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

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CWP-12185-2023 (O&M)
Date of Decision :26.11.2024

Hirdejit Singh through LRs

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Petitioner's wife in person as legal representative.

Mr. Arun Gupta, DAG, Punjab.

* * *

Harsimran Singh Sethi, J. (Oral)**CM-15740-CWP-2024**

Present application has been filed for bringing on record the legal representatives of petitioner-Hirdejit Singh, who unfortunately died during the pendency of the present petition.

Notice of the application to the respondents.

Mr. Arun Gupta, DAG, Punjab accepts notice on behalf of the respondent-State and raises no objection for the grant of prayer as made in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Legal representatives of petitioner-Hirdejit Singh, details of whom have been given in para-2 of the application are ordered to be brought on record subject



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to all just exceptions.

Amended memo of parties is also taken on record.

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In the present petition, prayer of the petitioner, who unfortunately died during the pendency of the present petition and his wife has been brought on record to pursue the present petition, is for the grant of the pensionary benefits after Hirderjit Singh has been allowed benefit of voluntary retirement by the respondents vide order dated 07.11.2022 as he has only been paid provident fund, leave encashment and Group Insurance and not the other pensionary benefits admissible in respect of the employee, who retires from service under the Punjab Civil Service (Premature Retirement) Rules, 1975 (in short, '1975 Rules').

Upon notice of motion, the respondents have filed reply wherein, it has been stated that though, the petitioner was granted the benefit of premature/voluntary retirement under the 1975 Rules but thereafter it came to be notice of the respondents that the petitioner Hirdejit Singh was not eligible for the grant of benefit of voluntary retirement as he did not had 20 years service to his credit on the date when he was allowed the benefit of voluntarily retirement.

Learned counsel for the respondents submits that inadvertently the request of the petitioner for voluntary retirement was accepted contrary to the 1975 Rules.

I have heard Manjit Kaur, wife of petitioner Hirdejit Singh and the learned counsel for respondents and have gone through the record with their able assistance.

The question as to whether an employee, who has been retired



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voluntarily by accepting his request under the 1975 Rules, can be denied the pensionary benefits even if, the request of the said employee had wrongly been accepted by the department before completion of 20 years of service has already been decided by this Court while passing order in **CWP-11207-2013 titled as Udai Bhan Yadav vs. State of Haryana and others decided on 29.01.2024** wherein also, the same request of the petitioner therein Udai Bhan Yadav for granting him benefit of voluntary retirement was accepted by the department but thereafter, his claim for the grant of pensionary benefits was rejected by the respondents on the ground that Udai Bhan Yadav did not had required 20 years of service to his credit before his request for voluntary retirement was accepted. Keeping in view the judgments of this Court in **CWP-8047-1991 titled as Nishan Singh vs. Transport Commissioner, Haryana decided on 25.08.1992** as well as in **CWP-15307-1994 titled as Rajbir Singh vs. State of Haryana and others decided on 22.05.1985**, the pensionary benefits were allowed in favour of the petitioner-Udai Bhan Yadav even though, the said employee had not completed 20 years of service before his request for voluntary retirement was accepted. The judgment of the Hon'ble Supreme Court of India in **State of Haryana and others vs. Babu Singh (2008) 2 SCC 85** was also considered while granting pensionary benefits. Relevant paragraphs of the said judgment are as under:-

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)**.”

Learned counsel for the respondents has not been able to rebut that in somewhat similar circumstances Nishan Singh, Rajbir Singh and Udai Bhan Yadav have been granted pensionary benefits by interpreting the same rules in the similar facts and circumstances wherein also the employee was allowed voluntary retirement before completing the required period of service envisaged under the 1975 Rules.

Learned counsel for the respondents has only raised the objection that the order granting the benefit of voluntary retirement to the petitioner was inadvertently passed by the respondents.

It may be noticed that due to the said inadvertence on the part of

the respondents, the petitioner cannot be punished especially, when the



respondents considered the claim of the petitioner for the grant of benefit of voluntary retirement and accepted the same. Had the respondents not accepted the request of hirdejit Singh, he would have completed 20 years of service and then claimed the benefit of voluntary retirement hence, any inadvertence on the part of the respondent-department, cannot cause prejudice to the petitioner so as to take away the benefits for which, the petitioner was otherwise entitled after benefit of voluntary retirement was allowed.

Learned counsel for the respondents has not been able to rebut that the claim of the petitioner is akin to one raised in **Udai Bhan Yadav (supra)** by interpreting the same rules under the similar facts and circumstances hence, the present petition is allowed in terms of the order passed by this Court in **Udai Bhan Yadav (supra)**. The respondents are directed to compute the pensionary benefits of the petitioner in respect of the services rendered by Hirdejit Singh up to the date he was allowed the benefit of voluntary retirement.

In the present case, as the petitioner has unfortunately died during the pendency of the present petition and wife of the petitioner has been impleaded as party to the present petition, the relief admissible to Hirdejit Singh be released in favour of the wife of the petitioner i.e. Manjit Kaur along with arrears from the date Hirdejit Singh voluntary retired from service, within a period of 08 weeks from the date of receipt of copy of this order.

As after the death of Hirdejit Singh, the wife of the petitioner will also be entitled for the grant of benefit of family pension admissible to



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her hence, the arrears of family pension be also paid to her within the period prescribed hereinbefore.

Present petition is allowed in above terms.

Civil miscellaneous application pending, if any, is also disposed of.

November 26, 2024

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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No