IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20433-2011
Date of decision : 29.04.2015

Mewa Singh Pattar ...Petitioner

V/S

State of Haryana and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R. K. Malik, Sr. Advocate
with Mr. Mandeep Singh, Advocate
for the petitioner.

Mr. Sourabh Mohunta, DAG, Haryana

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JITENDRA CHAUHAN, J. (Oral)

1. Prayer in the present petition filed under Articles 226 and 227 of the Constitution of India is for quashing the action which denied the pension to the petitioner and for issuance of directions to grant the pension admissible to the petitioner before joining the respondent Federation and all consequential benefits with market rate interest.

2. It is contended that the petitioner worked in Technical Education Department as well as PWD (B&R) Department from 07.01.1965 to 25.11.1974. Thereafter, the petitioner applied through proper channel for the post of Sub Divisional Officer in Haryana State

Cooperative Labour & Construction Federation Ltd., Chandigarh and joined on 26.11.1974 and his lien was kept in tact and ultimately his resignation was accepted on 18.01.1980. He retired from Federation on 30.11.2003. He remained in the Government service from 07.01.1965 to 18.01.1980 i.e. 15 years 11 days. As per policy Annexure P-1, he was entitled to pension from the Government from the date his resignation was accepted by the Government. He moved several representations that he may be granted the benefit of pension of the service rendered by him from 07.01.1965 to 18.01.1980 but no action was taken on them. Petitioner served a legal notice dated 13.09.2005 (Annexure P-3) upon the respondents for redressal of his grievance. Vide order dated 22.01.2008 (Annexure P-4) claim of the petitioner was rejected by Finance Department.

3. Learned State counsel contended that the pension on resignation is admissible on completion of thirty years of service and in special cases after completion of 25 years of service. He further contended that service in this case is even less than ten years, so the petitioner is not entitled to any pension on resignation. He refers to the judgment ***Ghanshyam Dass Relhan Vs. State of Haryana and ors.*** passed in **Special Leave Petition (C) No.98 of 2007** decided on 16.07.2009.

4. I have heard the rival contentions of the learned counsel for the parties.

5. Rule 6.16 (2) of Punjab Civil Service Rules, Vol. 2 reads as under:-

> *"6.16 (2) In the case of a Govt. employee, retiring on or after the 1st April 1979, in accordance with the provisions of these Rules after completing qualifying service of not less than 33 years or more, the amount of superannuation, retiring, invalid and compassionate pension shall be 50% of the average emoluments as defined in Rules 619 (C) of these Rules subject to a maximum (of Rs.3800/-) per mensum. However, in the case of Govt. employee who at the time of retirment has rendered qualifying service of 10 years or more but less than 33 years, the amount of pension shall be such proportion of the maximum admissible pension as qualifying service rendered by him bears to the maximum qualifying service of 33 years, subject to the maximum (of Rs.375/-) per mensum (a few illustrations are given in Annexure to this Chapter)"*

6. Para 8 of office memorandum No.1/2(4) 96-2 FRH, dated 07.01.2002 issued by the Government of Haryana, Finance Department, on the subject, reads as under:-

> *"8. On appointment from Pensionable to non-pensionable organization.*
>
> *On appointment from pensionable service to an Organization where pension scheme is not in existence, the concerned employee will be eligible for pro-rata retirement benefits as admissible under the rules of the Old Organization. These benefits*

will be payable after accepting the resignation of the concerned Government employee."

7. In CWP No.5475 of 2010, **Bhagat Ram Aggarwal Vs. State of Haryana**, decided on 30.04.2013, by this Court, it has been observed as under:-

> *"A similar issue as regards the entitlement of an employee to be paid pension in lieu of the service rendered with the Govt. of Haryana prior to joining the service of the National Mineral Development Corporation Ltd. i.e. a Govt. of India Undertaking came up for consideration before this Court in case of M.M. Lal Bareja Vs. State of Haryana, 1995 (2) S.C.T 178. While examining such issue in the light of Rules 3.17 and 4.19 (b) contained in Chapter III of the Punjab Civil Service Rules (Vol. II) as applicable to the State of Haryana, it was held that pension is payable even to such an employee who was holding a temporary post under the State Govt. and who may have subsequently resigned from the previous post in order to join another service under the Central or the State Govt. It was further held that the rules contemplate the grant of pension to a person who has resigned from service in order to take up another appointment and such resignation is not to be treated as resignation from public service."*

8. In the light of the above, an employee is entitled to proportionate pension if he has rendered 10 years qualifying service.

9. Keeping in view the Rule 6.16 (2) of Punjab Civil Service

Rules, Vol. 2 and the fact that petitioner had completed the Government qualifying service of 10 years, this petition is allowed and competent authority is directed to release the proportionate pension admissible to the petitioner, before joining the respondent-federation and all consequential benefits within 4 months after the receipt of certified copy of this order.

29.04.2015 **(JITENDRA CHAUHAN)**
ashok **JUDGE**

whether referred to reporter? Yes/No.