

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

CWP No.1410 of 2017

Date of Decision: 03.04.2017

Comptroller and Auditor General of India & Anr.

...Petitioners

VERSUS

Vikram Pachori & others

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. Harmanjit Singh Jugait, Advocate for the Petitioners.

SUDIP AHLUWALIA, J.

The Writ Petitioner seeks quashing of the impugned Order dated 30.08.2016 (Annexure P-5) passed by the Central Administrative Tribunal, Chandigarh Bench in O.A. No.060/00628/2015.

2) The aforesaid O.A. filed by Respondent No.1 was allowed by the Ld. Tribunal and the Petitioners were directed to include his past service with Respondent No.2 as Qualifying Service for all purposes, and also to treat the Applicant/Respondent No.1 to be covered by the old Pension Scheme and to make deduction of GPF Subscription from his Pay from the date of joining. To this effect, the Applicant/Respondent No.1 was also directed by the Ld. Tribunal to make payment of the arrears towards his GPF.

3) The background of the matter is that Respondent No.1 was originally in the regular service of Respondent No.2 at Jodhpur (Rajasthan) as a Clerk. He was selected for appointment with the Petitioners in the year 2004, on account of which, he submitted his Resignation from the Erstwhile Office of Respondent No.2, and joined his new assignment under Petitioner No.2 on 31.03.2004, after undergoing a Medical Examination. His prayer to Petitioner No.2 for including his past service with Respondent No.2 as Qualifying Service for all purposes was however, rejected, on account of which he approached the Ld. Tribunal. His contention before the Ld. Tribunal was that his previous service with Respondent No.2 was liable to be included as Qualifying Service for all purposes, since he was in regular employment there and his resignation on account of selection/appointment under Petitioner No.2 was only 'Technical' in nature. He also contended that he was forced to undergo the Medical Examination, since the Petitioners Authorities otherwise refused to permit him to join his assignment. The actual damaging result on account of the refusal to treat his previous service as Qualifying Service was that Respondent No.1/Applicant was rendered/declared ineligible for the old Pension Scheme on the pretext that he had joined under the Petitioner No.2 after 01.01.2004, when the old Pension Scheme had been done away with.

4) The Ld. Tribunal found merit in the Original Application and allowed the same inter-alia with the following observations -

04.06.2003. He submitted his technical resignation there on 09.03.2004 (Annexure A-5) and was relieved from there vide order dated 18.03.2004 (Annexure A-7) by accepting his technical resignation. The applicant was then subjected to medical examination by Respondents No. 1 and 2 on 23.03.2004 and was declared medically fit vide certificate dated 23.03.2004 (Annexure A-6). Thereafter, he joined service of Respondents No. 1 and 2 on 31.03.2004.

5. The applicant has been denied benefit of old pension scheme by Respondents No. 1 and 2 because he joined their service after 01.01.2004. However, this stand cannot be accepted because he had joined service of Respondent No. 3 on 04.06.2003 i.e. prior to 01.01.2004 when the old pension scheme was in operation and the applicant was covered by the same while in service of Respondent No. 3. Consequently, his service with Respondents No.1 and 2 is in continuation of service with Respondent No. 3.

6. In view of the aforesaid, we find that the applicant is entitled to include his past service rendered with Respondent No. 3 as qualifying service for all purposes while in service with Respondents No. 1 and 2 and is also, therefore, entitled to be included in old pension scheme.”

5) We find no impropriety or illegality in the aforesaid reasoned decision of the Ld. Tribunal. In fact, on going through the reply filed on behalf of the Petitioners before the Ld. Tribunal, it is seen that in Para 4(X), they had specifically admitted that the previous service of an identically placed employee Shri Hitesh Shrivastva was regularized after he joined his new assignment under the Petitioners. It is further stated in the reply that the previous employer of said Hitesh Shrivastva had intimated Petitioner No.2 that his resignation may be treated as 'Technical Resignation', on account of which, all the benefits of past service were extended to him. On the other hand, the same were denied to the present Respondent No.1 on the plea that his resignation from his previous post was 'not

technical'. We however, find on perusal of Respondent No.1's Resignation Letter (Annexure A-5) that he has specifically mentioned therein that he seeks to be 'relieved from duty in order to join on the post of Divisional Accountant', pursuant to his selection by the Staff Selection Commission. Ex facie therefore, it is clearly a prayer in the nature of 'Technical Resignation' from service on account of his appointment after selection, and such resignation was duly accepted by his previous employer at Jodhpur, vide Office Order dated 18.3.2004 (Annexure A-7).

6) We therefore, find no reason to interfere with the impugned Order passed by the Ld. Tribunal.

7) Dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

03.04.2017
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***