

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

CWP-11207-2013 (O&M)
Date of Decision :29.01.2024

Udai Bhan Yadav

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jai Vir Yadav, Senior Advocate with
Mr. Rohit Kumar Rana, Advocate;
Mr. Aman Gautam, Advocate and Ms. Parul, Advocate

Mr. Saurabh Mohunta, DAG, Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, grievance of the petitioner is that the petitioner has been allowed the benefit of voluntary retirement by the respondents vide order dated 30.07.2009 (Annexure P/3) w.e.f. 30.08.2009 but he has not been granted pensionary benefits on the ground that the petitioner did not had 20 years qualifying service to his credit, which is a requirement for the grant of benefit of voluntary retirement as envisaged under Rule 5.32 of the Punjab Civil Service Rules, Volume-II (as applicable to State of Haryana) (in short, 'Service Rules').

2. Certain facts need to be mentioned for the correct appreciation of the issue in hand.

3. The petitioner initially joined Indian Navy in January, 1975 and after rendering 15 years of service, he was relieved from Indian Navy and whereafter, he competed for the post of Physical Training Instructor as advertised by the respondent-State. The petitioner was duly selected and he joined the service of respondent-department as Physical Training Instructor on 04.04.1998. While working as such, the petitioner faced certain health issues and he had to undergo a heart surgery in the year 2008. Keeping in view the fact that the petitioner had undergone a heart surgery and his duties were of a physical training instructor, petitioner's health did not permit him to continue on the said post hence, petitioner requested the respondent-department for the grant of voluntary retirement vide letter dated 07.07.2009, addressed to the principal of the school, where the petitioner was working.

4. The said letter of request was forwarded to the District Education Officer, Kurukshetra for consideration and ultimately Department of Education, vide letter dated 30.07.2009 accepted the prayer of the petitioner for the grant of benefit of voluntary retirement w.e.f. 01.09.2009 and petitioner was retired w.e.f. September, 2009.

5. Thereafter, the petitioner claimed retiral benefits in respect of the service, which he had rendered with the Education Department, Haryana, but no benefit of the said service was extended to the petitioner on the ground that the petitioner had not rendered 20 years qualifying service with the respondent-department, which is a condition precedent for seeking voluntary retirement even though petitioner had minimum 10 years of service for grant of pensionary benefits as required under Rule 6.16 of the Service Rules but on account of not having 20 years qualifying service so as

to seek voluntary retirement, no pensionary benefits were extended to the petitioner.

6. As after the grant of voluntary retirement, the petitioner was not being granted the retiral benefits in respect of the service rendered by him, petitioner submitted representation to the respondents on 23.11.2009 (Annexure P/4) stating that in case his request for voluntary retirement has been accepted contrary to the rules governing the service, he be allowed to join back the service so that he can avail his retiral benefits keeping in view the financial hardship, which was being faced by him.

7. As no consideration was given to the said request of the petitioner by the District Education Officer, Kurukshetra, the petitioner also approached Commissioner and Director Education, Haryana with the same request vide letter dated 27.1.2009 (Annexure P/5) for allowing him to join back service but no action was taken by the concerned authority. Petitioner sent another reminder dated 30.12.2009 (Annexure P/6) with a request that either he should be allowed to join back service or the pensionary benefits due to him be released as he is facing financial hardship.

8. Similar reminder was again sent by the petitioner on 21.01.2010 (Annexure P/7). The said request was ultimately turned down by the respondents vide order dated 08.03.2010 (Annexure P/9) that once the request of the petitioner for voluntary retirement has already been accepted and petitioner has already been retired from service w.e.f. 01.09.2009, withdrawal of the said request cannot be entertained. The said order 08.03.2010 (Annexure P/9) is under challenge in the present petition.

9. Learned Senior counsel appearing for the petitioner submits that keeping in view the health issue, which the petitioner was facing due to his

heart surgery, the petitioner had requested the respondent-department for the grant of voluntary retirement and the said request was accepted by the authority concerned as the respondents were of the view that the said benefit is admissible to the petitioner but thereafter respondents took U-turn on the ground that as 20 years qualifying service is required for the grant of benefit of voluntary retirement and as the petitioner retired before rendering 20 years of qualifying service even though, he had minimum 10 years of service to his credit for the grant of pensionary benefits but the same cannot be extended to him.

