

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

**RSA No.1286 of 2009 (O&M)
Date of Decision:30.11.2015**

Joginder Singh

.....Appellant

vs

State of Punjab and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. S.K. Sharma, Advocate
for the appellant.

Mr. N.K. Verma, Sr. D.A.G., Punjab.

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?*

RAJ MOHAN SINGH, J.

CM No.3753-C of 2009

For the reasons mentioned in the application, delay of
180 days in re-filing the appeal is condoned.

Application stands disposed of.

RSA No.1286 of 2009 (O&M)

[1]. Plaintiff is in second appeal against judgment and
decrees passed by the Courts below.

[2]. Plaintiff filed suit for declaration that action of
respondents in not granting pensionary benefits to him is illegal,
unconstitutional and is null and void. Plaintiff is entitled to the

pensionary benefits along with interest.

[3]. Plaintiff alleged that he was appointed as Constable in Police Department at Patiala on 28.11.1947. He resigned from the service on 26.01.1960. He was having more than 10 years of service to his credit, but he was not granted any pensionary benefits.

[4]. Defendants contested the claim of the plaintiff. It has been admitted that the plaintiff served the Department from 28.11.1947 to 26.01.1960, but he is not entitled for pensionary benefits as he resigned from service of his own will. As per Rule 7.5 of Punjab Civil Services Rules (for short 'the Rules'), an employee who submits resignation forfeits his entire service.

[5]. On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled to pensionary benefits? OPP*
- 2. Whether the plaintiff is entitled to declaration as prayed for? OPP*
- 3. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 4. Whether the suit of the plaintiff is time barred? OPD*
- 5. Whether this court has no territorial jurisdiction to decide the suit? OPD*

6. *Whether the suit is bad for want of notice under Section 80 CPC? OPD*

7. *Relief.”*

[6]. Both the parties led their respective evidence to prove their case on the aforesaid issues.

[7]. The issue involved in the present appeal is purely related to the legal propositions. Admittedly plaintiff joined services of Police Department on 28.11.1947 and resigned from service on 26.01.1960. According to the plaintiff, at the time of resignation, he was having more than 10 years of qualifying service for pensionary relief. Resignation or voluntary retirement does not come in the way of legal entitlement of the plaintiff.

[8]. Further plaintiff alleged that Rule 7.5 of the Rules in respect of resignation from service was inserted in the Punjab Civil Service Rules only in January 1982. Since the resignation was tendered by the plaintiff on 26.01.1960, therefore, Rule 7.5 of the Rules cannot be made operational with retrospective effect.

[9]. On the other hand, the stand of the defendants is that the plaintiff has resigned from service of his own will and his case has to be distinguished from voluntary retirement. In case of resignation, employee cannot claim pension as the effect of forfeiture would come into being.

[10]. Rule 7.5(1) prescribes 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. According to defendants, case of the plaintiff is covered under this Rule which was inserted in Punjab Civil Services Rules in 1982.

[11]. Plaintiff/appellant has moved **civil misc. No.73-74-C of 2012** seeking to lead evidence in the form of Notification, Rules, copy of order of the Director General of Police, copy of judgment rendered in the cases of co-employees and copy of judgment in the case of **The State of Punjab and others vs. Balbir Singh (RSA No.811 of 1994)**, who were similarly situated as that of plaintiff.

[12]. The perusal of aforesaid application and the documents sought to be adduced thereunder would show that Rule 7.5(1) of the Rules talks about forfeiture of service on resignation, however sub-Rule 2 of Rule 7.5 of the Rules prescribes that 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. Apparently, these Rules came into being on 18.01.1982 by Notification of the Punjab Government and are known as Punjab Civil Services (1st Amendment) Rules Volume-I, 1982.

[13]. Rule 6.12 prescribes that after a service of not less than 10 years pension may be granted not exceeding the amounts as shown in maximum limits of pension.

[14]. In the aforecited case of **Balbir Singh**, the relief was given by computing base date as 29.04.1965 i.e. the date on which his resignation was accepted and he was also held entitled to receive arrears of pension only for the period of three years and two months immediately before the filing of the suit. In future he was ordered to receive pension as computed by the Department from time to time as per Punjab Government's instructions.

[15]. Balbir Singh joined the service in Police Department in the year 1952-53. He had served for more than 13 years. He submitted his resignation on 23.06.1966. Trial Court dismissed his suit, however Appellate Court accepted the appeal and Regular Second Appeal filed by the respondents/State of Punjab was rejected by this Court vide judgment and decree dated 13.08.2010 passed in **RSA No.811 of 1994**. Concededly the judgment rendered in the cited case of *Balbir Singh* has already been implemented.

[16]. The plaintiff/appellant has also sought parity in terms of Ranjit Singh's case as the directions/orders of Director General of Police, Punjab vide memo No.555/LA-2 dated 28.1.1997 and

771/LA-2 dated 10.02.1997 are in consonance with the claim of the plaintiff.

[17]. Plaintiff has also moved **civil misc. No.12487-88-C of 2013** seeking to produce additional documents as Annexures A-14 to A-20 on record. These documents are the copy of order passed by Hon'ble Apex Court in SLP filed by State of Punjab, copy of execution petition filed by Balbir Singh, copy of judgment and decree passed by the lower Appellate Court in the case of Balbir Singh, copy of judgment passed in execution, copy of letter and government instructions.

