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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-12734-CWP-2023 in /and
CWP-18730-2011 (O&M)
Date of Decision: 08.08.2023

ISHWAR SINGH

.. Applicant-Petitioner

Vs.

STATE OF HARYANA AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Gunjan Mehta, Advocate for applicant-petitioner.

Mr. Pankaj Middha, Addl. A.G., Haryana.

...

HARSIMRAN SINGH SETHI, J. (Oral)

CM-12734-CWP-2023

The present application has been filed for preponing the date of hearing of the present petition to an actual date.

Notice of this application.

Mr. Pankaj Middha, Addl. A.G., Haryana accepts notice on behalf of respondent-State and raises no objection in case hearing of the main petition is postponed to today and the same is decided.

Keeping in view the joint request of the parties, the main petition is taken up for consideration today itself.

CWP-18730-2011 (O&M)

1. The present petition has been filed with the prayer that the petitioner, though has resigned from service, but keeping in view the fact that he had more than 10 years of service to his credit, he be paid the pensionary benefits. The facts are being mentioned for the correct adjudication of the issue in hand.

2. Petitioner was appointed as a Conductor in the Haryana Roadways on 17.11.1982 and he continued working on the said post. When on 25.02.2024, he submitted his resignation from service, which request was accepted by the department and he was allowed to resign from service.

3. After the petitioner resigned from service, he filed a representation with respondents that keeping in view the rules relating to the grant of pension to a government employee, as he had more than 10 years of service to his credit on the date when he resigned, the petitioner will be entitled for the grant of pensionary benefits, which benefit should be extended to him.

4. As the benefit being claimed were not extended, the present petition has been filed with the prayer that the respondents be directed to release the pensionary benefits in respect of the service rendered by the petitioner prior to his resignation.

5. Upon notice of motion, the respondents have filed a reply, wherein the respondents have stated that the petitioner submitted the resignation voluntarily, which was accepted by the department. Hence, the petitioner cannot claim any benefit qua the pensionary benefits, as the pensionary benefits under Rule 6.16 of the Punjab Civil Services Rules, Vol. II Part I as applicable to Haryana is only applicable when the employee retires, whereas the petitioner has resigned from service. Hence, under Rule 4.19(a) of the Punjab Civil Services Rules, Volume II as applicable to Haryana, the resignation forfeits the service rendered by employee, hence the claim of the petitioner that he had more than 21 years of service to his credit for the grant of pensionary benefits is not supported by the rules.

tricks with the department, as on the date when the petitioner submitted his resignation, there were nine disciplinary proceedings pending against the petitioner and in fact, to avoid a harsh order, in those disciplinary proceedings the petitioner submitted a resignation and now after the request of the petitioner qua resignation from service has been accepted, he is claiming pensionary benefits, which benefit is not admissible as per rules governing service hence, the prayer of the petitioner for grant of pensionary benefits may kindly be declined.

7. I have heard the learned counsel for the parties and have gone through the record with their assistance.

8. The entitlement of an employee to get a particular benefit depends upon the rules governing the service on the said aspect. Rule 4.19 of the Punjab Civil Services Rules Volume II, as applicable to Haryana clearly envisages that the resignation forfeits the service rendered by an employee hence, the claim of the petitioner that he is entitled for the grant of pensionary benefits cannot be accepted. Immediately upon the acceptance of the resignation, the service rendered by the petitioner stood forfeited, hence, on the day when his resignation is accepted, as per the provisions of Rule 4.19, no service remained in his credit. The relevant Rule 4.19 is as under:

“4.19. (a) Resignation from public service, dismissal or removal from it, either under proviso (c) to Article 311 (2) of the Constitution for over anti-national activities such as sabotage, espionage etc. or for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination, entails forfeiture of past service and no pension shall be granted in the aforementioned circumstances:

Provided that in the cases of those Government employees whose removal or dismissal results from participation in other objectionable activities affecting or endangering the security of the State, such proportionate

pension may be granted as may be recommended by the Committee of the Advisors constituted under the Haryana Civil Services (Safe-guarding of National Security) Rules, 1971]

(b). Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.

In cases where an interruption in service is inevitable due to the two appointments being at different stations, such interruptions, not exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the Government employee on the date of relief or by formal condonation under Rule 4.23 to the extent to which the period is not covered by leave due to the Government employee.

***Note.-** The previous service of a Government employee who is transferred to a temporary appointment is forfeited by his resigning the temporary appointment up another temporary appointment of his own accord.”*

9. Further, even the Rule 3.17(d) which describes the qualifying service for the grant of pensionary benefits, clearly states that upon resignation, the service rendered by an employee stands forfeited and, therefore, the service rendered by an employee prior to resignation will not be treated as a qualifying service. The relevant Rule 3.17(d) is as under:

“Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of rule 4.19(a) of Punjab Civil Services Rules Volume-II.”

10. Keeping in view the rules governing the service, which have been reproduced hereinbefore, clearly defines that upon resignation, the service rendered by an employee stands forfeited hence, the claim being raised by the petitioner in the present petition is contrary to the provisions of Rule 4.19 of the Punjab Civil Services Rules, Volume II as applicable herein.

11. Learned counsel for the petitioner has not been able to rebut the provisions of Rule 4.19 of the Punjab Civil Services Rules, Volume-II as

applicable to Haryana to be applicable upon this case of the petitioner so as to deny him any benefit of service rendered by him prior to resignation. The reliance being placed by learned counsel for the petitioner on pension rules will not be applicable for the reasons that the same are only applicable upon an employee, who retires from service on attaining the age of superannuation, whereas the petitioner never reached the age of superannuation, but had resigned from service much prior to the said date, hence, the claim being raised by the petitioner is contrary to the rules governing the service, hence cannot be accepted and, therefore, the present petition is liable to be dismissed.

12. Even otherwise, the question where an employee has resigned though might be having more than 10 years of service to his/her credit, will not be entitled for the pensionary benefits or the grant of voluntary retirement, as the resignation forfeits the service rendered by the employee concerned has been settled by the Hon'ble Supreme Court of India in Civil Appeal No.9076/2019 decided on 05.12.2019 titled as “*BSES Yamuna Power Ltd. Vs. Sh. Ghanshyam Chand Sharma & Anr.*” which judgment can be relied upon in this present case which covers the case of the petitioner against him. Hence, the claim of the petitioner is not only contrary to the rules governing his service on the said aspect, but is also contrary to the settled principle of law hence cannot be accepted.

13. Petition is dismissed.

08.08.2023
Jasmine Kaur

(HARSIMRAN SINGH SETHI)
JUDGE