

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

208

CWP No.12004 of 2013 (O & M)

Date of Decision : 30.4.2024

*Rajesh Kumar Sharma**..... Petitioner**versus**Kurukshetra University, Kurukshetra and others**..... Respondents***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Deepak Sonak, Advocate, for the petitioner

Mr. A.S. Virk, Advocate, for the respondents

TRIBHUVAN DAHIYA J. (ORAL):

The petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the letter dated 15.11.2012, Annexure P-4, issued on behalf of the second respondent-Registrar of the respondent-University, conveying that the petitioner would not be entitled to pensionary benefits since total service rendered by him was less than the requisite twenty years.

2. Briefly, the facts of the case are, the petitioner was appointed as Peon in the University on 21.4.1989. After completing more than twenty years' service on 17.8.2010, he submitted a request seeking voluntary retirement with effect from 30.9.2010, vide letter dated 17.8.2010, Annexure P-1. The request was accepted by the Vice-Chancellor by waiving of the remaining notice period vide letter dated 6.9.2010, Annexure P-2, and the petitioner was relieved from service with effect from 30.9.2010. He was asked to submit duly completed pension file for

further necessary action. However, despite the claim having been submitted, he was not paid pension. A legal notice was issued for the purpose, which was finally rejected vide impugned letter dated 15.11.2012, on the ground that prior to voluntary retirement on 30.9.2010, the petitioner had rendered nineteen years, eight months and twenty-nine days of service, which was short of the requisite twenty years for getting pension in case of voluntary retirement. This led to filing of the instant petition.

3. The respondents contested the petitioner's claim for grant of pension on the ground that he remained absent from duty for different periods. Taking a lenient view, the University had treated this period of absence '*as extraordinary leave without pay*' (EoL), vide separate orders passed from time to time, and the same could not be treated as service period. Rule 5.32-B of the Punjab Civil Services Rules, Vol. II (as applicable to Haryana) (for short, 'Service Rules'), require an employee to satisfy himself that he/she has completed twenty years of qualifying service for pension, before giving notice of voluntary retirement. Since the petitioner on his own sought voluntary retirement before completing the requisite period, his case for grant of pension was rightly rejected vide the impugned letter.

4. Learned counsel for the petitioner has contended that the impugned letter is illegal and unsustainable in view of the law laid down by this Court in CWP No.11207 of 2013 titled *Udai Bhan Yadav v. State of Haryana and others*, decided on 29.1.2024, holding that after accepting an employee's request for pre-mature retirement before completion of twenty years' service, pension cannot be denied for want of qualifying

service.

5. *Per contra*, learned counsel for the University contends that the petitioner's claim cannot be accepted in terms of *Udai Bhan Yadav* case (*supra*), since it is contrary to the view taken by the Supreme Court in *State of Haryana and others v. Babu Singh*, (2008) 2 SCC 85. The Court held that under Rules 5.32-B and 6.16(1) of the Service Rules, an employee has to complete qualifying service of twenty years for grant of pension.

6. Heard.

7. It is not in dispute that the petitioner was appointed as peon in the University on 21.4.1989, and submitted request for voluntary retirement after completing more than twenty years of service with effect from 30.9.2010. The request was duly accepted vide letter dated 6.9.2010, and he was, accordingly, relieved from service. It was only subsequently, when he sought release of pensionary benefits, the University declined it on the ground that his service was less than the requisite twenty years period as required under Rule 5.32 of the Service Rules. Learned counsel for the University has sought to justify the rejection solely on the ground of law laid down by the Supreme Court in *Babu Singh* case (*supra*). The reliance is misplaced, as a coordinate Bench of this Court in *Udai Bhan Yadav* case (*supra*) dealt with the same issue of granting pensionary benefits to an employee whose request for voluntary retirement had been accepted prior to completing twenty years qualifying service. The judgment in *Babu Singh* case (*supra*) was also considered, holding that it was distinguishable on facts. And in the light of relevant provision of Rules as well as the law laid down this Court held, once the request for

voluntary retirement has been accepted prior to completing twenty years' service without any condition, pensionary benefits cannot be declined on the plea of not fulfilling the requisite qualifying service under Rule 5.32.

Relevant paragraphs of the judgment holding thus are as under:

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. ...

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. ...

29. xxx xxx

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. xxx xxx

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.

8. Following the law laid down by this Court in *Udai Bhan* case (supra), while relies upon *Nishan Singh* and *Rajbir Singh* cases, it is held that before accepting the petitioner's application for voluntary retirement the University was bound to ensure that he fulfilled the necessary requirements for it as per the Rules. Not only the petitioner's request was unconditionally accepted, he was asked to submit papers for pensionary benefits as well. In these circumstances, the University is not entitled to take an about turn and reject the petitioner's case by referring to Rule 5.32 on account of not fulfilling the requisite condition of twenty years of qualifying service by fastening entire blame on him. It is apparent on

record that he sought voluntary retirement on *bona fide* belief of having rendered more than the requisite twenty years' service. It was duly accepted also, treating the request admissible under the Rules and asking for submission of pension papers. In case it later dawned on the University that the service was less than the requisite, the petitioner cannot be solely blamed for it. The responsibility lies more on the University's shoulders as it was privy to his service record. Besides, it is not the case that the petitioner was informed about the service being less than the requisite, and he still insisted upon accepting the request instead of submitting the application later after completing the requisite service. Therefore, the University cannot shun responsibility to pay pensionary benefits to him.

9. The petition is, accordingly, allowed. The impugned letter dated 15.11.2012 is set aside, directing the respondents to release due pensionary benefits to the petitioner from the date of voluntary retirement within a period of four weeks from receiving the certified copy of this order. The arrears of pensionary benefits shall be paid along with interest at the rate of six per cent per annum from the date of entitlement to actual payment.

10. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

30.4.2024

Ashwani

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No