

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

CWP No.2429 of 2017

Date of Decision: 6.2.2020

Vijayant Kumar (deceased) through LRs

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Lalit Rishi, Advocate, for the petitioner.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

NIRMALJIT KAUR, J.

Prayer in the present writ petition is to set aside the order/letter dated 21.1.2015 (Annexure P-11) passed by respondent No.4, vide which, the case of the petitioner for claiming pension has been sent back to the Executive Engineer, Public Health Division No.1, Hisar to re-send the case of the petitioner after obtaining special approval from the Finance Department as per Rules with a further prayer to calculate the period of qualifying service of the petitioner for grant of pension by including the period of leave (leave of kind due and half pay leave) also prayer has been made to direct respondent No.2 to re-calculate the qualifying service period of the petitioner by including the period of leaves of 617 days, which was sanctioned vide order dated 13.10.2011 (Annexure P-5) and 334 days, which was sanctioned as 'Half Pay Leave'.

Reply has been filed. As per the said reply, the net qualified service of the petitioner was 17 years 9 months 8 days. As such, the petitioner has no locus standi to claim pensionary benefits on his voluntary

retirement as a Clerk as the pension become admissible on superannuation even if the retiring person has rendered less than 20 years qualifying service but in the present case, the petitioner had sought for voluntary retirement in terms of Rule 5.32-B of CSR Vol.II, which does not provide for pension for rendering service less than 20 years. Further, as per the proviso 2 to the Rule 5.32-B of CSR Vol.II, an employee has to give notice of voluntary retirement and has to satisfy himself that he has completed 25 years of qualifying service for pension before tendering his application for voluntary retirement under the Rules.

On the other hand, learned counsel for the petitioner placed reliance on the judgments rendered by this Court on the issue in hand in the cases of Nishan Singh vs. Transport Commissioner, Haryana, 1993(1) SCT 244, Ramesh Chand Kaushik vs. State of Haryana, 1994(1) SCT 227, Om Parkash Vashist vs. State of Haryana and others, 2002(2) SCT 80, Rajbir Singh vs. The State of Haryana and others, 1996(2) RSJ 559 and Ravi Dutt and others vs. State of Haryana and others, 2017(1) SCT 719 to contend that while allowing the pension to a person seeking voluntary retirement in spite of not having completed 20 years of qualifying service, the Court has held that once the respondents themselves have permitted an employee the luxury of voluntary retirement, then, the Department cannot turn around and take the objection that the employee has not achieved the mark of 20 years required for the grant of pensionary benefits.

The arguments of learned State counsel that it is incumbent upon the petitioner himself to satisfy that he has completed 20 years before filing an application for voluntary retirement, does not come in the way of the petitioner in the facts of the present case in view of the Clause 3 of 5.32-

B of the Punjab Civil Service Rules Vol.II, which reads as under:-

“The qualifying service as on the date of intended retirement of the Govt. employee seeking retirement under this rule or under clause (e) of rule 3.26 of Pb.CSR.Vol.I, Part I with or without permission shall be increased by the period not exceeding 5 years subject to the condition that the total qualifying service rendered by the Govt. employee does not in any case exceed 33 years and it does not take him beyond the date of superannuation. The weight age of five years shall not be admissible in cases of those Government employees who are prematurely retired by the Government in public interest under the relevant rules.”

A perusal of the Clause quoted above shows that the period not exceeding five years can be added to the qualifying service subject to the over all condition that the total period does not exceed 30 years. Therefore, the petitioner is entitled to get the benefit of another five years towards qualifying service. The judgment rendered in the cases of Nishan Singh, Ramesh Chand Kaushik, Om Parkash Vashist, Rajbir Singh, and Ravi Dutt (supra), totally covers the issue in hand. Para Nos.4 and 5 of the judgments rendered in case of Nishan Singh (supra) read thus:-

“4. Rule 5.32 B, as amended by the Haryana Government Notification No.1/2 (27)-79-2FRII dated March 29, 1983 reads as under:-

“(i) At any time after a Government employee has completed twenty years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority retire from service. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reasons therefor. On receipt of a request, the appointing authority may consider such

request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

A perusal of the above Rule shows that a Government employee can seek voluntary retirement only after he “has completed 20 years qualifying service.” It is the admitted case of the parties that the petitioner had sought premature retirement under the provisions of Rule 5.32-B. A condition precedent for seeking retirement under this rule is completion of 20 years of qualifying service. The fact that the petitioner was permitted to retire vide order dated 28.3.1989 w.e.f. 31.3.1989 (copy of the order is Annexure P-2) shows that the Department was satisfied that the petitioner had completed 20 years qualifying service. Consequently, the respondents are now estopped from claiming that the petitioner had not completed the requisite period of service so as to entitled him to claim pension.

5. Further a perusal of Clause 3 of the Rule quoted above shows that a person retiring under the provisions of Rule 5.32-B, shall be entitled to have “a period of exceeding 5 years” to be added to the qualifying service subject to the overall condition that the total period of service does not exceed 30 years. The petitioner is even entitled to the benefit of the provision contained in Clause 3. Nothing has been pointed out to show as to why the benefit under this provision should not be granted to the petitioner.”

This Court finds nothing to distinguish the case of the petitioner from the judgment rendered in the case of Nishant Singh (supra).

Since, the benefit is being allowed as above, this Court need not go into the second argument of learned counsel for the petitioner to count his suspension period having been converted into leave of the kind due towards the qualifying service in view of the Rule 14, Chapter IV of Haryana Civil Services (Pension) Rules, 2016.

Accordingly, in view of the above, the present writ petition is allowed. The respondents are directed to commute the pension admissible to the petitioner from the date of his voluntary retirement till his death and thereafter, the family pension after the death of the petitioner. The pension be accordingly calculated and disbursed within a period of three months alongwith interest @ 6% per annum from the receipt of the certified copy of this order. In case the said amount is not paid within three months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of the said three months.

(NIRMALJIT KAUR)
JUDGE

6.2.2020
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Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No