

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

**Civil Writ Petition No. 7889 of 2014
Date of Decision: 11.2.2015**

Jagtar Singh

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Bhim Sen Sehgal, Advocate
for the petitioner.

Mr. Piyush Bansal, DAG, Punjab.

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

RAMESHWAR SINGH MALIK J.

The short but important question of law that falls for consideration of this Court is, as to whether the petitioner is entitled for pension for the period of 9 years, 9 months and 19 days, he served the respondent-State, by rounding off the fraction of a year, i.e. the period of more than nine months, as a completed year, thereby completing 10 years which is minimum required qualifying service for pension.

Facts are hardly in dispute. Date of birth of the petitioner is 10.9.1953. Initially, he joined the Military Engineering Service w.e.f. 30.12.1978 and served in different positions up to 30.12.1999.

Thereafter, petitioner sought and was granted voluntary retirement after a total service of 21 years. He is getting service pension for his military service from 31.12.1999. These facts stood verified by Annexures P-1 and P-2.

Having sought voluntary retirement from the military service, petitioner joined as JBT teacher on regular basis in the Education Department w.e.f. 12.12.2001. Petitioner rendered satisfactory service and retired on 30.9.2011, after attaining the age of superannuation. As per communication Annexure P-3, petitioner rendered total service of 9 years, 9 months and 19 days with the Education Department. Pension case of the petitioner was forwarded to the Accountant General, Punjab-respondent No.3 by the office of of Block Primary Education Officer, Gidderbaha-2 (Doda), District Sri Muktsar Sahib, vide Annexure P-4, for release of retiral benefits of the petitioner including pension. Respondent No.3 rejected pension case of the petitioner, vide impugned order dated 18.1.2012 (Annexure P-5), saying that pension was not admissible as the petitioner was not having a qualifying service of 10 years.

Petitioner served the respondents with legal notice dated 6.1.2013 (Annexure P-6). After receipt of the legal notice, respondent No.3 released the amount of gratuity in favour of the petitioner vide letter dated 5.3.2013 (Annexure P-7), however, pension was not granted to him. Legal notice of the petitioner was replied vide communication dated 11.3.2014 (Annexure P-8), saying that pension was not admissible as the petitioner had less than 10 years of service. Having been left with no other option, petitioner has

approached this Court by way of instant writ petition under Article 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing the impugned orders. He also prays for a writ in the nature of Mandamus, directing the respondents to grant pension to the petitioner.

Notice of motion was issued and pursuant thereto, short reply by way of affidavit was filed on behalf of respondent No.3. A separate reply was filed on behalf of respondents No.1,2 and 4.

Learned counsel for the petitioner, while placing reliance on the judgments Annexures P-9 to P-12 and two later judgments of the Hon'ble Supreme Court passed in **Civil Appeal No. 172 of 2010 (State Bank of Patiala Vs. Pritam Singh Bedi and others)** and other connected matters decided on 7.7.2014 and **Civil Appeal No. 9389 of 2014 (Union of India and another Vs. Surender Singh Parmar)** decided on 20.1.2015, submits that petitioner was entitled for pension in view of the provisions contained in Rule 6.1 of the Punjab Civil Services Rules ('CSR' for short) Vol. II read with policy instructions issued by the respondent-State from time to time, which have been interpreted by the Hon'ble Supreme Court as well as this Court on more than one occasions, holding that whenever fraction of a year is equal to three months and above, it shall be treated as a complete one-half year and reckoned as qualifying service for pension. He further submits that since the instructions dated 1.8.2005 are contrary to the true spirit of the statutory rules contained in Rule 6.1 of CSR Vol.II, the same cannot take away the right of the petitioner flowing from statutory rule and cannot be invoked by the

respondent-State against the petitioner. He prays for setting aside the impugned orders, by allowing the present writ petition.

