

CWP No. 13554 of 2014 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 13554 of 2014 (O/M)

Date of decision : 29.7.2016

Shyam Lal Verma and another

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Amarjit Singh Virk, Advocate, for the petitioners.

Mr. Gagandeep S. Wasu, Additional Advocate General,
Haryana, for respondents No. 1 to 4.

None for respondents No. 5 and 6.

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

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KULDIP SINGH J.

Petitioner No. 1-Shyam Lal Verma was working as a teacher since 27.7.1970 in respondent No. 5-School i.e. Baba Sharvan Nath Senior Secondary School, which is a Government Aided Privately Managed School. However, the sanction of the post was received on 23.12.1971. The date of birth of petitioner No. 1 is 12.9.1947. Unfortunately, on 3.6.1991, petitioner No. 1 suffered head injury, on account of which he remained under treatment in PGI Chandigarh. He was operated on 4.6.1991 for compound depressed fracture left temporal region and was discharged from PGI Chandigarh, on 11.6.1991. Due to the head injury, he suffered 100%

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disability, as certified by the PGI Chandigarh, vide medical certificate Annexure-P-1. Since his power to speak was adversely affected, he was unable to teach the students and was unable to attend the duties. He remained on medical leave from 1.7.1991 to 6.9.1991, then earned leave from 7.9.1991 to 20.10.1991 and thereafter, extra ordinary leave (without pay) from 21.10.1991 to 20.10.1996 i.e. for five years. Thereafter, he was informed by the respondent No. 5-school that there is no provision for further leave without pay after the expiry of five years leave. The petitioner was unable to attend the duty. He requested for further extension of leave without pay. Since it was an unique case, respondent No. 5-School addressed a communication dated 13.12.1996 and sought the guidance from the District Primary Education Officer, Kurukshetra (respondent No. 4). Again, such guidance was sought, vide letter dated 3.2.1997 (Annexure-P-3). Respondent No. 4 sought guidance from the Director, Primary Education, Haryana (respondent No. 3), vide letter dated 27.2.1997 (Annexure-P-4). However, no order was passed on extra ordinary leave beyond five years and ultimately, the petitioner submitted an application dated 6.10.2002 (Annexure-P-5) to the respondent No. 5-School, requesting for voluntary retirement with effect from 5.1.2003, by serving three months' notice. He also submitted another application dated 6.10.2002 (Annexure-P-6) on the same day for release of his retiral benefits like gratuity, leave encashment and pension. Respondent No. 5-School, vide letter dated 31.12.2002 (Annexure-P-7) again referred the matter for guidance to respondent No. 4 i.e. the District Primary Education Officer, Kurukshetra, after submitting all the necessary documents and the medical certificates. The District Primary Education Officer, Kurukshetra, referred the case of

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petitioner No. 1 for voluntary retirement and pensionary benefits to the Director, Primary Education, Haryana (respondent No. 3), vide letter dated 28.1.2003 (Annexure-P-8). The pensionary benefits were not paid and it was claimed that the Haryana Government has introduced the scheme to grant pensionary and other retiral benefits to the teachers of private aided schools by notifying 'The Haryana Aided Schools (Pension and Contributory Provident Fund) Rules, 1999' (in short 'the Rules of 1999'), and the same was made applicable to the employees in Government Aided Schools, who were in service on 11.5.1998. The said rules were notified on 31.5.1999. However, in the year 2001, new pension scheme i.e. 'The Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001' (in short 'the Rules of 2001') was framed after repealing the Rules of 1999 and the same was notified on 29.3.2001, which was also made applicable from 11.5.1998. It is stated that Rule 9 of the Rules of 2001 provides for invalid pension to the employees, who are declared physically invalid for service because of bodily and mental infirmity, with the approval of the director. Likewise, Rule 11 of the Rules of 2001 provides for pension to the employees, who have completed 20 years of service or attained 50 years of age, are also eligible to seek voluntary retirement by serving 3 months' notice. It was further stated that the Government of India enacted 'Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short 'the Act of 1995'), for granting protection to the persons with disability. Section 47 of the Act of 1995 deals with an employee, who is already in service and acquires disability in service, for which certain protections have been provided and under the said section, no discrimination can be made. Section 47 of the Act

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of 1995 prohibits certain discrimination on the basis of disability.

The petitioner prays for grant of pensionary benefits by accepting his request for voluntary retirement with effect from 6.1.2003 and also grant him protection under Section 47 of the Act of 1995 or any other order.

