and has completed five year's qualifying service, may, **on his retirement from service**, be granted an additional gratuity not exceeding the amount specified in sub-rule (3).

(2)(a) If an officer, who has completed five year's qualifying service, dies while in service, a gratuity, not exceeding the amount specified in sub-rule(3), may be paid to the person or person on whom the right to receive the gratuity is conferred under rule 6.16-B or if there is no

such person, it shall be paid in equal shares to those surviving member of a Government employee's family as detailed in rule 6.16-B who belong to categories (i) to (iv), mentioned therein except widowed daughters. Where there are no such surviving member, but there is/are surviving widowed daughter and/or one or more member of the family of the Government employee who belong to categories (iv) to (ix), in the definition, the gratuity may be paid to all such person in equal shares. In case where the qualifying service, is less than the prescribed minimum (viz. 5 years), the deficiency should not be condoned.

(b) The family of a permanent pension able employee who dies before completing five year's qualifying service will also be eligible for gratuity equal to six months' emoluments of a Government employee at the time of his death except in case in which death occurs in the first year of service where the gratuity admissible will be equal to two month's emoluments.

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7.5 (1) Resignation from a service or a post, unless it is allowed to be withdrawn in public

interest by the appointing authority, entails forfeiture of past service.”

(12) An employee is entitled for pension under Rule 5.1 of CSR Volume II (Pension Rules), for compensation pension, invalid pension, superannuation pension and retiring pension. There is no provision of law in so far as an employee who has resigned the post is entitled for pension under the aforesaid provision of law. The petitioner in referring to Rule 4.2 (1)(b) that “he quits Government in not less than ten years”. Quits refers to resignation also. Since provision of law deals with pension and it refers to pensioner. An employee who has resigned is not a pensioner. Therefore, the aforesaid clause is not applicable to the petitioner.

(13) Learned counsel for the petitioner vehemently contended that petitioner's grievance will fall under Rule 4.2 (1) read with Rule 6.16-AA (1). He has also pointed out under which circumstances, an employee is not entitled for pension. Reading of the aforesaid provision is clear that those provisions are applicable to a retired person and not to an employee who has resigned.

(14) Having regard to the fact that the petitioner has resigned the post of Medical Officer w.e.f. 14.12.2001, master and servant relationship ceases. Consequently, he is not entitled for any benefit from the respondents.

(15) Learned counsel for the petitioner relied on the following judgments:-

1) 1997 (4) SCT 532, **Shagara Singh vs. State of**

Punjab ;

2) 2007(2) SCT 422 **Om Parkash vs. Financial Commissioner and Principal Secretary to Govt. of Haryana and another.**

3) 2010 (4) SCT 145, **Gulab Singh vs. The State of Haryana and another;**

4) 2011 (4) SCT 34, **Sheel Kumar Jain vs. New India Assurance Co. Ltd. and others and**

5) CWP No. 11258 of 1992, **titled as Kabal Singh vs. State of Punjab, decided on 16.7.2014;**

(16) Decisions cited by the learned counsel for the petitioner are not relevant, this Court had not occasion to consider Rule 4.19(a), 4.19 (b), 6.16 (2) and 5.32-A in the cited decisions. Whereas this Court in CWP No. 8666 of 2005 considered the above provisions and the decision of this Court has been upheld by the Supreme Court in **Ghanshyam Dass Relhan's case (Supra)**. Supreme Court decision cited by the petitioner viz. **Sheel Kumar Jain's case (Supra)**, is not applicable for the reasons that rules interpreted are entirely different i.e. dealing with Insurance Scheme and not Pension Scheme. The Supreme Court in the case of **Nair Service Society vs. Dr. T. Beermasthan** (2009) 5 SCC 545, it is held that “it is well established that judgments in service jurisprudence should be understood with reference to the particular service rule in the State governing that field”. Therefore, said judgment is not helpful to the case in hand.

(17) Learned counsel for the respondents relied on the

decision reported in **Ghanshyam Dass Relhan's case (Supra)**, paragraph 26, in which Rule 4.19(a) (b), 6.16 (2) considered and held that an employee who has resigned the post is not entitled to pension.

(18) In view of Supreme Court ruling in **Ghanshyam Dass Relhan's case (Supra)** , I am upholding the impugned order dated 16.11.2012.

(19) Accordingly, the writ petition is dismissed.

August 26th, 2015.
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(P.B. Bajanthri)
Judge