

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

CWP-9952-2015

Date of decision: 08.10.2015

**Post Graduate Institute of Medical Education and Research,
Chandigarh and another**

.....Petitioners

Versus

Balbir Singh and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE M. JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Amit Jhanji, Advocate for the petitioners.

Mr. J.R. Syal, Advocate for respondents No.1.

DARSHAN SINGH J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India in the nature of certiorari for quashing of the impugned order dated 07.04.2005 (Annexure P-5) passed by the leaned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (here-in-after called the 'Tribunal') in Original Application No.060/00459/2014.

2. The facts in brief are that respondent No.1 was appointed as

Security Guard Grade-II in the petitioner-Institute on 31.12.1988. He served a notice of voluntarily retirement vide letter dated 21.06.2007 with the request to allow voluntary retirement in terms of the Fundamental Rules after expiry of three months. Said request of respondent No.1 was accepted vide order dated 03.08.2007 treating the period from 16.01.2007 to 03.08.2008 as *Dies-non*. Respondent No.1 filed the Original Application bearing No.273-CH/2009 before the learned Tribunal for the release of retiral benefits, which was disposed of vide order dated 02.02.2010 with the direction to respondent No.1 as well as the petitioner-Institute regarding completion and processing of pension papers. The petitioner-Institute filed the review application. Learned Tribunal vide order dated 29.11.2010, modified the order dated 02.02.2010 to the extent that respondent No.1 may be paid pension and pensionary benefits if he is eligible under the statutory rules. Respondent No.1 filed the Civil Writ Petition bearing No.13239 of 2011 before this Court against the order dated 29.11.2010. The same was dismissed vide order dated 13.02.2012. Respondent No.1 filed the review application. The said application was disposed of by this Court vide order dated 25.10.2013 giving liberty to respondent No.1 to make the representation to the competent authority for retiral benefits and the competent authority will decide the said representation in accordance with law expeditiously. The representation filed by respondent No.1 was rejected by the petitioner-Institute vide order dated 05.03.2014, so he filed the Original Application No.060/00459/2014. The said application was contested by

the present petitioner on the ground that respondent No.1 was not entitled to the pensionary benefits because he has not completed 20 years qualifying service as required by Rule 48-A and Rule 48-A(3-A)(B) of the Central Civil Service (Pension) Rules 1972 (hereinafter called 'the Pension Rules'). But the learned Tribunal without going into the merits of the case allowed the application filed by respondent No.1 vide impugned order dated 07.04.2015. Hence, this petition.

3. Respondent No.1 contested the present petition on the grounds *inter alia* that respondent No.1 was allowed to retire from service in terms of Fundamental Rules 56 (k) (1). He was entitled for the retiral benefits under the provisions of Rule 49(2) (b) of the Pension Rules as he has put in more than 17 years, 10 months and 16 days of service at the time of his voluntary retirement.

4. We have heard Mr. Amit Jhanji, Advocate, learned counsel for the petitioners, Mr. J.R. Syal, Advocate, learned counsel for respondents No.1 and have meticulously gone through the paper-book.

5. Initiating the arguments, learned counsel for the petitioners contended that respondent No.1 was appointed as a Security Guard on 31.12.1998. He sought voluntarily retirement vide his application dated 21.06.2007. His request was accepted by the Director of the petitioner-Institute vide order dated 03.08.2007. He further contended that respondent No.1 filed the Original Application No.273-CH/2009 in order to claim the pensionary benefits. The said Original Application was decided by the learned Tribunal vide order dated 02.02.2010 and

petitioners were directed to release the remaining benefits of pension and gratuity etc. to respondent No.1 within a period of six weeks. On the application filed by petitioners the said order was reviewed and was modified to this extent that respondent No.1 shall be entitled to the pensionary benefits if he is eligible under relevant statutory rules. The Civil Writ Petition filed by the petitioners against the review order dated 29.11.2010 was dismissed by this Court vide order dated 13.02.2012. However, on the basis of an application filed by respondent No.1 for review, he was permitted to make representation to the competent authority for claiming the pensionary benefits. He further contended that the representation filed by respondent No.1 was rejected by the competent authority vide order dated 05.03.2014 as he has rendered less than 20 years of qualifying service which made him ineligible for pension on account of voluntary retirement in view of instruction contained in Rule 48-A (2) of the Pension rules. He further contended that thereafter respondent No.1 filed the present Original Application which was wrongly allowed by the Tribunal without taking into consideration the relevant statutory Pension Rules.

