

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

LPA No.95 of 2011 (O&M)
Date of decision: **15.07.2015**

Haryana Vidyut Prasaran Nigam Limited
(formerly Haryana State Electricity Board) ...Appellant

Versus

Saroj Bakshi and others ...Respondents

**Coram: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.Pardeep Singh Poonia, Advocate
for the appellant.

Mr. Vikas Chatrath, Advocate
for the respondents

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 24.9.2010 passed by the Learned Single Judge, whereby, CWP No.6871 of 1997 filed by the husband of respondent No.1 was allowed and the appellant Haryana Vidyut Prasaran Nigam Limited (earlier Haryana State Electricity Board) was directed to release the entire pensionary benefits to the respondents, (who are legal representatives of the deceased Om Prakash Bakshi) and to grant family pension, if permissible under the law within 30 days

alongwith interest thereon at the rate of 12% per annum.

The husband of the respondent namely Late Shri Om Prakash Bakshi was appointed as a Typewriter Mechanic with appellant Board on 16.03.1968. He worked for a period of 12 years 3 months. Due to certain unavoidable circumstances and ill health, he had to resign from his services and he submitted his resignation dated 03.06.1980 (Annexure R-9) by giving one month's notice to appellant Board which was accepted by the appellant Board on 02.07.1980. Thereafter, Om Prakash Bakshi submitted many applications requesting that he be given the pensionary benefits. The same were rejected by the appellant Board by stating that his request for allowing pensionary benefits under Rule 4.19(b) of CSR Vol. II had been considered but could not be accepted.

Aggrieved, he filed the writ petition. During the pendency of the petition Om Prakash Bakshi died. Whereafter, his legal representatives were brought on record.

The stand of the petitioner in the writ petition was that as per the Rules being followed by the appellant Board, the petitioner was entitled for grant of pension as he had served for more than ten years and his entitlement was governed by Rule 4.19(b) of the CSR Vol. II

In the written statement, it was stated that the petitioner was guilty of suppression of facts. It was stated that he had submitted resignation on two earlier occasions also but withdrawn

the same before they were accepted. Further, in justification of the impugned order denying pension, it was stated that the case of the petitioner was not covered under Rule 4.19(b) of the Punjab Civil Services Rules Volume-II but was covered under Rule 4.19(a) of the said Rules. It was stated that as per Rule 4.19(a) of the CSR Vol.II resignation from public service entails forfeiture of past service and an employee who voluntarily resigns is not entitled to pension.

Rule 4.19(a) and 4.19(b) of CSR Volume-II are reproduced below:

“4.19(a) Resignation from public service, dismissal or removal from it, either under proviso (c) to Article 311 (2) of the Constitution for over anti-national activities such as sabotage, espionage etc. or for mis-conduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination entails forfeiture of past service and no pension shall be granted in the aforementioned circumstances.

4.19(b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.”

The Ld. Single Judge taking note of the contents of the written statement held that tendering the resignation and withdrawing the same before its acceptance does not amount to misconduct so as to justify the action of the appellant in depriving the benefit of pensionary benefits to the deceased employee. Accordingly, the writ petition was allowed. The appellants were

directed to release the entire pensionary benefits to the respondents and to grant family pension if permissible under the law. Exemplary costs of Rs. One lac was also imposed on the appellant.

Ld. counsel for the appellant argued that as the deceased Om Prakash Bakshi had resigned from service, he is not entitled to pension in terms of Rule 4.19(a) of the CSR Volume-II. He further argued that the Ld. Single Judge has not addressed this issue but has proceeded on an erroneous assumption as if the pension had been declined on account of misconduct based on the earlier two resignations submitted and withdrawn by the deceased employee.

As there was no representation on behalf of the respondent, Sh. Vikas Chatrath, Advocate, was requested to assist on behalf of the respondents. Mr. Vikas Chatrath has argued that merely because the petitioner had voluntarily resigned, he cannot be denied the benefit of pension as he had put in necessary qualifying service for pension.

The question arises as to whether resignation invariably entails forfeiture of past service and whether an employee who resigns after putting in qualifying service for pension is entitled to pensionary benefits has been considered by the Courts in various cases. Thus, it has been held that if the resignation has been accepted by the employer and has not been tendered only with a view to avoid any disciplinary action, then the

employee would be entitled to pension as per the applicable pension rules.

A Division Bench of the Delhi High Court in **Ashwani Kumar Sharma vs. Oriental Bank of Commerce** 2003(3) S.C.T 764, after a reference to various Supreme Court decisions held as under:

“ 30. Payment of pension depends upon completion of qualifying service. A person who completes the qualifying service is entitled to pension. Whether the relationship of employer and employee comes to an end by way of resignation or voluntary retirement in a given situation may not matter so as to enable the employer to deprive the employee from the benefit of a beneficent scheme. It may be one thing to say that a scheme for payment of pension having been introduced at a stage when the concerned employee has retired, would not be entitled to the benefit thereof but it is another thing to say that although he, at all relevant times, was in service, he would be deprived therefrom only because he has either resigned or retired voluntarily. Resignation and voluntary retirement stand on slightly different footing but the effect and substance thereof is not of much significance. It may be true that an offer of voluntary retirement may be accepted or may not be accepted but such is a case of resignation also, particularly when the concerned employee is faced with departmental proceedings. The employer, having accepted the resignation, even upon waiver of the notice period, cannot be permitted to turn round and contend that he was not entitled to the pensionary benefits. The respondents, as noticed from

the factual backdrop of the case, themselves processed the matter for grant of pension. The petitioner was asked to make an amendment to his application for resignation to one for voluntary retirement.”

