



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

RSA-2965-2003 (O&M)

**Reserved on 08.05.2024
Pronounced on 15.05.2024**

State of Haryana and othersAppellant(s)

Versus

Rattan Dev SabharwalRespondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Saurabh Mohunta, D.A.G., Haryana.

Mr. Arun Singla, Advocate for the respondent.

NAMIT KUMAR J.

1. The appellants/defendants have filed the instant appeal against judgment and decree dated 29.03.2003, whereby learned Additional District Judge, Bhiwani, while allowing the appeal filed by the respondent/plaintiff, has set aside the judgment and decree dated 31.10.2002 passed by learned Civil Judge (Junior Division), Bhiwani, whereby suit for declaration filed by the respondent/plaintiff was dismissed. Parties to the lis are hereinafter shall be referred to by their original position in the suit.

2. The brief facts of the case are that the plaintiff was appointed as Clerk by defendant No.2 vide letter dated 27.09.1980 on the recommendation of the Subordinate Services Selection Board, Haryana, Chandigarh and he joined as such on 06.10.1980. He was further promoted to the post of Assistant on 19.08.1988 and thereafter, he resigned from his job on 16.06.1991 after rendering service of 10 years, 04 months and 16 days. He filed a suit for declaration with the



consequential relief of mandatory injunction to the effect that he is entitled for pension and other benefits along with interest. The suit was contested by the defendants by filing their separate written statements wherein they had taken various preliminary objections to the effect that the suit is not maintainable and the same is also barred by limitation. On merits it was submitted that in terms of Rule 5.32(b) of the Punjab Civil Services Rules, Volume II, Part-I (as are applicable to the State of Haryana) (herein after referred as 'PCS Rules'), minimum 20 years of qualifying service is required to sanction the pensionary benefits and since he resigned from the Government service after rendering less than 20 years of service to his credit, therefore, he is not entitled for the pensionary benefits. The suit filed by the plaintiff was dismissed by the learned trial Court vide judgment and decree dated 31.10.2002 by stating that firstly, the suit was time barred as the petitioner had resigned from the service in the year 1991 and the suit was filed on 02.05.2000 after a lapse of more than 09 years and on merits also the finding was recorded that the plaintiff is not entitled for the pensionary benefits in terms of the relevant rules. Aggrieved by the said judgment, the plaintiff preferred an appeal before the learned lower Appellate Court which was accepted by the Court of learned Additional District Judge, Bhiwani vide judgment and decree dated 29.03.2003 by recording a finding that since denial of pensionary benefits is recurring cause of action, therefore, the suit is not barred by limitation and on merits it was recorded that the petitioner is entitled to proportionate pension and other benefits as provided under Rule 6.16(2) of the PCS Rules along



with interest @ 9% per annum w.e.f. 23.06.1991 till the releasing of entire dues.

3. Aggrieved by the judgment and decree dated 29.03.2003 passed by the learned lower Appellate Court, the defendants/State of Haryana have preferred the instant appeal which was admitted on 03.07.2003 and execution of the decree under appeal was ordered to be stayed till further orders.

4. Learned State counsel submits that the judgment passed by the learned lower Appellate Court suffers from infirmity and illegality and deserves to be set aside. He has placed reliance upon the Rules 4.19, 6.16(2) and 5.32-A of the PCS Rules and has also placed reliance upon the judgment passed by the Division Bench of this Court in ***Ghanshyam Dass Relhan Vs. State of Haryana and others : 2006 (23) S.C.T. 125***, to contend that the plaintiff resigned from service and had not completed 20 years of service, therefore, is not entitled to the pensionary benefits.

5. Per contra, learned counsel for the respondent has supported the findings recorded by the learned lower Appellate Court and prays for dismissal of the present appeal.

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

7. Admittedly, the respondent/plaintiff joined the service as Clerk on 06.10.1980 and he was further promoted to the post of Assistant on 19.08.1988. Thereafter, on 16.06.1991, he resigned from the service after rendering service of 10 years, 04 months and 16 days.