6. He contended that as per Rule 48-A of the Pension Rules completion of 20 years qualifying service is essential for claiming the pension and retiral benefits. He contended that in the instant case, it is the admitted position that respondent No.1 has rendered the service less than 20 years. So, he was not entitled for the pensionary benefits. He contended that the provisions of Rule 49 (2) (b) of the Pension Rules only

cover the cases of retirement under Rules 35 and 36 of the Pension Rules i.e. the voluntarily retirement after 20 years of qualifying service, compulsory retirement after the prescribed age and such other cases as provided under Rules 35 and 36 of the Pension Rules. But, admittedly, respondent No.1 has sought the voluntary retirement before completing the qualifying service of 20 years, he cannot take the help of Rule 49(2)(b) of the Pension Rules and he is not entitled to the pensionary benefits. To support his contentions he relied upon cases ***Union of India Vs. Rakesh Kumar, AIR 2001 SC 1877***. He further contended that the claim of respondent No.1 was already rejected in the previous Original Application and Civil Writ Petition No.13239 of 2011. Thus, he pleaded that the impugned order dated 07.04.2015 passed by the learned Tribunal is illegal.

7. On the other hand, learned counsel for respondent No.1 contended that respondent No.1 has sought the voluntarily retirement under the Fundamental Rules. As per the official noting his case for voluntary retirement was also dealt with under the Fundamental Rules 56(K)(1). He was allowed to voluntary retirement on completing the age of 55 years, in view of three month's notice given by him. He contended that he is entitled to the pension and other retiral benefits in view of Rule 49(2)(b) of the Pension Rules, which has been wrongly denied to him.

8. We have duly considered the aforesaid contentions.

9. It is not disputed that respondent No.1 who was serving as Security Guard Grade-II with the petitioner-Institute had applied for

voluntarily retirement under the Fundamental Rules. He was permitted to retire vide order dated 03.08.2007 by the Director PGIMER, Chandigarh. The dispute in the present case is as to whether respondent No.1 is entitled for the pensionary benefits or not.

10. Fundamental Rule 56 (k) 1 reads as under:-

"F.R. 56 (k) (1) Any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years, if he is in Group 'A' or Group 'B' service or post, (and had entered Government service before attaining the age of thirty-five years), and in all other cases after he has attained the age of fifty-five years:

Provided that -

(a) Not printed (Since Clause (a) has been deleted)

(b) nothing in the clause shall also apply to a Government servant, including scientist or technical expert who (i) is on assignment under the Indian Technical and Economic Co- operation (ITEC) Programme of the Ministry of External Affairs and other aid Programmes, (ii) is posted abroad in a foreign-based office of a Ministry/Department and (iii) goes on a specific contract assignment to a foreign Government unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year; and

(c) it shall be open to the Appropriate Authority to withhold permission to a Government servant under suspension who seeks to retire under this Clause."

11. As per the aforesaid Fundamental Rule, any government servant by giving notice of not less than three months in writing to the appropriate authority, may retire from service after he has attained the age of 50 years if he is in Group 'A' or 'B' service of post and in any other case after he has attained the age of 55 years. The copy of the office

