

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

Sr. No.203

**Civil Writ Petition No.23868 of 2014
DECIDED ON: March 16, 2018**

HARBANS SINGH

..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. I.D. Singla, Advocate, for the petitioner.

Ms. Deepali Puri, Additional Advocate General, Punjab.

JASPAL SINGH, J.

Petitioner-Harbans Singh has preferred instant civil writ petition under Article 226 of the Constitution of India, seeking issuance of a writ in the nature of Mandamus directing the respondents to grant the admissible pensionary/retiral benefits to him with all consequential benefits AS WELL AS a writ of Certiorari quashing the communications dated 23.03.2005 (P-1) passed by respondent No.5, dated 23.10.2012 (P-3) passed by respondent No.3 and dated 15.01.2014 (P-5) passed by respondent No.4, whereby retiral benefits have been denied to him.

CWP No.23868 of 2014

2. The contention of learned counsel for the petitioner is that petitioner joined as Sub Inspector (Audit) in the Cooperative Department, Punjab w.e.f. 16.11.1960 after he was duly selected by the competent authorities. Subsequently, his services were regularized and petitioner crossed his efficiency bar w.e.f. 16.11.1966 raising his basic pay from Rs.80/- to Rs.85/- vide order dated 22.08.1968. While the petitioner was posted and working as Inspector (Audit) in Cooperative Department, at Tarn Taran, he resigned from the said post w.e.f. 06.04.1971 after putting in service of more than 10 years, 04 months and 20 days on account of compelling domestic circumstances, which was duly accepted by the competent authority. Since, petitioner has served the Department for more than 10 years, he was legally and equitably entitled to receive the retiral benefits for which, he approached the concerned Department for number of times and also moved written representations but the benefit, to which, he was legally entitled, was denied particularly vide communication bearing No.Audit/Estt./05/1078 dated 23.03.2005 (P-1). Whereafter, petitioner challenged the said rejection order by way of CWP No.11793 of 2009 before this Court. However, on 08.09.2009 (P-2), said petition was got dismissed as withdrawn with liberty to the petitioner to challenge the vires of Rule 7.5(1) of the Punjab Civil Services Rules, Volume 1, Part-1 as the said Rule entails forfeiture of past service on resignation from a service or a post. After passing of the aforesaid order dated 08.09.2009 (P-2), petitioner further probed into the matter, which revealed that Rule 7.5(1) of the Punjab Civil Services Rules, Volume 1, Part-1 was introduced in

the Rules vide amendment dated 18.01.1982, published in the Punjab Government Gazette, Part-1, dated 02.02.1982. Similarly, another Rule 3.17-A(1)(V) of Punjab Civil Services Rules, Volume-II was also introduced in the Rules by way of amendment for the first time on 18.01.1982, which was also published in the Punjab Government Gazette Part-1 on 19.02.1982. Thus, the relevant Rules under which the petitioner could not claim his pensionary benefits were not in existence when he had resigned from service. Subsequent thereto, petitioner again approached the concerned department stating the aforesaid facts that aforesaid Rules are not applicable to him having been coming into existence much after the resignation of the petitioner from service. Since the petitioner has already got a qualifying service more than 10 years, he is eligible for retiral benefits and said request was illegally declined vide letter dated 23.10.2012 (P-3).

3. Learned counsel for the petitioner while developing his arguments further submitted that order dated 23.10.2012 (P-3) is not sustainable in the eyes of law and is liable to be set aside for the simple reason that same is absolutely non-reasoned and non-speaking and further that he was not afforded an ample opportunity of hearing prior to passing thereof. Subsequent thereto, petitioner moved another representation dated 06.12.2013 (P-4), however, without adverting to various pleas raised therein, claim putforth by the petitioner for retiral benefits was rejected vide order dated 15.01.2014 (P-5) passed by respondent No.4.