On the basis of aforesaid service rendered by him, the



respondent/plaintiff claimed pensionary benefits. Now, the question arises is as to whether the respondent/plaintiff is entitled for pension and other benefits along with interest for the abovesaid period or not. The Hon'ble Division Bench of this Court in its judgment passed in ***Ghanshyam Dass Relhan's case (supra)***, while considering the Rules 4.19, 6.16(2) and 5.32-A of the PCS Rules, held that the employee who resigned from service and has not completed 30 years of service is not entitled for the pensionary benefits. The said judgment is reproduced as under :-

"1. The petitioner was inducted into service in the office of the Deputy Commissioner, Hisar, as a clerk on 7.11 1958. He continued to discharge his duties in the aforesaid office till 10.1.1970 where after, he came to be transferred to the office of the Deputy Commissioner, Karnal, on 11.1.1970.

2. During the course of his posting in the office of the Deputy Commissioner, Karnal, the petitioner was selected as a Senior Accountant by the Kurukshetra Central Bank Limited, Kurukshetra. Consequent upon his aforesaid selection, the petitioner tendered his resignation, which was accepted by his principal employer. In sum and substance, the petitioner is stated to have rendered service for a period of 18 years 2 months and 3 days with the Government from 7.11.1958 to 10.1.1970. On the basis of his aforesaid service the petitioner seeks pensionary benefits. This claim of the petitioner is based on his assertion, that as soon as he can establish that he has rendered more than 10 years regular service with his principal employer i.e. the Government, he would be entitled to claim pensionary benefits. To substantiate his aforesaid claim, the petitioner relies on rule 4.19 and rule 6.16 of the Punjab Civil Services Rules, Volume II, Part I (as are applicable to the State of Haryana). A relevant extract of the aforesaid rules is being reproduced hereunder:-

"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 by the Advisers constituted under the Haryana Civil Services (Safeguarding 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."

6.16.(1) In the case of a Government employee retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be the appropriate amount as set out in the table below, and no additional or special additional pension shall be granted to him.

xxx xxx xxx

6.16(2) In the case of a Government employee retiring on or after the 1st April, 1979, in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years or more, the amount of superannuation, retiring, invalid and compassionate pensions shall be 50% of average emoluments as defined in rule 6 19-C of these rules subject to a maximum of (Rs. 3,000/-) (Substituted vide No.1/2/1/CSR Vol.II/91-Sr.AO(FD) dated 31.1.92) per mensem. However, in



the case of a Government employee who at the time of retirement has rendered qualifying service of ten years or more but less than thirty-three years, the amount of pension shall be such proportion of the maximum admissible pension as such the qualifying service of thirty-three years, subject to a maximum of (Rs. 375/-) (Substituted vide No.1/2/1/CSR Vol.II/91-Sr.AO(FD) dated 31.1.92) per mensem..."

3. *According to the learned counsel for the petitioner, under rule 4.19 resignation tendered by an employee, with proper permission, to seek further employment, would not disentitle him from retiral benefits including pension. On the basis of rule 6.16(2), learned counsel for the petitioner states that an employee having 10 years qualifying service is statutorily entitled to the benefit of retiral benefits including pension.*

4. *In order to controvert the contention of the learned counsel for the petitioner, learned counsel for the respondents has placed reliance on rule 5.32-A of the Punjab Civil Service Rules, Volume II, Part I (as is applicable to the State of Haryana). The aforesaid rule is being extracted hereunder:-*

"5.32-A. The rule for the grant of retiring pensions is as follows:-

(a) A Government employee is entitled, on his resignation being accepted, to a retiring pension after completing qualifying service of not less than 30 years, but a competent authority may permit the pension to be granted in special cases where the qualifying service is not less than 25 years.

(b) A retiring pension is also granted to a Government employee who is required by Government to retire after completing 25 years' qualifying service or more and who has not attained the age of 55 years."

5. *We have perused the rules relied upon by the counsel representing the rival parties. In our view, rule 5.32-A is a rule specifically drawn for a situation, as the one in hand, i.e., where an employee during his service tenders a resignation, such an employee is entitled to pension subject to the condition that he has qualifying service to his credit, of at least 30 years. The competent authority has been*



authorised to relax, in special cases, the prescribed years of qualifying service to 25 years. In the background of the aforesaid statutory rule and keeping in mind the case set up by the petitioner, namely, that he has to his credit 18 years 2 months and 3 days qualifying service to his credit, we are of the view that the petitioner is not entitled to pension after he tendered his resignation from the employment of his principal employer because he did not acquire, at the time of his resignation, the minimum prescribed qualifying service. In so far as the applicability of rule 6.16(2) is concerned, we are of the view that the same is applicable only to those employees who retire on attaining the age of superannuation, and not to employees like the petitioner who sever their relationship with their employer before the age of superannuation.

