

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

103

**C.M. Nos. 7557-58-C-2017 &  
RSA No. 3033 of 2017**

**Date of decision: 08.07.2019**

*RAMESH VERMA*

*...APPELLANT*

*VS.*

*STATE OF PUNJAB AND OTHERS*

*..RESPONDENTS*

***CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH***

Present: Ms. Jyoti Choudhary, Advocate,  
for the appellant.

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**AUGUSTINE GEORGE MASIH, J. (ORAL)**

**C.M. No. 7557-C-2017**

Prayer in this application is for condonation of delay of 18 days  
in re-filing the appeal.

For the reasons mentioned in the application, which is  
supported by an affidavit of the applicant-appellant, the same is allowed.

Delay of 18 days in re-filing the appeal stands condoned.

**C.M. No. 7558-C-2017**

Prayer in this application is for condonation of delay of 52 days  
in filing the appeal.

For the reasons mentioned in the application, which is  
supported by an affidavit of the applicant-appellant, the same is allowed.

Delay of 52 days in filing the appeal stands condoned.

**RSA No. 3033 of 2017**

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division) Patiala dated 07.07.2015, whereby the suit for declaration rejecting his representation for withdrawal of the resignation by the appellant and for grant of the retiral benefits on account of he having completed more than 10 years service stood dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the District Judge, Patiala vide judgment dated 03.11.2016.

2. It is the contention of the learned counsel for the appellant that the appellant was appointed as a Constable in the Punjab Police on 26.09.1990. He was promoted to the post of Head Constable on 22.02.1992 against 5% sports quota, which is reserved for the outstanding sportsman. The appellant was further promoted to the post of Assistant Sub-Inspector vide order dated 08.07.1992, which has been approved by the Deputy Inspector General of Police, Patiala Range, Patiala with a formal order having been issued by the Senior Superintendent of Police, Patiala on ad-hoc basis. The appellant, in pursuance to the Instructions issued by the Deputy Inspector General of Police, Punjab, was demoted to the post of Head Constable on 06.06.1993, which was communicated to him on 19.06.1993.

3. FIR No. 70 dated 24.07.1993 under Sections 186/353/332/511 IPC was registered at Police Station City Hoshiarpur against the appellant-plaintiff. In pursuance thereto, he was placed under suspension on 26.07.1993. He remained absent from duty from 22.12.1994 and continued up to 22.05.1997 despite of the fact that he was reinstated on 29.01.1997 after the FIR was quashed by the High Court on 27.01.1995. Because of the

absence from duty, a departmental enquiry was held against him, in which he was found guilty leading to his dismissal from service on 19.08.2000. His representation submitted before the Deputy Inspector General of Police, Patiala Range, Patiala was rejected on 05.07.2001 as also his revision petition before the Director General of Police, Punjab on 21.11.2002. Thereafter, the appellant filed a mercy petition to the Principal Secretary, Department of Home Affairs and Justice Board, Punjab, Chandigarh, which was accepted by the Additional Secretary, Home on 10.02.2004 and his punishment of dismissal was converted into forfeiture of five annual increments. He rejoined the post of Constable on 01.03.2004. It may be added here that during the pendency of the departmental enquiry, the appellant was reverted from the post of Head Constable to the post of Constable on 11.09.1997 by the Senior Superintendent of Police, Patiala, as he had been promoted in excess of 10% quota reserved for persons who have excelled.

4. After his rejoining as a Constable on 01.03.2004 on acceptance of his mercy petition by the Government of Punjab, he was promoted as Head Constable again w.e.f. 22.02.1992 vide order dated 12.02.2005. The appellant filed CWP No. 7503 of 2005 in the High Court for quashing of the order dated 06.06.1993 issued by the Deputy Inspector General of Police, Patiala Range, Patiala, whereby he was reverted to the post of Head Constable, which was disposed of vide order dated 13.05.2005 directing the Director General of Police, Punjab, to consider the case of the appellant for deputing him to Intermediate School Course and to take a final decision. In compliance of this order, on consideration of his case, appellant was reverted to the post of Constable on 21.07.2006 after following due process

keeping in view the fact that he was promoted in excess of 10% quota. This order of reversion was based upon the guidelines issued by the Director General of Police, Punjab, vide office memo dated 31.08.1998, which were so issued in compliance with the judgment passed by the High Court in CWP No. 13788 of 1997 titled as SI Swaran Singh vs. State of Punjab and others, decided on 21.04.1998, according to which, there was no special 5% quota for sportsmen in list C-II and Rule 13.8(2) envisages filling up of 10 posts of the cadre of Head Constables from amongst Constables who might excel in various fields which would include sports.

5. Appellant submitted his resignation in the month of March, 2007 on the plea that he wanted to look after his unwell parents. It may be added here that the resignation Ex. D1 and along with application he had submitted an affidavit Ex. D2 where he had stated that his parents were residing in Hoshiarpur, who usually remained ill, as he wanted to look after his parents, he would not be able to serve the department. The request of the appellant-plaintiff was considered and after meeting him and obtaining the opinion of the District Attorney, the same was accepted by the Senior Superintendent of Police on 10.03.2007. His plea for challenging the acceptance of the resignation is that this was forcibly obtained from him and it was not voluntarily submitted. It is admitted that he had deposited two months' salary, which is the requirement of the Statute for the acceptance of the same forthwith.