Learned counsel for the respondent-State, referring to instructions dated 1.8.2005, reproduced in the judgment dated 4.12.2006 passed by this Court in RSA No. 1056 of 2006 (Major Sucha Singh Rana Vs. State of Punjab and another) at page 32 of the paper book, submits that the petitioner was not entitled for pension because he did not render minimum qualifying service for pension, i.e. 10 years. He also tried to distinguish the judgments relied upon by the learned counsel for the petitioner, contending that plaintiff-Major Sucha Singh Rana retired on 30.6.1993 and the abovesaid instructions were issued on 1.8.2005, as it was held by this Court that the instructions would operate prospectively whereas the petitioner retired on 30.9.2011. He further submits that since instructions dated 1.8.2005 were already in operation before retirement of the petitioner, he was not entitled for the relief claimed. He concluded by submitting that since the petitioner had not completed minimum qualifying service for pension, he was not entitled for the same. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after going through the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given facts and circumstances of the case, recorded hereinabove, present writ petition deserves to be allowed, for the following more than one reasons.

Since the issue involved herein revolves around Rule 6.1 of CSR Vol.II and instructions dated 1.8.2005, it would be appropriate to refer to Rule 6.1. of CSR Vol. II and instructions dated 1.8.2005, which read as under:-

Rule 6.1. of the CSR Vol. II

“The amount of pension that may be granted is determined by length of service as set forth by the succeeding sections of this chapter. [Fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service for describing the amount of pension].

Instructions dated 1.8.2005

“ To

*All Heads of Department,
Commissioners of Division,
Registrar Punjab and Haryana High
Court,
Deputy Commissioner in the State
Dated, Chandigarh the 01.08.2005*

Subject: Clarification regarding determination of Government employees for calculating the length of qualifying service for retirement benefits.

Sir,

I am directed to refer to Government letter No. 16/42/83-F.R.(6)7291, dated 17th August, 1983 and to clarify that the period of three months or more but less than 6 months of qualifying service will be treated complete 6 months for retirement benefits only in those cases where the employee has completed 10 years of qualifying service as per

provisions contained in rule 6.1. of CSE Vol. II.

Yours faithfully

Sd/-

(*Shyam Lal Sharma*)

*Endst. No. 2/49/2003-2FPPC/6273 dated,
Chandigarh the 1.8.2005.”*

Rule 6.1 of CSR Vol.II fell for consideration before a Division Bench of this Court in CWP No. 8012 of 2003 (Amrik Singh Vs. State of Punjab), which was decided on 8.7.2004. It was held by the Division Bench that the period of 9 years, 9 months and 17 days rendered by the petitioner in that petition was to be rounded off, as a result of which the petitioner in that case had completed 10 years of service entitling him for pension. The respondent filed SLP before the Hon'ble Supreme Court, which was dismissed vide order dated 24.3.2005, observing as under:-

“Delay condoned

Special Leave Petition is dismissed”

Following the order dated 8.7.2004 passed by the Division Bench of this Court in Amrik Singh's case (supra) which was upheld by the Hon'ble Supreme Court, RSA No. 1056 of 2006 came to be allowed by this Court, vide its judgment dated 4.12.2006 (Annexure P-9). Similar issue again fell for consideration before the Division Bench of this Court in **CWP No. 19101 of 2006 (Salwinder Singh Vs. State of Punjab and others)** (Annexure P-10) and the Division Bench, while following the abovesaid order passed by this Court in Amrik Singh's case (supra), allowed the writ petition,

observing as under:-

The Division Bench interpreted the instructions and held that 3 months period was to be taken as a fraction for completed one half years, whereas, earlier six months period was taken as a fraction of one year. Therefore, the benefit of instructions was extended to the employee, who had rendered 9 years 9 months 17 days of service.