[18]. Another **CM No.15143-44-C of 2014** under Order 41 Rule 27 CPC has also been filed by the plaintiff/appellant for production of Annexure A-21 which is judgment in **RSA No.2433 of 1998** titled as **State of Punjab vs. Gian Chand** vide which it was held that after qualifying service of ten years employee is entitled to pension and gratuity. Rule 7.5(1) Chapter VIII Volume-I of the Rules did not apply as it was introduced in the year 1982, whereas the appellant in the said case resigned on 20.04.1979. The claim for gratuity was however declined as time barred. It was held that Rule 7.5 of the Rules would not apply to the employee who had retired prior to 19.01.1982.

[19]. Learned counsel for the appellant by referring to the

case of Balbir Singh submitted that Balbir Singh also retired on 24.09.1965 and he was granted pension even after resignation on 24.09.1965. His resignation was accepted and arrears were restricted to three years two months before filing of the suit on 26.08.1989. The **RSA No.811 of 1994** preferred by the State of Punjab was dismissed on 13.08.2010 and against that judgment and decree **SLP(C) No.25423 of 2011** was also dismissed by the Hon'ble Apex Court on 27.07.2012. Balbir Singh filed execution on 12.02.2011 for implementation of the judgment and decree. The decree already stood executed.

[20]. The case of the Balbir Singh stands on equal footing. Balbir Singh was having 13 years of service for the purposes of pensionary benefits and his entitlement was accepted after judicial bout upto the Hon'ble Supreme Court and the arrears were restricted to three years two months preceding the date of filing of suit i.e 26.08.1989.

[21]. Learned counsel for the appellant craves indulgence of this Court to take judicial notice of the aforesaid facts.

[22]. Learned State counsel however stressed upon the fact that these judgments may not be taken judicial notice as the applicant/appellant remained silent for 43 years and he filed the suit only on 11.06.2003, therefore, delay and latches come in the way of the plaintiff to seek the relief.

[23]. The judgments and documents which are sought to be produced on record by way of additional evidence have not been denied in terms of their execution. The only contention raised by the State counsel is that since the suit has been filed after 43 years of resignation, therefore, these documents cannot be relied by this Court.

[24]. A judicial notice has to be taken on the documents sought to be brought on record as additional documents because according to this Court these documents would facilitate the Court to arrive at just decision. The grounds on which relief has been given to Balbir Singh are legal grounds and on same analogy the case of the plaintiff/appellant can be treated at par with that of Balbir Singh. Since Rule 7.5 of the Rules came into being only in the year 1981, the same had no application in the year 1960 when resignation was made by the plaintiff/appellant.

[25]. Since at the relevant time there was no such rule of forfeiture, therefore, the Rule 7.5(1) of the Rules cannot be invoked to forfeit the claim of the plaintiff. The acceptance of resignation and not granting pensionary benefits is discriminatory in character and is hit by Articles 14 and 16 of the Constitution of India. The process is confiscatory in character. The plaintiff was having more than 10 years of service at the

time of resignation.

[26]. Learned counsel for the appellant contends that even the word resignation is to be treated as retirement for the purposes of pensionary benefits. In that eventuality also as per Section 3 of the Pension Rules, Chapter VI, Punjab Civil Services Rules Volume-II for the Government Employee, the amount of superannuation retiring, invalid and compensation gratuity and pension will be the appropriate amount set out in the table given in Rule 6.16 *ibid* and it will be clear that Government Employee who has put in not less than ten years service becomes entitled to pension on retirement. Even the voluntary resignation also connotes something as retirement for the purposes of the pension.

[27]. No authority has taken contrary view. In the light of **1984(1) SLJ 575, 1993(2) RSJ 768 (P&H) The State of Punjab vs. Sandhu Singh, 1992(8) SLR 689 (P&H) State of Punjab vs. Parkash Singh** and **1992(1) PLR 417 State of Punjab vs. Paramjit Singh**, learned counsel for the appellant contends that the appellant is also entitled to receive arrears of pension only for the period of three years two months immediately before the filing of the suit.

[28]. Learned counsel on the strength of **Balbir Singh's** case (*supra*) as well as on the strength of **Kavid Ratan vs. U.P.**

Public Service Tribunal, 1990(4) SLR 78 contends that after ten years of service one becomes entitled to pension.

[29]. It is not in dispute that at the relevant time post of Constable in the employment of State of Punjab was pensionable in nature. Relying upon the grounds on which lawful criteria has been evolved in granting benefit to Balbir Singh, this Court also concurs with the reasoning given in the said case.

[30]. Since the additional evidence sought to be adduced on record is in respect of documents based on public domain and authenticity and correctness of which has not been doubted by the respondents, therefore **Civil Misc. Nos.73-74-C of 2012, 12847-88-C of 2013** and **15143-44-C of 2014** are allowed and accompanying documents are taken on record. The reasoning adopted in **Balbir Singh's** case (supra) is being adopted in the present case as well. Rule 7.5(1) of the Rules is not applicable in case of resignation submitted in the year 1960.

[31]. In view of interpretation of Rule 7.5 as held in the aforecited case of Gian Chand as well as in the case of Balbir Singh, this Court is of the considered opinion that claim of the appellant cannot be curtailed only on the ground of resignation that was done in the year 1960.

[32]. Accordingly, the plaintiff/appellant is held entitled to the

pensionary benefits. He is allowed to receive arrears of pension confined to three years two months just before filing the suit. In future the plaintiff shall also continue to get pension as computed by the Department in terms of increase or modification from time to time based on Government instructions. The appellant is also held entitled to receive interest @ 12% per annum on the dues legally payable to him from the date of which these dues become actually due to him till final realisation of the same.

[33]. Consequently, Impugned judgments and decrees passed by the Courts below are set aside. Suit of the plaintiff is decreed. The present appeal is allowed to the extent of pension in the terms as indicated above.

November 30, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**