IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 20653 of 2013

Date of Decision : April 04, 2016

Sham Sunder Dutt .... Petitioner

vs.

State of Haryana and another .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. D. K. Khanna, Advocate
for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

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DEEPAK SIBAL, J. :

On 22.09.1955, the petitioner joined as a Clerk in the Department of Industries in the erstwhile State of Punjab and on the formation of the new State of Haryana, which was carved out from the erstwhile State of Punjab, he was allocated to State of Haryana, which he accepted. On 22.08.1973, the petitioner resigned from his services. Thereafter, he made a representation to the respondents for counting the period of his service from 22.09.1955 till 22.08.1973 for the purpose of pension, which was rejected through order dated 02.06.2000. After being silent for over 11 years, the petitioner got served upon the respondents a legal notice dated 22.08.2011, which was considered and again rejected through order dated 23.10.2012, which is impugned through the present petition.

After hearing counsel for the parties and perusal of the record with their able assistance, the issue, which arises for determination is whether the afore-referred service of the petitioner from 22.09.1955 till 22.08.1973 is to be considered for grant of pension to him.

Learned counsel for the petitioner has placed reliance on Rule 6.16 (2) of the Punjab Civil Services Rules, Volume II (as applicable to the State of Haryana) (hereinafter referred to as – the Rules), as also on a Single Bench judgment of this Court rendered in **Gulab Singh vs. State of Haryana and another** – **2010 (6) SLR 77**.

Before adverting further on the issue, it would be useful to refer to the only Rule, on which the petitioner relies i.e. Rule 6.16 (2) of the Rules, which is reproduced below for ready reference :-

> ***"Rule 6.16 (2)*** *In the case of Government employee retiring on or after the 1st April, 1979, in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years or more, the amount of superannuation, retiring, invalid and compassionate pensions shall be 50% of average emoluments as defined in rule 6.19-C of these rules subject to a maximum of Rs. 3,800 per mensem. However, in the case of a Government employee who at the time of retirement has rendered qualifying service of ten years or more*

> *but less than thirty-three years, the amount of pension shall be such proportion of the maximum admissible pension as the qualifying service rendered by him bears to the maximum qualifying service of thirty-three years, subject to a minimum of Rs.375 per mensem."*

Basing his case on the afore-quoted Rule, learned counsel for the petitioner submits that first part of the Rule 6.16(2) would not apply to the case of the petitioner since he has resigned from service prior to 01.04.1979. However, reliance is placed on the second part of the Rule, which provides that on rendering 10 years' of qualifying service, an employee would become entitled to pension, which would be, of course, subject to stipulated conditions.

The argument of the learned counsel, though attractive on first blush, does not stand deeper scrutiny. The entire Rule has to be read harmoniously. The second part of the Rule is the consequence of the first and is not disjointed, as sought to be projected by learned counsel for the petitioner. That being so, the Rule would not apply in the case of the petitioner as it applies to cases of retirement and not resignation, as in the case in hand. That being so, then irrespective of the number of years of service having been rendered by the petitioner, no reliance on Rule 6.16(2) could be placed by him. Even otherwise, the Rule would apply only to those employees, who retired on or after 01.04.1979 and as the petitioner admittedly resigned from his job on 22.08.1973, the above quoted Rule would not apply in his case.

In fact, the Rule, that would apply in the case of the petitioner is Rule 5.32-A of the Rules, which is reproduced as under :-

> ***"5.32-A*** *The rule for the grant of retiring pensions is as follows :*
>
> ***a)*** *A Government employee is entitled, on his resignation being accepted, to a retiring pension after completing qualifying service of not less than 30 years, but a competent authority may permit the pension to be granted in Special cases where the qualifying service is not less than 25 years.*
>
> ***b)*** *A retiring pension is also granted to a Government employee who is required by Government to retire after completing 25 years qualifying service or more and who has not attained the age of 55 years."*

A perusal of Rule 5.32-A of the Rules, as quoted above, clearly provides that on resignation, an employee is entitled to a pension, subject to his having qualifying service of not less than 30 years, which, in special cases, could be reduced to 25 years. Since the petitioner does not have 25 years of service to his credit, his case would also not be covered under the afore-quoted Rule.

The aforesaid view expressed by me finds support from a judgment of the Apex Court rendered in **Special Leave Petition (Civil) No. 98 of 2007** – **Ghanshyam Dass Relhan vs. State of Haryana and others**, decided on **16.07.2009**, wherein on similar facts, it has been held as under :-

*“**15.** Having considered the submissions made on behalf of the respective parties and the provisions of the Punjab Civil Services Rules, we are unable to accept Mr. Dholakia's submissions that in view of the provisions of Rule 4.19(b) read with the latter portion of Rule 6.16(2) of the aforesaid Rules, the petitioner will be eligible and entitled to pro rata pension having rendered more than 10 years' service which has been indicated as the qualifying service in the latter portion of the said Rule for the purpose of receiving pro-rata pension.*

***16.** In our view, Rule 4.19(a) has to be read and understood differently from what has been urged by Mr. Dholakia. The expression `resignation from public service' will have to be read disjunctively from `dismissal or removal from it'. The expression `resignation from public service' will not be qualified by the subsequent references relating to anti-national activities. On the other hand, the expression `dismissal or removal from it' will be qualified by the said expression which would in both cases entail forfeiture of past service and disqualification so far as payment of pension is concerned. In other words, read disjunctively, resignation simpliciter from public service would entail forfeiture of past service and no pension is to be granted in the aforesaid circumstances.*

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***18.** As far as Rule 6.16(2) is concerned, in our view, the same cannot be divided into two* *separate compartments as has been suggested by Mr. Dholakia. The second part of the said Rule is a consequence of the first part, which deals with retirement upon superannuation and not resignation, as in the instant case. In order to be eligible for pension the Government employee at the time of superannuation would have to complete qualifying service of not less than 33 years or more. However, an exception has been made in the second part of the said Rule which also allows the benefit of pro- rata pension to employees who had rendered 10 years service or more. In our view, not having superannuated from government service, the petitioner cannot come within the said category and as submitted by Mr. Patwalia, his case would instead be governed by Rule 5.32-A, which deals with resignation.*

19. *The said Rule clearly provides that a Government employee is entitled on his resignation being accepted to a retiring pension subject to his completing qualifying service of not less than 30 years which in special cases could be reduced to 25 years. Since the petitioner has not completed the qualifying service of 30 years and since the service rendered by him with the Bank would not be counted towards Government service, the petitioner is not entitled to the benefit of pension under Rule 6.16(2) and the High Court has rightly decided the issue."*

No law to the contrary has been cited by learned counsel for the petitioner.

In view of the aforesaid facts and the law declared by the Apex Court in the case of **Ghanshyam Dass Relhan** ***(supra)***, the present petition, being devoid of any merit, is ordered to be dismissed.

(DEEPAK SIBAL)
JUDGE

April 04, 2016
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