noting prepared by the officials/officers of the petitioner-Institute has been obtained by respondent No.1 under the provisions of the Right to Information Act, 2005 and is available at page 112 to 115 of the paper-book, which shows that the notice issued by respondent No.1 for retirement was dealt with as per Fundamental Rule 56 (k) (1). As per the noting the date of birth of respondent No.1 as per the office record was 03.03.1949. He had already completed the age of 55 years when he had given three month's notice on 21.06.2007. From the notice given by respondent No.1 and the office noting it is evident that respondent No.1 has sought the retirement under the Fundamental Rule 56 (k)(1). It is not understandable as to why the petitioner-Institute had mentioned Rules 48-A(2) and 48 A (3-A) (b) read with Government of India decision no(2) under rule 32 of CCS (Leave) Rules, in the order dated 03.08.2007 vide which respondent No.1 was allowed to retire. As per Rule 48-A of the Pension Rules, the qualifying service of 20 years is essential for voluntary retirement. Admittedly, at the time of his retirement, he has not completed 20 years service. So, if he would had sought the retirement under Rule 48-A of the Pension Rules, the criteria of 20 years service applied and his request for retirement could not have been allowed. So, obviously, respondent No.1 has been allowed to retire under Fundamental Rules 56(k) (1). Rules 48-A(2) and 48 A (3-A) (b) read with Government of India decision no(2) under rule 32 of CCS (Leave) Rules, have been wrongly quoted in the order dated 03.08.2007 passed by the Director of the petitioner-Institute.

12. Rule 49 (2) (b) reads as under:-

“49 (2) (b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years, but after completing qualifying service of 10 years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than Rupees three hundred and seventy five per mensem”

13. As per the aforesaid rule, a government servant retiring in accordance with the provisions of these rules before completing qualifying service of 33 years but after completing qualifying service of 10 years, shall be entitled to the proportionate amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than Rs.375/- per month. It is not disputed that on the date of his retirement respondent No.1 has rendered the service of 17 years, 10 months and 16 days. In this manner, he has rendered the qualifying service of more than 10 years on the date of his retirement. So, he will be entitled to the pension and other retiral benefits as per Rule 49(2)(b) of the Pension Rules reproduced above.

14. The plea raised by learned counsel for the petitioner that earlier the claim of the respondent No.1 was rejected by the learned Tribunal and this Court, carries no substances as previous Original Application No.273-CH/2009 filed by respondent No.1 was disposed of by the learned Tribunal directing the petitioner to release the pension, gratuity etc. to respondent No.1. However, on the basis of review application filed by the petitioners the said order was modified to this extent that the direction for release of pension, gratuity etc. shall be

applicable if respondent No.1 is eligible under the relevant statutory rules. Respondent No.1 has filed the CWP No.1329 of 2011 against the review order dated 29.11.2010. The said writ petition was dismissed by this Court vide order dated 13.02.2012. On the basis of an application filed by respondent No.1 for reviewing the order dated 13.02.2012 passed by this Court, it was modified giving liberty to respondent No.1 to make the representation. This order was modified taking note of the provisions of Rule 49 (2) (b) of the Pension Rules. So, it cannot be stated that in the previous round of litigation the claim of the petitioner was rejected.

15. Case *Union of India Vs. Rakesh Kumar* (supra) relied upon by learned counsel for the petitioner has no application to the facts of the present case because in that case respondent a Member of Boarder Security Force has resigned from the post. So, that was not a case of voluntary retirement. Moreover, in Para No.15 of the judgment, the Hon'ble Apex Court has categorically mentioned that Rule 49(2)(b) will cover the cases of retirement under Rules 35 and 36 i.e. voluntary retirement after 20 years of qualifying service, compulsory retirement after prescribed age and **such other cases as provided under the rules**. The contention raised by learned counsel for the petitioner that other cases shall also be the cases provided under Rules 35 and 36 of the Pension Rules has no substance as if that would have been so, there was no necessity of specifically mentioning Rules 35 and 36 of the Pension Rules in the first part of the sentence. 'Such other cases as provided under the Rules' has been mentioned in the later portion of the sentence after

word 'and' so 'such other cases as provided under rule' would mean the retirement in other cases as provided under the Rules, which will also cover the retirement under Fundamental Rules 56 (k) (1).

16. Thus, keeping in view our aforesaid discussion as respondent No.1 has retired under Fundamental Rule 56 (k) (1) on attaining the age of 55 years, by that time he has already rendered the qualifying service of 17 years, 10 months and 16 days i.e. more than 10 years, so, he shall be entitled to the pensionary benefits as per Rule 49 (2) (b) of the Pension Rules.

17. Thus, we do not find any illegality or legal infirmity in the impugned order dated 07.04.2015 passed by the learned Tribunal.

18. Sequelly, the present writ petition is devoid of merits and is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

08.10.2015

sunil yadav