The question has been considered by this Court on earlier occasions and it has been held that if the employee at the time of his resignation had to his credit the required qualifying service for grant of pension, then the mere fact that he had resigned as distinct from seeking premature retirement would not make any difference to his entitlement to pension.

In **Om Parkash vs. Financial Commissioner and Principal Secretary to Government of Haryana and another** 2007(4) SLR 706, it was observed as under:

*“5. Learned counsel for the petitioner has placed reliance on **Mehar Singh vs. State of Punjab 2003(1) SCT 453 (P&H)** wherein this Court in para 7 of the judgment held that since the petitioner resigned after he had put in more 10 years of service, he is entitled to pension and other retiral benefits as premature retirement from service and voluntary resignation from service will have the same effect i.e. one is retiring.*

*6. Learned counsel further referred to the judgment passed in **Haryana State vs. Madan Pal Ahlwat** reported in **2003(1) SCT 327 (P&H)** wherein his Lordship Hon'ble Mr. Justice S.S. Nijjar while dealing with considered Rule 4.19(a) and 6.16(2) observed that Rule 4.19(a) of Punjab Civil Services Rules Vol. II Part II would apply only in cases where a resignation is*

submitted by a government servant to avoid an order of dismissal or removal from service either under proviso C to Article 311(2) for anti-national activities as sabotage, espionage etc. for misconduct. This provision cannot possibly be made applicable to a voluntary resignation from service for domestic reasons. Even in case of resignation, the case would clearly fall under Rule 6.16(2) of the Rules. Since the respondent resigned from service due to domestic reasons having put in more than 10 years of service, he was clearly entitled to proportionate pension as provided under Rule 6.16(2)."

In this Om Parkash's case (supra), the petitioner who had resigned from the post of District Attorney after serving for 13 years 6 months and 25 days was held to be entitled to proportionate pension as per the provisions of Rule 6.16(2) of the Punjab Civil Service Rules, Volume -II (as applicable to the State of Haryana).

To the same effect are the observations of this Court in

Gulab Singh vs. the State of Haryana and another 2010 (6)

SLR 771:

*"5. The petitioner, who is appearing in person, has placed reliance on the judgments of learned Single Benches of this Court rendered in the cases of **Mehar Singh v. State of Punjab and others, 2003 (1) SCT 453** and **Haryana State through Collector, District Bhiwani, Bhiwani v. Madan Pal Ahlawat, 2003 (1) SCT, 327** to contend that the petitioner is entitled to gratuity and other pensionary benefits on completion of*

10 years qualifying service. He further contended that his resignation was accepted and he was permitted to quit the job by the government, therefore, he is entitled to pension. In Mehar Singh's case (supra) it has been held as under :-

"Since the petitioner resigned after he had put in more than 10 years of service, he is entitled to pension and other retiral benefits as premature retirement from service and voluntary resignation from service will have the same effect i.e. one is retiring. So, this writ petition is allowed. Respondent-State of Punjab is directed to release the pension and other retiral benefits to the petitioner. He will be given interest @ 9% per annum on this amount payable with effect from 1.8.1998 till its payment. Payment shall be made to him within six months of the receipt of copy of this order."

*The above said judgments have been relied upon by a Division Bench of this Court in the case of **Om Parkash v. The Financial Commissioner, 2007(2) S.C.T. 422 : 2007 (4) Services Law Reporter 706**, wherein the following observations have made :-*

*"After considering the observations made in Mehar Singh (supra) and **Haryana State v. Madan Pal Ahlawat** (supra), we are of the view that the petitioner who has resigned from the post of District Attorney is entitled to the proportionate pension with respect to the service he has served i.e. 13 years 6 months and 25 days, as is applicable to the State of Haryana. He is, thus, entitled to the benefit as per provisions 6.12 (2) of the Punjab Civil Services, Volume-II (as applicable to State of Haryana). We, therefore, allow the present writ petition and quash Annexure P-8. The retiral benefits i.e. Pension, Gratuity and leave encashment etc. be made payable to the petitioner within four months from the date of passing of this order."*

Before his resignation was accepted, Sh. Om Parkash

Bakshi had rendered 12 years 3 months service. Thus, he is entitled to proportionate pension as per the service rendered by him. Accordingly, his claim for pension is upheld for this reason, though not on the ground on which it was allowed by the Ld. Single Judge. Further, if family pension is permissible as per the law, the same be also paid as per Rules.

Thus, the appeal is dismissed.

However, the costs are reduced to Rs.25,000/- subject to the condition the same are paid to the respondent No.1 within a period of two months of the receipt of a certified copy of this order.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

15.07.2015
Atul