In the present case, the petitioner has rendered 9 years 11 months and 21 days of service and it is claimed that the matter is squarely covered by the Division Bench's judgment rendered in CWP No. 8012 of 2003. When the matter came up for consideration on 28.7.2008, CWP No. 19101 of 2006 learned State counsel has sought time to seek instructions as to whether the Division Bench's judgment, rendered in CWP No.8012 of 2003 (Amrik Singh vs. State of Punjab) was still holding field or whether it was challenged before Hon'ble the Supreme Court. At the resumed hearing, learned State counsel has placed on record a copy of the order dated 14.3.2005 (Mark 'A') showing that the SLP has been dismissed. Learned State counsel has also made some efforts to persuade us to take a view different than the one taken by the Division Bench by citing heading of Chapter 6 of the Civil Services Rules. However, the view taken by the Division Bench is binding on us and even otherwise there is no reason for us to differ the Division Bench. The instructions dated 31.12.1997 have been issued in pursuance to Rule 6.1 of the Punjab Civil Services Rules and interpreted by adopting principle of beneficial

construction.

Accordingly, the writ petition is allowed. The petitioner shall be deemed to have rendered 10 years qualifying service. Let his pension and pensionary benefits now be calculated and be paid to him within a period of two months from the date of receipt of a certified copy of this order. In view of some controversy concerning interpretation of Rules we refrain from passing an order awarding any cost or interest to the petitioner.”

Another Division Bench of this Court in **Union of India Vs. Surender Pal Singh, 2012 (2) RSJ 483 (Annexure P-11)**, observed as under:-

“After hearing learned counsel for the parties, we are of the view that though the concerned employee in the case of Salwinder Singh (supra) was covered under Civil Services Rules yet the provision as contained in Regulation 9 of the Pension Regulations for the Army 1961 (Part-I) is pari-materia to Rule 6.1 of the Civil Services Rules. The respondent was, therefore, entitled to condonation of 58 days of qualifying service as the fraction of a year equal to 3 months and above but not less than 6 months has to be treated as a completed one half year towards qualifying service. Mere fact that a civil servant qualifies for pension of completion of 10 years of qualifying service whereas the army personnel like the respondent is required to put in 15 years of qualifying service before being granted the pensionary benefits, is no ground to hold that the judgment in the case of Salwinder Singh (supra) is not applicable to the facts and circumstances of the present case.

*Moreover, the Division Bench in the case of Salwinder Singh (supra) relied upon another judgment dated 8.7.2004 passed by a Division Bench of this Court in CWP No. 8012 of 2003 **Amrik Singh Vs. State of Punjab** wherein also 3 months period was taken as a fraction for completed one half year. Against the said decision, an SLP was filed but the same had also been dismissed by the Hon'ble Supreme Court on 14.3.2005."*

The respondent-State challenged the judgment dated 4.12.2006 in Major Sucha Singh Rana's case (supra) before the Hon'ble Supreme Court by way of civil appeal No. 2530 of 2008, but the same was dismissed. The relevant observations made by the Hon'ble Supreme Court in para 4 to 6 of the judgment dated 19.2.2014 (Annexure P-12), which can be gainfully followed in the present case, read as under:-

" Mr. Kuldip Singh, learned counsel for the appellant submitted that this rule as well as the clarification contemplates only calculation of the amount and not calculation of the period of service put in by an employee. In our view, this submission cannot be accepted. The rule and particularly the clarification issued thereafter, are very clear. Clarification in terms speaks about the qualifying service and as to how it is to be calculated. It specifically says that for the purpose of pension, a fraction of a year equal to three months or above shall be treated as a completed one half year and shall be reckoned as qualifying service for determining the quantum of pension. That being so the respondent will have to be held as having

completed 10 years of service which would entitle him to receive pension.

Mr. Kuldip Singh has also drawn our attention to a subsequent circular dated 1st August, 2005, issued by the State Government which states that a period of three months or more but less than six months of qualifying service will be treated as complete six monthly period for retirement benefits only in those cases where the employee has completed 10 years of qualifying service as per Rule 6.1. quoted above.