10. Learned Senior counsel for the petitioner further submits that the petitioner has been punished on both accounts firstly, by not accepting his prayer for the grant of pensionary benefits after accepting his prayer for voluntary retirement and, thereafter, once again by not allowing him to join back service so as to allow him to complete 20 years of qualifying service or allowing him to work till the age of superannuation hence, in the facts and circumstances of the present case, keeping in view the settled principle of law settled by the Coordinate Bench of this Court in **CWP-8047-1991 titled as Nishan Singh vs. Transport Commissioner, Haryana decided on 25.08.1992** which judgment has already been upheld by the Division Bench of this Court in **CWP-15307-1994 titled as Rajbir Singh vs. State of Haryana and others decided on 22.05.1985**, the petitioner is entitled for the grant of pensionary benefits even if, the petitioner has not completed 20 years of qualifying service so as to seek the benefit of voluntary retirement.

11. Learned counsel for the respondents on the other hand submits that though, it is a matter of fact that the request of the petitioner for voluntary retirement has been accepted by the respondent-department but

once keeping in view the provisions of Rule-5.32 of the Service Rules, the petitioner did not had minimum 20 years of qualifying service to his credit so as to grant the benefit of voluntary retirement, pensionary benefits could not be given as his request for voluntary retirement was accepted contrary to the rules itself.

12. Learned counsel for the respondents further submits that as the obligation to ensure whether the petitioner is eligible to be granted voluntary retirement is upon the petitioner, the petitioner should have been vigilant enough while making any such request hence, the department cannot be blamed for accepting his request for the grant of benefit of voluntary retirement though, the same was not permissible under the rules governing the service. Learned counsel for the respondents placed reliance upon the judgment of the Hon'ble Supreme Court of India in **State of Haryana and others vs. Babu Singh (2008) 2 Supreme Court Cases 85.**

13.. Learned Senior counsel for the petitioner submits that the judgment in **Babu Singh (supra)** is wrongly applied in the present case as the facts of both the cases are not similar and further the respondent-State has already issued Instructions dated 09.02.2006 according to which, burden of examining the eligibility of an employee to seek voluntary retirement was fastened upon the department hence, keeping in view the facts and circumstances of the present case, the petitioner is entitled for the grant of pensionary benefits.

14. It may be noticed that the present writ petition came to be allowed by the Coordinate Bench of this Court vide order dated 21.07.2015, which judgment was challenged by the respondent-State before the Division Bench of this Court and vide order dated 27.02.2017 of the Division Bench

of this Court, order dated 21.07.2015 passed by the Single Bench of this Court, was set aside and the case was remanded back for fresh adjudication.

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

16. The first question which arises for determination in the present case is as to whether the petitioner is entitled for the grant of voluntary retirement with pensionary benefits keeping in view the provisions of the rules governing the service.

17. It may be noticed that for the grant of benefit of voluntary retirement Rule 5.32-A and 5.32-B of the Punjab Civil Service Rules, Volume-II are applicable which are as under:-

“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) xx xx xx

(c) A retiring pension is also granted to a Government employee other than a Class IV Government employee --

(I) who is retired by the appointing authority by giving him a notice of not less than three months in writing --

(i) If he is in Class I or Class II service or post and had entered Government service before attaining the age of thirty-five years, after he has attained the age of fifty-five years ; and

(ii)(a) If he is in class III service or post ; or

(b) If he is in class I or Class II service or post and entered Government service after attaining the age of thirty-five years, after he has attained the age of fifty five years:

Provided that in the case of a member of the judicial services, a retiring person shall be granted if he is required to retire at the age of fifty-eight years irrespective of age at the time of entry into Government service subject to ten years qualifying service;

(2) Who, if from category (1)(i) above retires on or after attaining the age of fifty years, or if from category (i) (ii) above retires on/or after attaining the age of fifty-five years or if from category of judicial service retires on or after attaining the age of fifty eight years, by giving a notice of not less than three months, in writing, of his intention to retire, to the appointing authority :

Provided that where the notice is given before attaining the age of fifty years, fifty-five years in the case of Civil

Services and fifty-eight years in the case of judicial services, as the case may be, it shall be given effect to from a date not earlier than the date on which the age of fifty years/fifty-five years, in the case of Civil Services and fifty-eight years in the case of judicial services, as the case may be, is attained.

Note : Appointing authority retains an absolute right to retire any Government employee referred to have on or after he has attained the age of fifty years or fifty-five years in the case of Civil Service, or fifty-eight years in the case of judicial service, as the case may be without assigning any reason. A corresponding right is also available to such a government employee to retire on or after he has attained the age of fifty years, fifty-five years or fifty-eight years, as the case may be.”