4. While concluding his arguments, it has been submitted by learned counsel for the petitioner that since neither Rule 7.5(1) of the Punjab Civil Services Rules, Volume 1 nor Rule 3.17-A(1)(V) of Punjab Civil Services Rules, Volume-II cannot be applied to the case of the petitioner, firstly, being not operative on the date of voluntary resignation of the petitioner i.e. on 06.04.1971 and secondly, he has served the respondents-Department for more than 10 years before his resignation. Thus, he is legally and equitably entitled to admissible retiral benefits.

5. On the other hand, learned State counsel has ebulliently argued that no doubt, petitioner has joined as Sub Inspector (Audit) in the Cooperative Audit Department on 16.11.1960 and resigned as Inspector (Audit) on 06.04.1971, but instant petition is not maintainable and deserves to be dismissed on account of delay and latches. Though, petitioner had voluntarily retired on 06.04.1971 yet instant petition was filed in the month of November, 2014 i.e. after expiry of more than three decades. Another ground raised by learned State counsel is that service rendered by the petitioner prior to his resignation stands forfeited in view of the Rule 3.17-A(v) (later amended as Rule 3.17-A(1)(v) on 18.01.1982) of Punjab Civil Services Rules, Volume-II. The aforesaid Rule(s) was very much in existence and applies in the case of employees retiring from service on or after 01.11.1968 and as per Clause (v) the previous service can be counted in full or part in the pension, in case, an employee has resigned with proper permission and to take up another appointment, which is not the case of the petitioner. Thus, petitioner is

not entitled to pension as claimed by him and instant petition is liable to be dismissed with special costs.

6. This Court has weighed the rival submissions made by learned counsel for the parties and have gone through the record meticulously, but does not find any legal and factual weight in the submissions made by learned counsel for the petitioner.

7. Undisputably, petitioner joined as Sub Inspector (Audit) in the Cooperative Audit Department on 16.11.1960 and submitted his voluntary resignation on 07.04.1971, which has been duly accepted by respondent-department. Firstly, petitioner slept over the matter since 1971 for decades together, however, when he raised his voice for claim of pension and pensionary benefits, that was declined vide impugned orders dated 23.03.2005 (P-1), 23.10.2012 (P-3) and 15.01.2014 (P-5) and secondly, his case is not covered under the relevant Service Rules.

8. The questions which arises for determination in the instant case, whether petitioner who resigned in the month of April, 1971 is entitled to pension under the Service Rules.

9. Undoubtedly, as far as Rule 7.5(1) of the Punjab Civil Services Rules, Volume 1, Part-1 which entails the forfeiture of past service, is concerned, it was not in existence or operative at the time, petitioner sought voluntary resignation. However, Rule 3.17-A of Punjab Civil Services Rules, Volume-II was very much in existence even at the time the petitioner submitted his resignation, which reads as under:-

“3.17-A. This rule shall apply in the case of employees retiring from service on or after 01.11.1968.

Subject to other provisions of Section C of this chapter and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-

(i)-----

(ii) -----

(iii)----

(iv)----

(v) Resignation of public service except where such resignation is with proper permission and to take up another appointment, service in which counts in full or in part for pension.

(vi) ----”

10. A glance at the aforesaid Rule makes it crystal clear that consequent upon resignation of an employee, his service is not countable as qualifying service for the purposes of pension. An amendment carried out in the Punjab Civil Services Rules in the year 1982 with respect to Clause (v) would also be relevant for disposal of instant case. It reads as under:-

“Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government where service qualifies for pension”.

11. Thus, taking to the case of the petitioner in the light of aforesaid provision, service rendered by the petitioner could have been

counted only if resignation has been submitted with proper permission to take up another appointment under the Government. Here, it would also be pertinent to mention that such is not the case of the petitioner. Thus, respondents have rightly declined to count his service of more than 10 years prior to his resignation towards pensionary benefits as qualifying service. Here in this context, a reference can also be made in the judgment captioned as *Ghanshyam Dass Relhan vs. State of Haryana & ors.*, passed in Special Leave Petition (C) No.98 of 2007 decided on 16.07.2009, wherein the identical issue was considered.

12. In the light of aforesaid discussion, this Court does not find any merit in the instant petition. Accordingly, it stands dismissed but with no order as to costs.

March 16, 2018
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No