As far as this Circular of 1st August, 2005 is concerned, firstly, we would like to make it clear that if the employee has completed 10 years of qualifying service then there is no occasion to count any fraction. Secondly, this circular cannot apply retrospectively and thirdly, it cannot be read in the teeth of Rule 6.1. which is very clear. This being the position, we do not find any error in the judgment rendered by the High Court. The civil appeal is therefore dismissed.”

In addition to the judgments referred to hereinabove, an identical issue came for consideration before the Hon'ble Supreme Court in Pritam Singh Bedi's case (supra). The Hon'ble Supreme Court reproduced the relevant provisions for qualifying service and broken period of less than one year in para 18 of the judgment and interpreted the same in favour of the retirees in para 23 and 24. Relevant observations made by the Hon'ble Supreme Court in para 18, 23 and 24 of the judgment in Pritam Singh Bedi's case (supra), read as under:-

“Chapter IV relates to qualifying service. Regulation 14 defines qualifying service as under:

“14.Qualifying Service-

Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank, on the date of his retirement or on the date on which he is deemed to have retired shall qualify for pension.”

For the purpose of qualifying service, under the said Chapter IV Regulation 18 prescribes broken period of service of less than one year as under:

18.Broken period of service of less than one year-

If the period of service of an employee includes broken period of service is less than one year, then if such broken period is more than six months, it shall be treated as one year and if such broken period is six months or less it shall be ignored.”

XX XX XX XX

It has not been disputed by appellant-Bank that the respondents in all the appeals have completed much more than 19 years 6 months of service in the Bank. For example, respondent No.1-Prakash Chand in C.A. No.173 of 2010 had joined the Bank on 4th May, 1981 and relieved on 31st March, 2001. Thus, he had completed 19 years, 10 months and 28 days of qualifying service on the date of relieving from service.

Regulation 18 of the Pension Regulations,

1995 provides that if broken period is more than six months, it shall be treated as one year. Therefore, all the respondents-writ petitioners having completed more than 19 years and 6 months of service in the Bank, they are to be treated to have completed 20 years of service. The aforesaid question was neither raised nor decided in the case of 'Bank of Baroda' or 'Bank of India'.

Again, the identical rule for qualifying service was considered by the Hon'ble Supreme Court in **Surinder Singh Parmar's case (supra)**. The provisions of the rules were analogous as in the present case. Relevant observations made by the Hon'ble Supreme Court in para 7 to 9 in its judgment, which aptly apply to the facts of the present case, read as under:-

The note below paragraph 5 of the Government of India, Ministry of Defence instructions dated 30th October, 1987 at clause 5 provides that in calculating the length of qualifying service fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year for reckoning qualifying service. The said provision reads as follows:-

“5. Qualifying service.

(a)xx xx xx

(b)xx xx xx

Notes:

(1) to (4) xx xx xx

(5) In calculating the length of qualifying service fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year and reckoned as qualifying service.”

8. In view of the aforesaid provisions the respondent is entitled to claim total period of service as 14 years for the purpose of calculation of pension. By Government of India, Ministry of Defence order dated 14th August, 2001 administrative power has been delegated to the competent authority under clause (a)(v) the competent authority has been empowered to condone shortfall in qualifying service for grant of pension beyond six months and upto 12 months.

The said provision reads as follows:-

“(a)(v) Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months.”

9. In view of the aforesaid provision, the respondent is also entitled to claim for condonation of shortfall in qualifying service for grant of pension beyond six months and upto 12 months. If the aforesaid power has not been exercised by the competent authority

in proper case then it was within the jurisdiction of the High Court or Tribunal to pass appropriate order directing the authority to condone the shortfall and to grant pension to the eligible person, which has been done in the present case and we find no ground to interfere with the substantive finding of the Tribunal.”