“5.32-B (1) At any time a Government employee has completed twenty years’ qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reason therefor. On receipt of a request, the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.”

18. A bare perusal of the above reproduced rules would show that Rule 5.32-A deals as to who is entitled for the grant of pensionary benefits after being allowed the benefit of retirement. In Rule-5.32-B, it has been mentioned that in case of voluntary retirement which can be granted to a Government employee on completion of 20 years of service, pensionary benefits are admissible. The question which arises is whether in the facts and circumstances of the present case, the petitioner is entitled for the grant of retiral benefits or not.

19. Before proceeding further, it may be noticed that under Rule-6.16 of the Service Rules, the minimum period of service required for being eligible for pension has also been given. Relevant Rule 6.16 (2) is as under:-

“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 the average emoluments as defined in rule 6.19C of these rules subject to a maximum of Rs.3,000/- 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 minimum of Rs.375/- per mensem.”

20. A conjoint reading of Rule-5.32 read with Rule 6.16 of the Service Rules makes it clear that though, an employee who retires and is having 10 years of service to his/her credit is entitled for the grant of pensionary benefits but for the purpose of the same, the retirement should be on attaining the age of superannuation but where an employee is seeking voluntary retirement, then according to Rule-5.32-B of the Service Rules, the said employee should have at least 20 years of qualifying service to his/her credit before the said option of voluntary retirement can be invoked by the employee concerned.

21. The intention of the legislation is that in case on attaining the age of superannuation an employee has minimum 10 years of qualifying service, he/she will be granted pensionary benefits but in order to see that employee do not leave service before the age of superannuation by claiming voluntary retirement with pensionary benefits on the ground that he/she has rendered 10 years of service, minimum period of 20 years of qualifying service has been mentioned for the employee to become eligible for the grant of voluntary retirement.

22. Both the rules i.e. Rule 5.32 and Rule 6.16 of the Service Rules are to be read in their own sphere as both operate in different field in different facts hence, this Court is of the view that though, an employee

retiring on attaining the age of superannuation should have 10 years of qualifying service to be eligible for the grant of pensionary benefits but where an employee wants to leave the service before attaining the age of superannuation, keeping in view Rule 5.32-B of the Service Rules, the said employee should have 20 years of qualifying service in order to seek voluntary retirement and consequential pensionary benefits. While applying said view in the facts and circumstances of the present case, it is clear that on the date when the petitioner made an application seeking voluntary retirement, he did not had 20 years qualifying service to his credit so as to get benefit of voluntary retirement and consequential retiral benefits.

23. However, as per the facts stated hereinbefore, after the petitioner's request for voluntary retirement was allowed by the respondent-department, upon not being granted pensionary benefits, the petitioner requested the respondent-department to allow him to join back service, which request was not accepted by the respondent-department on the ground that request for voluntary retirement could have only been withdrawn before the acceptance of the said request. In the facts and circumstances of the present case, not only the petitioner but respondents chose not to apply their mind with regard to the entitlement of the petitioner to seek voluntary retirement as per rules governing the service. The respondent-department allowed the benefit of voluntary retirement in favour of the petitioner contrary to the rules governing the service despite the fact that through specific instructions dated 09.02.2006 the respondent-State had directed the concerned officials to ensure that before accepting an application for voluntary retirement, applicant's eligibility under the rules be examined.

24. Now where both the petitioner as well as respondents have not

adhered to the requirement of Rule-5.32 of the Service Rules, the question arises whether in the present case the claim of the petitioner for the grant pensionary benefits can be allowed in his favour or not.

25. Learned Senior counsel has relied upon the judgment of this Court in *Nishan Singh (supra)* wherein, in somewhat similar circumstances, where the employee claimed the pensionary benefits despite the fact that voluntary retirement was allowed in favour of the employee concerned without completing essential requirement of 20 years of qualifying service, a Coordinate Bench of this Court allowed the benefit of pension by recording the finding that authorities have allowed the benefit of voluntary retirement even though, the employee did not had 20 years of qualifying service to his credit, the employee cannot be caused prejudice by declining grant of pensionary benefits. Relevant paragraph of the judgment is as under:-

4. Rule 5.32 B, as amended by the Haryana Government Notification No. 1/2 (27)-79-2FRII dated March 29, 1983 reads as under :-

"(i) At any time after a Government employee has completed twenty years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority retire from service. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reasons therefor. On receipt of a request, the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the

Government employee shall not apply for commutation of a

part of his pension before the expiry of the period of notice of three months."