The official respondents No. 2 to 4 have taken the stand that the Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001, are not applicable to the case of petitioner No. 1 since he has failed to submit option and undertaking, as required under Rule (3) of Rules of 2001. It is stated that the option was to be exercised within three months from the date of publication of the rules in the official gazette. The facts are not denied. It was stated that petitioner No. 1 is away from duty with effect from 20.10.1996. It is admitted that he had sought voluntary retirement, as claimed by him. It is stated that from 23.12.1971 to 20.10.1991, he has worked with respondent-School for 19 years, 9 months and 28 days and, therefore, he does not complete 20 years of statutory service to seek voluntary retirement. It was stated that the resignation of the petitioner was approved, but the pension was declined by the office, vide order No. Audit/2005/1421 dated 19.5.2005 (Annexure-P-12). No appeal was filed against the said order before the appellate authority under the Haryana School Education Act, 1995, and Haryana School Education Rules, 2003.

The respondents No. 5 and 6 have also not disputed the facts. Seeking of guidance on various letter was also admitted. It was stated that the petitioner has already withdrawn an amount of Rs. 60,000/- in the form of Kisan Vikas Patra in the year 2003. He was accorded sanction to withdraw an amount of Rs. 26,198/- from the contributory provident fund,

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vide letter No. Audit/2005/1422-23, dated 19.5.2005. It was further stated that the petitioner had submitted the resignation with effect from 8.3.2004. The prayer was made for dismissal of the writ petition.

I have heard the learned counsel for the petitioners, the learned State counsel and have also carefully gone through the file.

The perusal of the file shows the pathetic condition of petitioner No. 1 and purely clerical attitude of respondents. The respondents were unable to decide what to do in case of petitioner No. 1. Undoubtedly, petitioner No. 1 suffered head injury and vide medical certificate (Annexure-P-1), the PGI Chandigarh, declared that his disability is 100% on account of head injury. Admittedly, speaking power of petitioner No. 1 was affected and he was unable to teach. Petitioner No. 1 was granted medical leave from 1.7.1991 to 6.9.1991, followed by earned leave from 7.9.1991 to 20.10.1991 and thereafter, extra ordinary leave (without pay) for five years from 21.10.1991 to 20.10.1996. The problem arose thereafter when petitioner No. 1 moved an application for further leave. Respondent No. 5-School did not know what to do. Therefore, they sought guidance of District Primary Education Officer, Kurukshetra, (respondent No. 4), vide letter dated 3.2.1997 (Annexure-P-3). It appears that the District Primary Education Officer, Kurukshetra, (respondent No. 4) shot a letter dated 27.2.1997 (Annexure-P-4) to the Director, Primary Education, Haryana (respondent No. 3), himself seeking guidance in the matter. The registered letter dated 6.10.2002 (Annexure-P-5), sent by petitioner No. 1 Shyam Lal Verma shows that he gave three months' notice and sought voluntary retirement with effect from 5.1.2003. On the same day, he addressed another letter dated 6.10.2002 (Annexure-P-6), seeking

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the release of the retiral benefits. In the meanwhile, on the receipt of the said letter, the respondent No. 5-School again conducted the same exercise by addressing a letter dated 31.12.2002 (Annexure-P-7) to the District Primary Education Officer, Kurukshetra, (respondent No. 4), seeking guidance regarding the case of voluntary retirement of petitioner No. 1 and the release of the pensionary benefits. All the necessary documents were submitted. Again, the District Primary Education Officer, Kurukshetra, (respondent No. 4) played safe and addressed a communication dated 28.1.2003 (Ann.P-8) to the Director, Primary Education, Haryana, seeking guidance in the matter. Thereafter, the guidance was ultimately received, vide letter dated 7.4.2003 (Annexure-P-9), which is reproduced as under :-

- “1. In Rule 11(4) of Special pension Scheme Rules 2001, it is provided that any employee after serving for 20 years or on completing 50 years of age can seek voluntary retirement after serving 3 months notice.
2. As it is mentioned in the letter that employee unable to speak and is continuing on leave since 1991. In this situation he can be considered for grant of Invalid Pension under Rule 9 of Pension Scheme.
3. If the employee is medically fit, then he can be asked to join duty. The documents of the employee alongwith Service Book (Part-I and II) in original are being returned.”