6. The appellant-plaintiff neither filed any appeal nor any representation against the acceptance of his resignation although it is permitted as per Rule 14.11.(2) of the Punjab Police Rules within a period of two months from the date of submission of the resignation but he has not

done so and for the first time, he had filed an application on 30.08.2011 after expiry of 4 years and 5 months, which was not permissible in law and, therefore, rejected by the Deputy Inspector General of Police, Patiala Range, Patiala on 06.07.2012 followed by an order dated 16.07.2012 passed by the Inspector General of Police Zonal-I, Punjab, Patiala leading to the filing of the suit by the appellant-plaintiff wherein he has challenged the acceptance of his resignation vide order dated 10.03.2007 passed by the Senior Superintendent of Police, Patiala as also the order dated 06.07.2012 passed by the Deputy Inspector General of Police, Patiala Range, Patiala and order dated 16.07.2012 passed by the Inspector General of Police Zonal-I, Punjab, Patiala.

7. The plea taken for challenging the order of acceptance of the resignation of the appellant on 10.03.2007 is on the basis that the Senior Superintendent of Police, Patiala is not the competent authority to accept his resignation as he was promoted by the higher authorities and, therefore, his resignation could have been accepted by the said authorities i.e. the Inspector General of Police. Another plea, which has been taken, is that the resignation was not voluntary and was obtained by force. An alternative plea has also been taken that since he has completed more than 15 years of service with the respondents whereas the qualifying service for pension is 10 years, he was entitled to the pension which has not been granted to him.

8. I have considered the submissions made by the learned counsel for the appellant and with her assistance, have gone through the impugned judgments and records but am not in a position to accept the same.

9. The basic order, which is under challenge, is dated 10.03.2007 passed by the Senior Superintendent of Police, Patiala, whereby the

resignation submitted by the appellant-plaintiff stands accepted whereas the civil suit has been filed on 14.08.2012, which is after the period of more than 5 years. As per Article 58 of the Limitation Act, 1963, the suit for declaration is to be filed within a period of 3 years. The delay is being sought to be covered by asserting that the representations submitted by the appellant to the Inspector General of Police, Patiala Range, Patiala and the Inspector General of Police, Zonal-I, Patiala, were decided on 06.07.2012 and 16.07.2012 respectively and, therefore, the same gave him the cause of action to file the civil suit, which cannot be accepted in the light of the fact that the period for making such representation for withdrawal of resignation is two months from the date of acceptance of the resignation, as provided under Rule 14.11(2) of the Punjab Police Rules. It is also an admitted position that the application for withdrawal of the resignation is dated 30.08.2011 which is after the expiry of 4 years and 5 months. Therefore, even the first approach after the passing of the order of acceptance of resignation by the Senior Superintendent of Police, Patiala i.e. 10.03.2007 is beyond three years which is the period of limitation prescribed under Article 58 of the Limitation Act, 1963. These types of representations, which are submitted beyond the period of limitation prescribed under the Statutory Rules i.e. two months, leading to the passing of the orders on such representations, would not enlarge the period of limitation for challenging the order passed by the competent authority. The Hon'ble Supreme Court in **State of Punjab vs. Gurdev Singh**, (1991) 4 SCC 1 has held that if a suit is filed after lapse of 3 years' period, it would be liable to be dismissed on ground of bar of limitation. The suit for declaration, therefore, filed by the appellant-plaintiff is time barred and deserves to be dismissed on this

ground alone.

10. However, on merits as well, when seen, the facts, as narrated above, itself speak about the checkered career of the appellant-plaintiff. It is not in dispute that on the date of submission of his resignation in the month of March, 2007, the appellant-plaintiff was working on the post of a Constable and the appointing authority of the post of Constable is the Senior Superintendent of Police. The acceptance, therefore, of his resignation by the Senior Superintendent of Police, Patiala, cannot be said to be by an incompetent authority. The assertion of the counsel for the appellant that the appellant had been promoted by an order passed by the higher authorities, suffice it to say that the said order of promotion was only granting approval and not a promotion order. It may be added here that the said promotion under the sports quota of the appellant-plaintiff has been found to be violative of the guidelines issued by the Director General of Police, Punjab, vide office memo dated 31.08.1998, which were issued in compliance with the judgment passed by this Court in a writ petition i.e CWP No. 13788 of 1997, where it was clearly mentioned that there is no separate sports quota of 5% for sportsmen in List C-II and 10 posts of the cadre of Head Constables were kept for all Constables who might excel in various fields which included sports. Since the appellant had been promoted in excess of the quota which would fall in the category of sportsmen, he was reverted to the post of Constable from the rank of Constable vide order dated 21.07.2006, which has never been challenged nor is it under challenge in the present suit. Therefore, the plea of the counsel for the appellant to the competence of the Senior Superintendent of Police, Patiala to accept his resignation stands rejected.

