

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 65 of 2013 (O/M)
Date of decision : 27.2.2017

Ram Lal Petitioner (s)

Versus

State of Haryana and others Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.S. Dinarpur, Advocate, for the petitioner.

Mr. Keshav Gupta, Assistant Advocate General, Haryana.

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

:-

:-

KULDIP SINGH J. (ORAL)

The petitioner has impugned the order dated 24.2.2010 (Annexure-P-4), passed by respondent No. 3, vide which the pensionary benefits have been declined to the petitioner.

The brief facts of the case are that the petitioner joined the service as a driver on 27.9.1981, in the Haryana Roadways, Yamuna Nagar Depot on regular basis against a sanctioned post. He resigned from Haryana Roadways on 18.10.1991 from the post of driver. In this way, he worked for 10 years, 1 month and 21 days in Haryana Roadways. According to the petitioner, he is qualified for pension in view of Rules 4.19 and 6.16 (2) of the Punjab Civil Services Rules, Volume-II, Part-II, as applicable to State of Haryana. The petitioner has also disclosed that he had worked as a driver with the Ambala Central Cooperative Bank Limited, Ambala, on 17.12.1969 on a substantive post. His services were terminated

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by the Ambala Central Cooperative Bank Limited, Ambala, on 23.6.1978. The termination order was set aside by the appellate authority. The Ambala Central Cooperative Bank Limited, Ambala, being aggrieved of the orders, filed CWP No. 169 of 1980 before this Court, which was dismissed on 4.2.1991 (Annexure-P-1). The Letters Patent Appeal (LPA-423-1991) against the said order of Single Bench was dismissed by a Division Bench of this Court on 27.5.1991 (Annexure-P-2). Further Civil Appeal (Civil Appeal No. 11312-1995 arising out of SLP (C) 14940/1991) preferred by the Ambala Central Cooperative Bank Limited, Ambala, before the Hon'ble Supreme Court of India was also dismissed on 27.11.1995 (Annexure-P-3). It was thereafter that during this period the petitioner had served with Haryana Roadways for the aforesaid period. The petitioner claims pension and other pensionary benefits and it is stated that the impugned order dated 24.2.2010 (Annexure-P-4), vide which the benefits have been denied under Rule 5.32-A of Punjab Civil Services Rules, Volume-II, as applicable to State of Haryana, is illegal.

Respondents, on the other hand, have taken the stand in the written statement that as per Rule 5.32-A of Punjab Civil Services Rules, Volume-II, as applicable to State of Haryana, the qualifying service of the petitioner is less than 25/30 years. Therefore, he is not entitled to the pensionary benefits and the same were rightly declined.

I have heard the learned counsels for the parties and have also carefully gone through the file.

The learned counsel for the petitioner has referred to Rule 4.19 (a) and (b) as well as Rule 6.16 (1) and (2) of Punjab Civil Services Rules, Volume-II, Part-II, as applicable to State of Haryana, which are

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reproduced as under :-

“4.19 [(a) Resignation from public service, dismissal or removal from it, either under proviso (c) to Article 311 (2) of the Constitution for over anti-national activities such as sabotage, espionage etc. or for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination, entails forfeiture of past service and no pension shall be granted in the aforementioned circumstances ;

Provided that in the cases of those Government employees whose removal or dismissal results from participation in other objectionable activities affecting or endangering the security of the State, such proportionate pension may be granted as may be recommended by the Committee of the Advisors constituted under the Haryana Civil Services (safeguarding of National Security) Rules, 1971]

(b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.

In cases where an interruption in service is inevitable due to the two appointments being at different stations, such interruptions, not exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the Government employee on the date of relief or by formal condonation under Rule 4.23 to the extent to which the period is not covered by leave due to the Government employee.