Then, it comes out that petitioner No. 1 is alleged to have made a request dated 8.4.2004 (Annexure-P-10) for permission to withdraw contributory provident fund and resignation from service. The perusal of copy of the resolution dated 8.3.2004 (Annexure-P-11) shows that a meeting was held one month prior to the said letter i.e. 8.4.2004 (Annexure-P-10) at 10:00 AM by the Management Committee of the respondent No. 5-School, in which the resignation of petitioner No. 1 was accepted with

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effect from 21.10.1996. The communication dated 19.5.2005 (Annexure-P-12) referred to by the official respondent No. 4 shows that the voluntary retirement of petitioner No. 1 was accepted and rather, it is a letter dated 19.5.2005, addressed by the District Primary Education Officer, Kurukshetra, to the management committee, granting the approval for acceptance of resignation of the petitioner with effect from 21.10.1996. the petitioner No. 2, who is son of petitioner No. 1, thereafter made a complaint dated 11.9.2009 to the Commissioner-cum-Director General, School Education, Haryana, regarding said resignation. An inquiry was conducted and report dated 12.3.2010 (Annexure-P-17) was submitted wherein the said story of resignation was disbelieved by holding that once he has sought voluntary retirement from 6.1.2003, there is no question of submitting resignation on 8.4.2004 and the same is suspicious. The District Elementary Education Officer, Kurukshetra, in his report dated 12.3.2010 (Annexure-P-17) made the following recommendations :-

“ On the basis of the above facts and the case being the first of its nature and also keeping in view the 100% disability of the Applicant, on humanitarian grounds, if the department takes decision to accept his request for Voluntary Retirement by granting extraordinary leave (Leave without Pay) till 5.1.2003 and by rejecting his resignation letter, then this employee become eligible for pensionary benefits and the applicant is to be paid the benefit of pension only on the basis of active service.”

Therefore, it is clear that the said inquiry report was accepted by the Commissioner-cum-Director General, School Education, Haryana (respondent No. 2), vide Annexure-P-18. The abovenoted facts and circumstances make it clear that there is inaction on the part of the

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respondents. They have been shifting the liability from one to another and have been unable to take a decision. Once, petitioner No. 1 sought voluntary retirement by giving three months' notice, the respondents should have accepted the same with effect from 6.1.2003.

So far as the plea that there is no qualifying service of 20 years, as required for voluntary retirement, is concerned, I am of the view that the said plea is without any force.

Section 47 of the Act of 1995 provides as under :-

“Section 47 - Non-discrimination in Government employment.

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service :

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits :

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability :

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

It follows that no discrimination can be made. When the petitioner No. 1 had exhausted his five years' extra ordinary leave, the respondent No. 5-School should have asked him to join the service and allow him light duty, which was not done. Infact, the further leave was not granted and the petitioner No. 1 was kept in limbo. The respondent No. 5-

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School kept seeking guidance from the District Primary Education Officer, Kurukshetra, (respondent No. 4) who further kept seeking guidance of his higher officers. For the time consumed in this correspondence, the petitioner No. 1 cannot be allowed to suffer. Therefore, it is hereby ordered that the period from 21.10.1996 till 5.1.2003 shall be treated as extra ordinary leave (without pay) since the petitioner No. 1 did not work during the period nor sought to join duty. However, the entire period during which the petitioner No. 1 remained on medical leave, earned leave and extra ordinary leave shall be counted towards qualifying period of service for grant of retiral benefits. In this way, from 27.7.1970 till 5.1.2003, the petitioner No. 1 is deemed to have completed more than 32 years of service and, therefore, he qualifies for pension. The resignation of the petitioner No. 1 has already been disbelieved and found to be false one. Once, the petitioner No. 1 sought the voluntary retirement, there was no occasion for him to subsequently submit resignation.

In view of the matter, it is hereby ordered that his (petitioner No. 1) entire period of medical leave, earned leave and extra ordinary leave till the expiry of notice of three months (i.e. 5.1.2003) shall be reckoned towards qualifying service for the purpose of grant of retiral benefits. The petitioner No. 1 is deemed to have retired from service with effect from 6.1.2003 when the notice of three months expired. The option for pension, if required, shall be sought within one month. The respondents are hereby directed to process the case of retirement of the petitioner No. 1 and grant him pensionary benefits including pension, excluding benefits already released to him under Rules 9 and 11 of Rules of 2000, referred to above, within a period of three months and disburse the arrears with interest at the

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rate of 9% per annum with effect from 6.1.2003 till disbursement, within two months thereafter.

The present writ petition is accordingly allowed.

(KULDIP SINGH)
JUDGE

29.7.2016
sjks

Whether speaking / reasoned : ☒ Yes / No

Whether Reportable : ☒ Yes / No