

**RSA-148-2021(O&M)****-1-****228****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA-148-2021(O&M)****Date of decision:-22.10.2024****Chief Administrator, Haryana State Agricultural Marketing Board and
another****...Appellants****Versus****Smt.Kamlesh****...Respondent****CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL****Present** : Mr.Padamkant Dwivedi, Advocate with
Ms.Mansi, Advocate
for the appellants.

None for respondent.

SUVIR SEHGAL, J.(ORAL)

1. Appellants – defendants are in second appeal before this Court challenging the judgment and decree passed by the First Appellate Court.

2. Factual matrix leading to the filing of the appeal is that Ram Bhagat, husband of the respondent - plaintiff was appointed as Cattle Scarer in Market Committee, Hisar on 10.4.1980. After 15 years' of service, he tendered his resignation, which was accepted on 08.08.1995 and he unfortunately expired on 14.09.2004. Claiming that she is entitled to family pension on account of service rendered by her husband prior to resigning, respondent – plaintiff filed a suit for declaration.

3. Upon notice appellants - defendants contested the suit by



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taking various objections. The stand taken by the defendants was that as the deceased had resigned from service, plaintiff is not entitled to family pension as provided in Rule 4.19 (a) of Punjab Civil Service Rules, Volume II, as applicable to the State of Haryana. Plaintiff filed replication reasserting her claim. On the basis of the pleadings of the parties, the Trial Court framed issues. After the parties led evidence and were heard, Trial Court by judgment and decree dated 20.01.2010 dismissed the suit. An appeal filed by the respondent – plaintiff was accepted by the learned District Judge, Hisar vide judgment dated 13.02.2020, judgment of the Trial Court was reversed and the suit was decreed. Appellants – defendants have approached this Court in the above backdrop.

4. Mr. Dwivedi, counsel for the appellant submits that the First Appellate Court has proceeded on a wrong premise by placing reliance upon the judgment of this Court in *Mehar Singh Versus State of Punjab and others, 2003 (1) SCT 453* as the judgment passed by the writ Court has been reversed by a Division Bench in LPA-181-2003, decided on 07.01.2009. It is also his submission that other judgments relied upon by the learned First Appellate Court have been held to be not applicable by the Division Bench.

5. Despite service, there is no representation on behalf of the respondent.



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6. The matter in issue is no longer *res integra* and has been settled by the Division Bench in LPA No.181 of 2003 titled “**State of Punjab and others Versus Mehar Singh**”, decided on 07.01.2009. After examining judgments rendered by Single Benches of this Court in **Ganga Bishan Versus State of Haryana, 1994 (4) SLR, 59, State of Punjab Versus Gurkeerat Singh, 2002 (4) RSJ 440** and **Haryana State Versus Madan Pal Ahlawat, 2002 (4) SCT 671**, which have been relied upon by the First Appellate Court, the Division Bench has held that the judgments are in-applicable as the Court did not consider the effect of Sub Rule (1) of Rule 7.5 of the Punjab Civil Service Rules. Following the dictum of the Supreme Court in **Union of India and others Versus Braj Nandan Singh (2005) 8 SCC 325**, the Division Bench has observed as under:

“In view of the aforesaid legal position settled by the Hon’ble Supreme Court, it is held that a government employee, who has resigned from service, is not entitled to grant of pension and other retiral benefits in view of Rule 7.5 of PCS Rules.

Still further, in our opinion, provisions of Rule 6.16 (2) of the Punjab Civil Services Rules, as relied upon in the judgment on behalf of the employee/government servant lays down the amount of pension admissible to a government employee, who has retired from service, and does not confer an independent right to claim pension. We find that the reference to Rule 6.16 (2) of the Punjab Civil Services Rules in the judgments relied upon on behalf of the employee/government servant is provided in the Rules applicable



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in the State of Haryana only. Thus reference to Rule 6.16 (2) of the Punjab Civil Services Rules on behalf of the respondent Mehar Singh in the letters patent appeal and the petitioner Nirmaljit Kaur in the writ petition for grant of pension on completion of 10 years service is totally misplaced, as in the Punjab Civil Services Rules applicable to State of Punjab, there is no rule 6.16 (2) and it only exists in the State of Haryana.”

7. Rule 4.19 and 6.16 (2) of the Punjab Civil Services Rules came up for consideration before the Hon’ble Supreme Court in **Ghanshyam Dass Relhan Versus State of Haryana & Ors, (2009) 14 SCC 506** and it was held as under:

“25. 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.

26. 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.

27. *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.*

28. *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*



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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.

29. 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”

8. From the perusal of the above judgments, it is evident that the findings recorded by the learned District Judge, Hisar are contrary to the legal position as settled by the Supreme Court as well as a Division Bench of this Court. As the findings are against the settled legal position, they cannot be sustained and are reversed.

9. As a consequence of the above, appeal is allowed. Judgment and decree passed by the First Appellate Court is reversed and the suit filed by the respondent - plaintiff is dismissed throughout, with no order as to costs.

10. Pending application, if any, is disposed of.

(SUVIR SEHGAL)
JUDGE

22.10.2024

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No