

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

LPA No.799 of 2016 (O&M)

Date of Decision:27.02.2017

State of Haryana and others Appellants

Vs.

Udai Bhan Yadav Respondent

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

Present:- Mr. R.D. Sharma, DAG, Haryana
 for the appellants.

Mr. Jai Vir Yadav, Advocate
for the respondent.

SURYA KANT, J.(Oral)

The instant Letters Patent Appeal at the instance of State of Haryana is directed against the order dated 21.07.2015 whereby learned Single Judge allowed the writ petition and has held the respondent entitled to pension on the basis of service of 11 years and 5 months rendered by him before seeking voluntary retirement.

The respondent is an Ex Army Personnel who served in the Indian Navy from January, 1975 till January 1990. He, thereafter, joined the Education Department, Haryana as Physical Training Instructor on 4.4.1998. The respondent applied for voluntary retirement on completion of 11 and a half year's service as he was not maintaining good health. The application dated 7.7.2009 was accepted and vide order dated 30.7.2009, he was retired from service w.e.f. 1.9.2009.

Thereafter, the respondent approached this Court claiming pension in lieu of service rendered by him and his claim has been accepted by the learned Single Judge.

The issue which fell for consideration of the learned Single Judge was whether the respondent was required to complete minimum 20 years 'qualifying service' to earn pension or such a benefit was admissible on completion of more than ten years of service under Rule 6.16(2) of Punjab Civil Services Rules, Volume 2?

Since we are inclined to remit the case back to learned Single Judge for fresh adjudication, it is not necessary to notice the rival contentions or express any opinion on merits. Suffice it would be to mention that the learned Single Judge has relied upon a Division Bench judgment of this Court in Babu Singh v. State of Haryana and others, without noticing the fact that the said judgment has already been reversed by Hon'ble the Supreme Court in 2008 (2) SCC 85. The other question which requires determination is whether Rule 6.16(2) ibid confers an independent right to claim pension on the basis of 10 years of service or such rule is to be read in conjunction with Rule 5.32(B) wherein a government employee is required to complete 20 years of 'qualifying service'. Since the above stated aspect of the matter has gone unnoticed, we allow this appeal; set aside the order under appeal dated 21.7.2015 and remit the case back to learned Single Judge for fresh adjudication.

The parties are directed to appear before the learned Single judge on 20.03.2017.

It is clarified that we have not expressed any opinion on merits.

(SURYA KANT)
JUDGE

(SUDIP AHLUWALIA)
JUDGE

27.02.2017
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No