

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

213

CWP-32587-2019

Date of decision :-20.01.2023.

Sunil Kumar

...Petitioner

Versus

District & Sessions Judge, Rohtak and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. N.C. Kinra, Advocate for the petitioner.

Mr. Dhiraj Chawla, Advocate for the respondents.

SUVIR SEHGAL, J.

By way of present writ petition filed under Article 226/227 of the Constitution of India, petitioner has approached this Court for issuance of a writ in the nature of certiorari quashing orders dated 03.01.2017, 04.01.2017, 06.01.2017 and 11.04.2017, Annexures P-10, P-11, P-12 and P-16, respectively. He has further sought a writ of mandamus for issuance of a direction to the respondents to re-consider his application for voluntary retirement, withdrawal of resignation and for taking him back in service with all consequential service benefits.

Petitioner was selected and appointed as a Class IV employee vide letter dated 15.12.2000, Annexure P-1. He joined at Sub-Division Narnaul under the Sessions Division, Rewari. During his service tenure, he was promoted as Daftri in 2007, and as Process Server in 2015. In May, 2017, petitioner and another employee, Anil Sangwan Bailiff, were served

with separate charge-sheets, Annexures P-5 and P-6, under Rule 7 of the Haryana Civil Service (Punishment and Appeal) Rules, 1987, on the allegation that they had made false complaints in the name of other employees. Reply was submitted by the petitioner, but the same was found unsatisfactory and an Enquiry Officer was appointed, who by his report dated 30.09.2015, Annexure P-8, found both the delinquent employees to be guilty. By application dated 02.01.2017, Annexure P-9, petitioner submitted a request for voluntary retirement. The very next day, he submitted an application dated 03.01.2017, Annexure P-10, for resignation. His request for voluntary retirement was declined vide impugned order dated 04.01.2017, Annexure P-11, and his resignation was accepted vide impugned order dated 06.01.2017, Annexure P-12, whereby he was asked to deposit one month salary in lieu of the notice period. He deposited the amount on 11.01.2017 and was relieved on 02.02.2017, Annexure P-14. By an application dated 21.03.2017, Annexure P-15, he requested for permission to re-join his duties, which was declined by impugned order dated 11.04.2017, Annexure P-16. An appeal was filed by the petitioner, which was withdrawn by him on 06.09.2019, Annexure P-18, with liberty to seek appropriate remedy in accordance with law.

In response to notice of motion, written statement has been filed by the respondents, contesting the writ petition. Stand taken in the reply is that the petitioner by impersonating in the name of one Atma Ram, had submitted false complaints. He had been intimidating and threatening the officials of the Rohtak Sessions Division on the pretext that his brother was the President of All Haryana Employees Association. It has also been submitted that the petitioner was found guilty in the regular enquiry and in

order to evade the punishment, he had voluntarily submitted his resignation, which was duly accepted.

Counsel for the petitioner has contended that the petitioner had rendered more than 16 years of service at the time of his resignation and he was entitled to pro-rata pensionary benefits. He has placed reliance upon the judgments of this Court in **Naresh Kumar Sharma Versus State of Haryana and others 2011 (4) P.L.R. 796** and a Division Bench judgment of this Court in **Haryana Vidyut Prasaran Nigam Limited Versus Saroj Bakshi and others 2016 (1) SCT 584**.

Opposing the petition, counsel for the respondents has argued that upon acceptance of voluntary resignation of the petitioner, his past service stands forfeited. He has placed reliance upon the judgment of the Hon'ble Supreme Court in **BSES Yamuna Power Limited Versus Shri Ghanshyam Chand Sharma (2020) 3 SCC 346**.

I have heard counsel for the parties and perused the paper-book with their able assistance. Rule 21 of the Haryana Civil Services (Pension) Rules, 2016, reads as under:-

*“21. Forfeiture of past service for pension
Save as otherwise provided, past service of a Government employee shall be forfeited towards pension and death-cum-retirement gratuity in the following circumstances:-
(a) an interruption in service caused by wilful absence from duty;
(b) resignation from public service; or
(c) dismissal or removal from service under the Haryana Civil Services (Punishment and Appeal) Rules, 2016.”*

A perusal of the above reproduced Rule shows that once a resignation is accepted by the appointing authority, the relationship between employer and employee comes to an end and the entire past service rendered by the employee is forfeited. It has been held by the Supreme Court in

Union of India and others Versus Braj Nandan Singh (2005) 8 SCC 325;

State of Madhya Pradesh and others Versus Hitkishore Goswami (2015)

11 SCC 199 and **BSES Yamuna Power Limited's case (supra)**, that the effect of tendering resignation is severance of employer-employee relationship and not only is the entire past service forfeited, but also the petitioner is not entitled to any pensionary benefits. In view of this position in law, the claim of petitioner for pension cannot be entertained.

Although, an employee can withdraw the resignation before it is accepted, but that is not the situation here. More than 02 months after his resignation was accepted, the petitioner moved an application dated 21.03.2017, Annexure P-15, stating therein that:-

“... During the span of my service, no enquiry was pending against me. Since I was mentally upset, I tendered my resignation. Now I want to serve by re-joining and in future, I will not repeat such mistake and I shall comply with all the rules and regulations.”

The request in the application was not for withdrawing of the resignation, but for re-joining after the resignation had been accepted. Moreover, in this application, the petitioner did not disclose the correct factual position. On the one hand, he stated that he will not repeat his mistake and on the other hand, he did not disclose the pendency of the departmental proceedings against him and the conclusion of an enquiry wherein vide report, Annexure P-8, whereby he had been found to be guilty of pseudonym complaints against a co-employee. The enquiry report had been supplied to the petitioner and after considering the reply submitted by him, it was accepted. By order dated 01.02.2017, Annexure R-2, four annual increments with cumulative effect of Anil Sangwan, Bailiff, co-delinquent, were stopped. Proceedings against the petitioner were, however, dropped as

he had resigned from service. This background had deliberately been suppressed by the petitioner in his application, Annexure P-15. At best, the request made vide application, Annexure P-15, can be treated to be a request for re-joining, which after noticing the background has been rightly rejected vide order, Annexure P-16.

It deserves to be mentioned that petitioner’s request for voluntary retirement had been turned down vide order, Annexure P-11, as he did not fulfill the conditions laid down in Rule 146 of Haryana Civil Services (General) Rules, 2016. The petitioner had neither completed twenty years of qualifying service nor had he attained the minimum age prescribed in the said Rule. The Rule being mandatory, order, Annexure P-11, does not warrant any interference.

Looked at from any angle, petitioner is not entitled to any relief.
Petition sans merit and is hereby dismissed.

20.01.2023
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No