A perusal of the above Rule shows that a Government employee can seek voluntary retirement only after he "has completed 20 years qualifying service." It is the admitted case of the parties that the petitioner had sought premature retirement under the provisions of Rule 5.32-B. A condition precedent for seeking retirement under this Rule is completion of 20 years of qualifying service. The fact that the petitioner was permitted to retire vide order dated 28.3.1989 w.e.f. 31.3.1989 (copy of the order is Annexure P-2) shows that the Department was satisfied that the petitioner had completed 20 years qualifying service. Consequently, the respondents are now estopped from claiming that the petitioner had not completed the requisite period of service so as to entitle him to claim pension."

26. The said judgment was also considered by the Division Bench of this Court in **Rajbir Singh (supra)**, wherein, the Division Bench of this Court took the same view as taken in **Nishan Singh (supra)**. Relevant paragraph of the judgment in **Rajbir Singh (supra)** is as under:-

"5. Before a person can seek voluntary retirement, he has to complete 20 years of qualifying service. Petitioner made an application seeking voluntary retirement on completion of 20 years service, which was allowed by the respondents after having satisfied themselves that the petitioner had completed 20 years of qualifying service. In Annexure P-1 it was mentioned that "Shri Rajbir Singh, Junior Lecturer, Assistant, Government College, Tohana, is allowed to proceed on premature retirement w.e.f. 31.1.1993. Certified that the official has completed

20 years of service on 31.1.1993". This shows that the department was satisfied that the petitioner had completed 20 years of qualifying service. Respondents, under the circumstances, cannot be estopped from claiming that the petitioner had not completed the requisite period of service so as to entitle him to claim pension. The point in issue was considered by a learned Single Judge OP this Court in Nishan Singh v. Transport Commissioner, Haryana, Chandigarh, and another, 1993(1) RSJ 519 , and it was held as under :-

"A perusal of the above Rule shows that a Government employee can seek voluntary retirement only after he "has completed 20 years of qualifying service." It is the admitted case of the that the petitioner had sought premature retirement under the provisions of Rule 5.32 B. A condition precedent for seeking retirement under this Rule is completion of 20 years of qualifying service. The fact that the petitioner was permitted to retire vide order dated 28.2.1989 w.e.f. 31.3.1989 (copy of the order is Annexure P-2) shows that the Department was satisfied that the petitioner had completed 20 years qualifying service. Consequently, the respondents are now estopped from claiming that the petitioner had not completed the requisite period of service so as to entitle him to claim pension.

Further a perusal of clause 3 of the Rule quoted above shows that a person retiring under the provisions of Rule 5.32 B, shall be entitled to have "a period not exceeding 5 years" to be added to the qualifying service subject to the overall condition that the total period of service does not exceed 30 years. The petitioner is even entitled to the

benefit of the provision contained in Clause 3. Nothing has been pointed out to show as to why the benefit under this provision should not be granted to the petitioner."

27. A bare perusal of the said reproduction would show that a view has been taken by this Court that where the department faulted in his obligation to ensure as to whether the employee is entitled for the grant of voluntary retirement or no, an employee cannot be caused prejudice hence, the benefit of pension was allowed in favour of the employee concerned, even if, voluntary retirement is allowed without completing essential requirement of 20 years of qualifying service.

28. Learned counsel for the respondents has placed reliance on the judgment of the Hon'ble Supreme Court of India in **Babu Singh (supra)** to contend that as per Rule 5.32 of the Service Rules, the onus to ensure that employee concerned is entitled for the benefit of voluntary retirement is on the employee concerned and though the department was also negligent in accepting the plea of the petitioner therein for voluntary retirement before completing the required period of 20 years of qualifying service still the benefit of pensionary benefits was denied by the Hon'ble Supreme Court of India for the petitioner therein. Learned counsel for the respondents has placed reliance upon para 16 of the judgment in **Babu Singh (supra)**, which is as under:-

"16. As noticed above, the respondent has not chosen to seek the benefit of pension in terms of Rule 6.16 (2) of the PCS Rules Vol. I in the first writ petition No.2890/97, which was dismissed by the Division Bench with costs for the aforesaid reasons. In the said writ petition, second prayer made by the writ petitioner (respondent herein) was to issue a writ of

mandamus directing the respondents-authorities (appellants herein) to take back the writ petitioner into service in order to complete 20 years qualifying service for the purpose of pension, gratuity, etc. This prayer of the writ petitioner would clearly indicate that his claim for the grant of pension in the case of voluntary retirement is squarely covered by [Section 5.32-B](#) of the PCS Rules and not under Rule 6.16(1) of the Rules as held by the High Court. Undisputedly, the respondent has not completed 20 years qualifying service before he sought voluntary retirement on 09.02.1997 and his request was accepted by the competent authority on 19.06.1996 with immediate effect.

