IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-3402-CWP-2020 in/and
CWP-32322-2018
Date of Decision:-28.02.2020.

Jai Gopal

.....Petitioner

Versus

Oriental Insurance Company Limited and others

......Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

****

Present: Mr. Suresh Kumar Kaushik, Advocate for the petitioner.

Mr. Ashwani Talwar and
Mr. Sahej Mahajan, Advocates for the respondents.

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SANJAY KUMAR, J. (Oral):

CM-3402-CWP-2020

This application is ordered and the replication is taken on record along with the accompanying Annexures.

CWP-32322-2018

The petitioner is aggrieved by the order dated 02.11.2018, whereby the Oriental Insurance Company rejected his request for payment of pension.

The petitioner entered the service of the respondent-Company as an Assistant Administrative Officer in April, 2004. He resigned from its service in November, 2017, so as to join the post of Assistant Professor in the Education Department of the Government of Haryana. Thereafter, he submitted representation dated 28.08.2018 seeking grant of pension, commutation of pension and leave encashment in relation to the service rendered by him in the respondent-Company. By the impugned order, the respondent-Company turned down the said request.

The respondent-Company is governed by the provisions of the General Insurance (Employees) Pension Scheme, 1995. Though Mr. Suresh Kumar Kaushik, learned counsel for the petitioner, would assert that, in terms of para 14 of the Scheme, an employee would qualify for pension upon rendering a minimum of 10 years of service, it may be noted that para 14 begins with the words *'Subject to the other conditions contained in the scheme'*. Para 22 of the Scheme makes it clear that resignation from the service of the respondent-Company would entail forfeiture of the entire past service and would consequently disqualify the employee concerned from seeking pensionary benefits. It may also be noted that para 14 makes it clear that the entitlement to pension, upon qualifying for the same after rendering a minimum of 10 years of service, would be on the date of retirement.

Though Mr. Suresh Kumar Kaushik, learned counsel, would contend that para 55 of the Scheme, titled 'Residuary Provisions', makes the provisions of the Central Civil Services (Pension) Rules, 1972 applicable and rely upon Rule 26 of the said Rules, it may be noted that para 55 states that only in the event no express provision has been made in the Scheme with regard to any matter relating to pension and other benefits, the provisions of the Central Civil Services (Pension) Rules would apply. As para 22 is clear in its import and applicability, there is no ambiguity requiring the provisions of the Central Civil Services (Pension) Rules, 1972 to be brought in. Similarly, reliance placed by the learned counsel on the Office Memorandum dated 17.08.2016 issued by the Department of Personnel & Training, Ministry of Personnel, Public Grievances and

Pensions, Government of India, is of no avail as no material is produced in proof of the respondent-Company having adopted this Office Memorandum, which would apply only to Government servants.

Mr. Suresh Kumar Kaushik, learned counsel, would argue that the recital in the written statement to the effect that the respondent-Company has no quarrel with the aforestated Office Memorandum would mean that the respondent-Company has adopted the same. However, the sentence upon which reliance is placed reads as follows:-

> *'There is no quarrel with the OM of the Government of India dated 17.08.2016 (P-7) but the payment of pension in case of petitioner is regulated by the pension scheme of 1995 (Annexure P-11)'*

The aforestated sentence does not lend itself to the interpretation that the learned counsel for the petitioner would place upon it. There is no admission to the effect that the Government's Office Memorandum dated 17.08.2016 (Annexure P-7) stood adopted merely because the respondent-Company said that it had no quarrel with it, in the light of the later part of the sentence which makes it clear that the case of the respondent-Company was that the petitioner would be regulated by the Scheme of 1995 alone.

Lastly, reliance placed by the learned counsel for the petitioner upon the decision in ***Asger Ibrahim Amin Vs. Life Insurance Corporation of India*** [***2015 (4) S.C.T. 695***] is also of no avail, as the case covered thereby is distinguishable on facts. That was a case which dealt with an employee who styled his desire to retire voluntarily from service as a resignation as there was no provision for such voluntary retirement at that time and the Supreme Court was of the opinion that mere styling of his termination from service as a resignation would not disentitle the said employee from seeking pension. In the case on hand, there is no dispute that the petitioner did, in fact, submit his resignation from service so as to avail the employment opportunity in State service. The judgment therefore does not advance the case of the petitioner.

Learned counsel would further argue that even if the petitioner is not entitled to pensionary benefits, he should be granted the benefit of leave encashment. However, this argument is equally without merit as it loses sight of the fact that, in terms of para 22 of the Scheme, the petitioner forfeited his past service in its entirety upon tendering his resignation and therefore, the question of his encashing the leave which accrued to his credit during the period of service rendered by him would not arise.

The writ petition is therefore devoid of merit and is accordingly dismissed.

No order as to costs.

(SANJAY KUMAR)
JUDGE

February 28, 2020.
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Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.