11. As regards the plea of the counsel for the appellant that the resignation, which was submitted by the appellant-plaintiff, was not voluntary but was obtained forcibly, again cannot be accepted in the light of the fact that the appellant-plaintiff has himself admitted in his cross-examination that he had submitted the application Ex. D1, which was the resignation letter, as also the affidavit Ex. D2 where he had mentioned that he was resigning from the police force to take care of his parents, who are residing in Hoshiarpur. He has also admitted that he had deposited two months' salary for acceptance of his resignation forthwith as per the requirement of the Statutory Rules. That apart, after the acceptance of the resignation on 10.03.2007 by the Senior Superintendent of Police, Patiala, the appellant-plaintiff, admittedly, has not submitted any representation/application to any competent authority prior to 30.08.2011, which is after a period of 4 years and 5 months. It is difficult to accept such a conduct from a police officer that he would not file a simple application stating therein that he had not submitted his resignation voluntarily and was forced to do so. It is apparent that the application dated 30.08.2011, which has been submitted by him to the Inspector General of Police, Patiala Range, Patiala, is an afterthought. Nothing has come on record which would indicate that he was forced to put in his resignation papers by any of the authorities except for his bald statement. No allegations of mala-fide against any officer has been made nor has anyone been impleaded as party to the suit. In the light of this, it cannot be accepted that the resignation of the appellant-plaintiff was not voluntary. The acceptance, thus, of the resignation by the Senior Superintendent of Police, Patiala, cannot be faulted with.

12. As regards the alternative prayer of the counsel for the appellant that despite acceptance of his resignation by the Senior Superintendent of Police, Patiala, he would still be entitled to pensionary benefits as he had completed more than 10 years of service. The said plea also, on facts, cannot be accepted as the total qualifying service of the appellant-plaintiff, as pointed out by the Courts below after deducting the period which could not be counted for qualifying period of pension, comes to 6 years, 11 months and 1 day. The details, as given, are that his total service rendered with the respondent-Police Department was 16 years, 5 months and 11 days, out of which, non-qualifying service comes to 9 years, 6 months and 10 days, which leaves him with service less than 10 years. If that be so, he would not be entitled to pensionary benefits.

13. There is another aspect which the Courts below have not taken into consideration i.e. resignation entails forfeiture of past service as provided under Rule 7.5 of the Punjab Civil Services Rules, Volume-I, Part-I. In a recent judgment dated 01.03.2019 passed in Civil Appeal No. 2411 of 2019 titled as **State of Punjab and others vs. Gurbaran Singh**, the Hon'ble Supreme Court considered the scope and ambit of Rule 7.5 (1) and (2) of the Punjab Civil Services Rules, which are applicable to the appellant-plaintiff as well. The respondent-Gurbaran Singh, who was working as a Pharmacist, tendered his resignation on 27.06.1986, which was accepted by the Civil Surgeon, Civil Hospital, Muktsar, Punjab. He filed various representations contending that he was entitled to pension and service benefits but was only granted gratuity and General Provident Fund. He filed a civil suit, which was allowed by the Civil Judge (Senior Division), Bathinda directing the State of Punjab to pay the respondent the

pensionary benefits which order was upheld to the High Court. Thereafter, the State preferred the SLP before the Hon'ble Supreme Court, which was treated as an appeal, where the Hon'ble Supreme Court, relying upon the judgment of the Supreme Court in **Union of India and others vs. Braj Nandan Singh**, 2005 (8) SCC 325, held as follows:-

“7. Sub-Rules (1) and (2) of Rule 7.5 of the Rules which are relevant for the present purposes are to the following effect:-

“7.5 (1) Resignation from a service or a post, unless it is allowed to be withdrawn in public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension.”

8. In *Braj Nandan Singh* a pari materia provision viz. Rule 26 of CCS Rules came up for consideration. Para 5 of the decision was as under:-

“5. In order to appreciate rival submissions Rule 26 which is the pivotal provision needs to be quoted. The same reads as under:

“26. Forfeiture of service on resignation.—(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past

service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.”

Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub-rule (2) is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules

(1) and (2) cannot be lost sight of while deciding the question of entitlement to pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the learned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. The said rule deals with amount of pension and not with entitlement.”

9. It was thus clearly laid down that in case of resignation from service or a post, unless the matter was covered under Sub-Rule 2 of Rule 26 of CCS Rules, it would entail forfeiture of past service. Since the past service would stand forfeited, the same would be excluded from the period of qualifying service, and as such for deciding the question of entitlement to pension,

the employee would not have the qualifying period of service.”

14. In view of the settled law, the claim of the appellant-plaintiff for grant of pensionary benefits cannot be accepted.

15. Keeping in view the above, judgments and decree, as passed by the Courts below, do not call for any interference. There are concurrent findings recorded by the Courts below which do not call for any interference by this Court especially when there is no question of law involved in the present appeal which would require adjudication by this Court.

16. Finding no merit in the present appeal, the same stands dismissed.

**July 08, 2019**  
*pj*

**(AUGUSTINE GEORGE MASIH)**  
**JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No