29. It may be noticed that in the case of **Babu Singh (supra)**, the said Babu Singh had filed a writ petition being CWP-2890-1997 claiming the retiral benefits and also seeking an order of reinstatement so as to complete 20 years of qualifying service. The said writ petition was contested by the Government on the ground that Babu Singh has made certain incorrect averments in the writ petition so as to claim the benefit. The said writ petition came to be dismissed by this Court by imposing cost of Rs.5000/- on the said Babu Singh. Thereafter, once again, the said Babu Singh filed another writ petition being CWP-4619-1999 claiming release of the retiral benefits, which writ petition was again withdrawn. Babu Singh thereafter filed an application under Section 151 of the CPC for reviving his writ petition No. 2890-1997 which was allowed by the Division Bench of this Court and direction was given to the State to extend the pensionary benefits, which order was impugned before the Hon'ble Supreme Court of India and keeping in view the facts and circumstances of the said case the

Hon'ble Supreme Court of India allowed the appeal on the ground that once the writ petition No.2890-1997 claiming said benefit was dismissed with cost, the same could not have been allowed in an application under Section 151 of the CPC.

30. The facts of the present petition are entirely different as compared to the case of **Babu Singh (supra)**.

31. Though, in para 15 of the judgment in **Babu Singh (supra)**, Hon'ble Supreme Court of India has held that an employee should have been careful before making an application under Rule 5.32-B of the Service Rules for the grant of voluntary retirement as to whether he/she has 20 years qualifying service in his/her credit or not as envisaged under the rules governing the service, however, Government of Haryana had issued Instructions dated 09.02.2006 to all the concerned officials to verify in advance before accepting an application for voluntary retirement of the concerned employee as to whether he fulfills the necessary requirements as per the rules for grant of the said benefit. The said instructions have been issued on account of the judgment of this Court in **Nishan Singh (supra)** and **Rajbir Singh (supra)** and the same were not brought to the notice of the Hon'ble Supreme Court of India in the case of **Babu Singh (supra)**.

32. In the present case not just the judgments in **Nishan Singh (supra)** and **Rajbir Singh (supra)** but also the Instructions which have been issued by the respondent-State themselves on 09.02.2006 is sufficient to show that the respondent-department was also responsible for examining the eligibility of an employee upon receiving an application for voluntary retirement under Rule 5.32 of the Service Rules before granting the said benefit.

33. Further, the facts and circumstances of the present case would show that immediately within a period of three months of denial for the grant of pensionary benefits, the petitioner had approached the respondents to allow him to join back the service and the respondents turned down his plea by not allowing him to join his duty back on the ground that his plea for voluntary retirement was already accepted and, thereafter, no application can be entertained. Despite of having an opportunity to rectify the mistake of allowing the application of petitioner's voluntary retirement, by passing impugned order the respondent-State has caused prejudice to the petitioner. Being a welfare State, in the facts and circumstances of the present case, the respondents should have taken a liberal view while deciding the representation of the petitioner qua rejoining the service, State should have rectified the mistake of which onus was shared so as to allow pensionary benefits to an employee who had served the respondent-State for a considerable time.

34. Keeping in view the facts and circumstances noticed hereinbefore, coupled with the settled principle of law settled by the Coordinate Bench of this Court in *Nishan Singh (supra)* as well as by the Division bench of this Court in *Rajbir Singh (supra)*, the prayer of the petitioner for the grant of pensionary benefits is allowed by treating him to be voluntarily retired by harmonious reading of Rule 5.32 and Rule 6.16 of Punjab Civil Service Rules in the facts and circumstances of the present case.

35. Let the respondents pass an appropriate order for the grant of pensionary benefits to the petitioner along with arrears within a period of two months from the date of receipt of copy of this order.

36. No other argument has been raised.
37. Present petition stand allowed in above terms.
38. Civil Miscellaneous application pending if any, is also disposed of.

January 29, 2024

aarti

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No