5. For the reasons recorded above, we find no merit in this petition. The same is accordingly dismissed.”

8. The abovesaid judgment was challenged before the Hon’ble Supreme Court in a special leave petition which was dismissed vide judgment dated 16.07.2009 passed in ***Ghanshaym Dass Relhan Vs. State of Haryana and others : 2009 (3) S.C.T. 617***. The relevant pars of the said judgment reads as under :-

“15. Having considered the submissions made on behalf of the respective parties and the provisions of the Punjab Civil Services Rules, we are unable to accept Mr. Dholakia's submissions that in view of the provisions of Rule 4.19(b) read with the latter portion of Rule 6.16(2) of the aforesaid Rules, the petitioner will be eligible and entitled to pro rata pension having rendered more than 10 years' service which has been indicated as the qualifying service in the latter portion of the said Rule for the purpose of receiving pro-rata pension.

16. In our view, Rule 4.19(a) has to be read and understood differently from what has been urged by Mr. Dholakia. The expression ‘resignation from public service’ will have to be read disjunctively from ‘dismissal or removal from it’. The expression ‘resignation from public service’ will not be qualified by the subsequent references relating to anti-national activities. On the other hand, the expression ‘dismissal or removal from it’ will be



qualified by the said expression which would in both cases entail forfeiture of past service and disqualification so far as payment of pension is concerned. In other words, read disjunctively, resignation simpliciter from public service would entail forfeiture of past service and no pension is to be granted in the aforesaid circumstances.

17. *As far as Rule 4.19(b) is concerned it is quite clear that resignation to take up with proper permission another appointment, would have to be in a service, which would count towards pension in Government service. It means that the subsequent appointment must also be in public service and in such a case the resignation would not amount to resignation of public service. In such a case, continuity in public service would be accepted in computing the qualifying service of 30 years for grant of pension. It is a provision similar to Rule 4.19(b) which was relied upon by the Division Bench of the Calcutta High Court in deciding the case of Dr. Sajal Kanti Chakraborty (supra), and distinguishes the said case from the facts of this case.*

18. *As far as Rule 6.16(2) is concerned, in our view, the same cannot be divided into two separate compartments as has been suggested by Mr. Dholakia. The second part of the said Rule is a consequence of the first part, which deals with retirement upon superannuation and not resignation, as in the instant case. In order to be eligible for pension the Government employee at the time of superannuation would have to complete qualifying service of not less than 33 years or more. However, an exception has been made in the second part of the said Rule which also allows the benefit of pro-rata pension to employees who had rendered 10 years service or more. In our view, not having superannuated from government service, the petitioner cannot come within the said category and as submitted by Mr. Patwalia, his case would instead be governed by Rule 5.32-A, which deals with resignation.*

19. *The said Rule clearly provides that a Government employee is entitled on his resignation being accepted to a retiring pension subject to his completing qualifying service of not less than 30 years which in special cases could be reduced to 25 years. Since the petitioner has not completed the qualifying service of 30 years and since the service rendered by him with the Bank would not be counted towards Government service, the petitioner is not*



entitled to the benefit of pension under Rule 6.16(2) and the High Court has rightly decided the issue.

20. We, therefore, see no reason to interfere with the judgment of the High Court and the Special Leave Petition is, therefore, dismissed, but without any order as to costs.”

9. Applying the above judgments to the facts of the present case, the plaintiff/respondent is not entitled for the grant of pensionary benefits as he has rendered only 10 years, 04 months and 16 days of service and resigned on 16.06.1991 on his own will. Consequently, the present appeal is allowed and the judgment and decree dated 29.03.2003 passed by the learned lower Appellate Court is set aside and that of the trial Court is restored and the suit of the plaintiff stands dismissed. The decree-sheet be prepared accordingly.

10. Pending applications, if any, shall stands disposed of accordingly.

15.05.2024
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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No