Note :- The previous service of a Government employee who is transferred to a temporary appointment is forfeited by his resigning the temporary appointment and taking up another temporary appointment of his own accord.

xxxxx xxxxx xxxxx xxxx”

“6.16[(1) In the case of a Government employee retiring in accordance with the provisions of these rules before

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completing qualifying service of ten years, the amount of service gratuity shall be the appropriate amount as set out in the table below, and no additional or special additional pension shall be granted to him

<u>Completed six monthly periods of qualifying service</u>	<u>Scale of service gratuity</u>
1.	Half month's emoluments
2.	1 month's emoluments
3.	1½ months' emoluments
4.	2 months' emoluments
5.	2½ months' emoluments
6.	3 months' emoluments
7.	3½ months' emoluments
8.	4 months' emoluments
9.	4 ³ / ₈ months' emoluments
10.	4 ³ / ₄ months' emoluments
11.	5 ¹ / ₈ months' emoluments
12.	5½ months' emoluments
13.	5 ⁷ / ₈ months' emoluments
14.	6¼ months' emoluments
15.	6 ⁵ / ₈ months' emoluments
16.	7 months' emoluments
17.	7 ³ / ₈ months' emoluments
18.	7¾ months' emoluments
19.	8 ¹ / ₈ months' emoluments"

6.16 [(2) In the case of a Government employee retiring on or after 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. 3800] 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 maximum of [Rs. 375] per mensem (A few illustrations are given in Annexure to this Chapter)]

xxxxx xxxxxx xxxxxx xxxxx"

Therefore, it is claimed that the resignation does not result in

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forfeiture of the service and that the matter is not governed by Rule 5.32-A of the Punjab Civil Services Rules, Volume-II, Part-II, as applicable to State of Haryana, and the petitioner is entitled to pensionary benefits on completion of 10 years qualifying service. Rule 5.32-A of the Punjab Civil Services Rules, Volume-II, Part-II, as applicable to State of Haryana, is reproduced as under :-

“5.32-A The rule for the grant of retiring pension 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.”

The learned counsel for the petitioner also relies upon the Single Bench authorities of this Court in Ganga Bishan Versus State of Haryana through Director Animal Husbandary Haryana, Chandigarh and others, PLR [Volume CVIII-(1994-3)] 691 and State of Haryana Versus Madan Pal Ahlawat, PLR [(Volume CXXXIII-2003-1)] 346. Therefore, it is urged that the petitioner is entitled to pension and other pensionary benefits.

The present controversy was considered by the Hon'ble Supreme Court of India in Ghanshyam Dass Relhan Versus State of Haryana and others, (2009) 14 Supreme Court Cases 506. In the said case, the petitioner had worked in the office of Deputy Commissioner, Hissar, in the State of Haryana for 18 years, 2 months and 3 days and had submitted resignation after having been selected in Kurukshetra Central Bank Limited after having applied through proper channel. The Apex Court, while considering the provisions of Rules 4.19, 6.16 (2) and 5.32-A of the Punjab

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Civil Services Rules, Volume-II, Part-II, reproduced above, has observed as under :-

“25. 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 ten 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.

The Apex Court thus concluded as under :-

“29. 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.

30. 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 thirty years which in special cases could be reduced to twenty-five years. Since the petitioner has not completed the qualifying service of thirty 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.”

The said authority was followed by a Full Bench of this Court in State of Haryana and others Versus Dr. (Mrs.) Sudha Seth, 2011 (1) PLR 650, wherein it was observed as under :-

“5. In our considered view, the benefit of Rule 6.16 (2) certainly cannot be available to an individual who had served his relationship with his/her employer by way of resignation.

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The aforesaid rule is applicable only to an individual who has retired from service. The benefit of Rule 6.16 (2) aforementioned can, therefore, be availed of only by a person who retires on superannuation or invalid and compassionate grounds.”

“8. The aforesaid stance of the Government has to be resolved, in view of the conclusion expressed by us hereinabove, on the basis of Rule 5.32A(a) (extracted above). In our considered view, the aforesaid rule is not an absolute rule, inasmuch as, Rule 5.32A(a), extracted hereinabove, is an exception to the aforesaid rule. As such, a person who has qualifying service of a minimum of 30 years prior to tendering his resignation, will still be entitled to retiral benefits. The aforesaid retiral benefits at the discretion of the State government, can extend to an individual, who has 25 or more years of qualifying service. Rule 3.17A extracted above will, therefore, result in forfeiture of service (in a claim for pension) where the qualifying service rendered by a Government employee is less than 25/30 years (as the case may be) as per Rule 5.32A (extracted above).”

In view of the authoritative pronouncements of the Apex Court in Ghanshyam Dass Relhan's case (supra) and the Full Bench of this Court in Dr. (Mrs.) Sudha Seth's case (supra), I am of the view that the present case is squarely covered by the said pronouncements. Therefore, the petitioner is not entitled to pension and other pensionary benefits. Hence, the present writ petition is dismissed.

(KULDIP SINGH)
JUDGE

27.2.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes