

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

LPA No.1747 of 2014(O&M)

Date of decision: 21.05.2015

Surinder Nath Kesar

----Appellant

Versus

Board of School Education Haryana and others

----Respondents

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

Present: Mr.Gurinder Singh Thind, Advocate
for the appellant.

Mr.Rajesh Sheoran, Advocate for
respondents No.1 and 2.

Mr.Amar Vivek, Addl. A.G.Haryana
for respondents No.3 to 6.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 20.04.2013 passed by the Learned Single Judge, whereby, CWP No.3037 of 2003 filed by the appellant seeking directions to the respondent - Board of School Education Haryana to grant him pension, has been dismissed. Also challenged is the order dated 22.11.2013, vide which, the Review Application No.155 of 2013 seeking review of the aforesaid judgment was dismissed.

The appellant joined the respondent – Board as Proof

Reader in the year 1970. It is stated that because of some unavoidable family circumstances he sought voluntary retirement from service in the year 1988 which request was accepted w.e.f. 1.2.1988. After about six years, he submitted a representation dated 24.3.1994 (Annexure P-1) requesting for re-appointment as Proof Reader in the respondent -Board. After due consideration, the Board passed a resolution dated 31.5.1994, according sanction to reappoint him afresh. Regarding giving benefit of past service, the resolution recorded that the Government may be consulted. The Board accordingly gave a fresh appointment in the pay scale of Rs. 1400-2600 to the appellant vide letter dated 25.7.1994. He joined on 3.8.1994. Immediately after joining he started efforts to get the benefits of his past service. After some communications inter-se the respondents, the respondent No. 1 – Board passed a resolution dated 31.5.1995 for condoning the period from 2.2.1988 to 2.8.1994 i.e., from the date of his voluntary retirement till rejoining and to consider this period as leave without pay and to give him the benefit of past service for the purpose of seniority/ pension. Accordingly a letter dated 15.5.1995 was issued by the Secretary of the respondent Board calling upon the appellant to submit an affidavit, that the decision of the Board was acceptable to him and that he would not claim any other service benefit for that period. Appellant submitted the required affidavit. But objections were raised by the audit department to this decision and it was pointed out that the case of the appellant would be covered by the provisions of Rule 4.23 of

CSR Vol.II instead of Rule 4.22 under which provision it was sought to be dealt with earlier. It was pointed out that for any relaxation under Rule 4.23 approval of the Finance Department was essential. Accordingly the case was referred to the Finance Department which declined to accept the proposal and suggested that the pay of the appellant be fixed under Foot Note 6 of Rule 7.18 of CSR Volume II. This was communicated to the Board vide communication dated 24.8.2001. (Annexure P-19). The request of the appellant for condoning the break in service and treating it as leave without pay and counting it for the purpose of seniority/ pension being thus declined, when he retired from service on 31.5.2002 on attaining the age of superannuation, he was not given the benefit of pension as his service after reappointment on 3.08.1994 till superannuation on 31.05.2002 came to less than 10 years which is required to qualify for pension.

Aggrieved, he filed CWP No.3037 of 2003, which was dismissed holding that the case of the petitioner was covered by Rule 4.23 of Chapter V of the Punjab Civil Services Rules, Volume-II (for short "the Rules"), as per which if break in service is occasioned on account of resignation, dismissal or removal, then the period of interruption cannot be condoned. It was also held that the order of appointment clearly indicated that it was a fresh appointment and there was nothing on record as per which it would be possible to compute the two different spells of service as a single service to entitle the appellant for pension.

The appellant filed a review primarily taking the ground that his case was governed by Rule 4.22 of the Rules. This plea was negated by the Ld. Single Judge by holding that Rule 4.22 would be applicable only on the continuance of service in the same establishment with a period of absence without leave coming in between. It was held that this Rule does not contemplate a situation of termination that arises by voluntary resignation.

Apart from canvassing that his case is governed by Rule 4.22 of the Rules, Ld. Counsel for the appellant has placed reliance on the resolution of the Board dated 31.5.1995 whereby it was decided to condone the period from 2.2.88 to 2.8.1994 i.e., the period from voluntary retirement till his rejoining and treat it as leave without pay and to give him the benefit of past service for the purpose of pension/ seniority. Ld. Counsel states that pursuant to that decision the appellant had submitted an affidavit accepting the same and even deposited the amount of gratuity, provident fund, leave encashment received by him at the time of his voluntary retirement.

Rules 4.22 and 4.23 of the Punjab Civil Service Rules Volume II read as under:-

“4.22.- The authority which sanctions the pension may commute retrospectively periods of absence without leave into leave without allowances or extraordinary leave.

4.23. - In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered under the State

Government shall be treated as automatically condoned, and the pre-interruption service shall be treated as qualifying service for pension purposes, except where the interruption has been caused by resignation, dismissal or removal from service or due to participation in a strike, but the period of interruption itself shall, under no circumstances, be reckoned as qualifying service for pension purposes.”

The language of the Rules is clear. The case of the appellant being one of interruption in service would be governed by Rule 4.23 as rightly held by the Ld. Single Judge. Further as in his case the interruption was caused by his seeking voluntary retirement i.e. resignation, the said interruption cannot be condoned.

The appellant cannot derive any benefit from the resolution of the Board to condone the break in service and treat it as leave of the kind due and to give him the benefit of past service for the purpose of pension/ seniority as this resolution was not in consonance with the applicable Rules. It has been rightly declined by the Government which under the Haryana Board of School Education Act, 1969 has the superintendence and control over the Board and its officers.

Accordingly, there is no merit in the appeal and the same is dismissed.

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

May 21, 2015

gian