A combined reading of Rule 6.1. of CSR Vol.II and instructions dated 1.8.2005, reproduced herinabove, would make it crystal clear that the petitioner was entitled for service pension in view of the unambiguous provisions of Rule 6.1 of CSR Vol.II. Petitioner need not to invoke the instructions dated 1.8.2005. Further, once the petitioner is entitled to get pension by rounding off the fraction of more than three months for a complete one half year or by rounding off fraction of more than nine months as a completed year under Rule 6.1 of CSR Vol.II, respondent-State cannot take away the said right of the petitioner under the garb of instructions dated 1.8.2005. It is so said, because it is the settled proposition of law that if there is any conflict between the statutory rules and administrative instructions issued by the State, statutory rules shall prevail, as held by the Hon'ble Supreme Court in **C.L.Verma Vs. State of Madhya Pradesh and another 1990 (1) RSJ 38 S.C.**

Further, as observed by the Hon'ble Supreme Court in para 6 of its judgment in Major Sucha Singh Rana's case (supra) that if the employee has completed 10 years of qualifying service, then there would be no occasion to count any fraction of the year.

Occasion for rounding off the fraction of a year would arise only when an employee has completed less than 10 years of qualifying service.

In view of the observations made by the Hon'ble Supreme Court, instructions dated 1.8.2005 do not convey any purposeful meaning. Since the instructions dated 1.8.2005 run counter to the abovesaid Rule 6.1 of CSR Vol.II, these cannot be read against the employee seeking pension in view of the provisions contained in Rule 6.1 of CSR Vol.II. This seems to be the only constructive and harmonious interpretation of Rule 6.1 of CSR Vol. II. Any contrary interpretation will defeat the very object of Rule 6.1. of CSR Vol.II.

The contentions raised by the learned counsel for the State have been duly considered but none of them has been found worth acceptance, being without any substance. During the course of hearing, when a pointed question was put to the learned counsel for the State as to what purposeful meaning is conveyed by the instructions dated 1.8.2005 or what was the object sought to be achieved by way of these instructions, he had no answer and rightly so, because in the given facts and circumstances of the present case, factually there could not be any answer to the question posed. Having said that, this Court feels no hesitation to conclude that the respondent authorities proceeded on an arbitrary and misconceived approach, while passing the impugned orders, denying the genuine claim of the petitioner, because of which the impugned orders cannot be sustained.

It is a matter of record that the petitioner had rendered service of 9 years, 9 months and 19 days, which clearly falls within

the ambit of Rule 6.1. of CSR Vol.II. There is no dispute about the first six months of the year. The dispute is only about the second half of the 10th year, during which the petitioner had rendered the service of three months and 19 days. Once the petitioner had completed fraction of a year equal to more than three months, the said period has to be treated as complete six months, for the purpose of second half of 10th year. This is what the scope and ambit of Rule 6.1. of CSR Vol.II, which clearly comes to the rescue of the petitioner.

To test it from a different angle, it can be said that petitioner had rendered service of more than 9 months and it shall be treated to be a completed one year, as held by the Hon'ble Supreme Court in **Pritam Singh Bedi's case (supra)**. Thus, testing it from any angle, Rule 6.1 of CSR Vol.II protects the right of the petitioner making him entitled for pension. Under these circumstances, it can be safely concluded that the petitioner shall be deemed to have rendered qualifying service of 10 years.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that in view of the provisions of Rule 6.1. of CSR Vol.II, petitioner has rendered qualifying service of 10 years. Natural consequences would follow.

Consequently, petitioner is declared entitled for pension. The respondent authorities are directed to calculate the pension of the petitioner. He shall be paid arrears of the pension within a period of two months from the date of receipt of a certified copy of this

order. If the needful is not done within the stipulated period, the petitioner shall be entitled for interest @ 9% per annum on the amount of arrears of pension, from the date when it became due, till the date of actual payment.

Resultantly, with the abovesaid observations made and directions issued, the instant writ petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

11.2.2015
AK Sharma