

Officer, the petitioner submitted a resignation on 09.05.2011 along with one month's salary, which was accepted by the respondent-Department and thereafter, the petitioner joined as Assistant Public Relation Officer on 10.05.2011. The petitioner continued working on the said post till his retirement.

Learned counsel for the petitioner submits that the benefit of the service which the petitioner had rendered in the Department of Education, has not been taken into account as a qualifying service for computing his pensionary benefits, which act on the part of the respondents is arbitrary and illegal and the claim of the petitioner is squarely covered by Rule 7.5 of the Punjab Civil Services Rules as the petitioner has tendered Technical resignation from the Department of Education so as to join the Department of Information and Public Relation, Government of Punjab hence, the respondents are under obligation to grant the petitioner the benefit of service which the petitioner rendered with the Department of Education for all intents and purposes, which claim of the petitioner has wrongly been rejected by the respondents vide letter dated 12.10.2012 (Annexure P-10), which order needs to be set aside.

Upon notice of motion, the respondents have filed the reply. In the reply, the respondents have stated that while working in the Department of Education, the petitioner on his own had applied for the post of Assistant Public Relation Officer in the Department of Information and Public Relation without informing the Department of Education and thereafter, the Department of Education never relieved the petitioner and rather, the

petitioner submitted his resignation with one month's salary which is to be done in case of a normal resignation, which is to be submitted by an employee hence, the petitioner is not entitled for the benefit of the past service, as the petitioner does not fulfil the requisite of Rule 7.5 of the Punjab Civil Services Rules, wherein the benefit is only allowed where, an employee is allowed for the benefit to compete for the post with due promotion and after obtaining no objection from the Department he/she is serving while applying for the new post.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

It is a conceded position that the petitioner has worked in the Government Departments during his entire service career. Initially, the petitioner was an employee of the Department of Education, where he has served until 2011 and thereafter, he served the Department of Information and Public Relation.

The question which arises for adjudication before this Court is whether keeping in view the facts and circumstances of the present case, the earlier service rendered in the Department of Education is to be taken into account for computing the pensionary benefits of the petitioner or not?

For the purpose of the adjudication of the claim of the petitioner, Rule 7.5 which deals with the grant of the benefit of the earlier service, is detailed as under:-

“7.5 (1) XXX

(2) *A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission,*

another appointment, whether temporary or permanent, under the Government where service qualifies for pension..”

A bare perusal of the above would show that a resignation which is submitted to take up another job in another Department with proper permission is to be treated as a technical resignation and not a simple resignation so as to forfeit the earlier service rendered by an employee.

In the present case, it has already come on record that the petitioner never applied through the proper channel while working in the Department of Education for the post of Assistant Public Relation Officer in the Department of Information and Public Relations Punjab. Rather, the petitioner after being selected for the post of Assistant Public Relation Officer, tendered a resignation with one month salary, which is to be done in a normal case and joined the new Department. No NOC was ever taken by the petitioner from the Department of Education to join the new Department as Assistant Public Relation Officer.

In the facts and circumstances of the present case coupled with the reason given by the respondent in the impugned order, it is clear that the petitioner never competed for the post of Assistant Public Relation Officer as an in-service candidate with the permission of the Department, where he was already serving i.e the Department of Education.

Even after leaving the job from the Department of Education, no NOC was issued by the Department of Education either to compete for the post or to join the new Department. The petitioner was only relieved upon his tendering of resignation though, in the said resignation it was

mentioned that the petitioner was tendering resignation in order to join the new Department. Merely that the petitioner has mentioned the said ground, the resignation submitted does not become a technical resignation as, the technical resignation will only be considered in case, the petitioner had competed for the post, on which the petitioner intends to join, with the permission of his earlier employer i.e. Department of Education where the petitioner was earlier working.

In the present case, it is conceded fact that the Department of Education never gave the petitioner any No Objection Certificate (NOC) to compete for the post in question or forwarded his application through proper channel of Department of Education to be considered by the appropriate authority for the post of Assistant Public Relation Officer.

Further, a similar question of law came up for consideration before the Hon'ble Supreme Court of India in Civil Appeal No.7351 of 2013 titled ***“Union of India and ors. Vs. H.R. Vijaya Kumar”*** decided on 31.08.2023 wherein, it has been held that in case, an employee does not apply for the post through proper channel and the Department does not issue No Objection Certificate either to compete or for joining the new post, the benefit of earlier service cannot be given. Rather the said resignation is to be treated as normal resignation, which will entail the forfeiture of the past service. Relevant paragraph Nos.17, 18 and 19 of the said judgment are as under:-

“17. This Court in Union of India and Others vs Braj Nandan Singh reported in (2005) 8 SCC 325, while considering Rule 26 of the CCS Pension Rules observed that Rule 26 in clear terms provides that

resignation from a service for another post, without due permission will entail forfeiture of service. In this case, although the respondent did seek permission of his employer to apply for the opening in HAL, such permission was not forthcoming. In the meantime, the respondent applied directly, appeared in the selection process availing leave despite denial of permission, and then took up the new assignment. The circumstances here would show that the present 8 case is squarely covered by sub-Rule (2) of Rule 26 of CCS Pension Rules. In such circumstances, we are of the considered view that the High Court erred in granting relief to the respondent by ordering that his resignation shall not entail forfeiture of past service. The reading of the applicable statutory provision does not warrant an interpretation which will enure to the benefit of an incumbent merely because he applies directly when such application is not supported by due permission of the competent authority.

18. At this stage, we may also usefully refer to the judgment of this Court rendered on 25.02.2011 in SLP (C) No.31788 of 2009 Union of India vs. H. R. Vijaya Kumar, where in the earlier round, on the decision given in favour of the respondent by the High Court, the Supreme Court indicated that the effect of the relevant Rules including Rule 26(2) of the CCS Pension Rules was not appropriately considered by the High Court. Therefore, the judgment passed by the High Court on 18.02.2008 in the Writ Petition No.28751 of 2002 was set aside and the matter was remitted back to the Division Bench of the High Court for a fresh decision, in accordance with the law.

19. When we examine the impugned judgment of the learned Single Judge and also of the Division Bench, it is seen that the Court failed to consider the implication of sub-Rule (2) of Rule 26 of the CCS Pension Rules. If the relevant Rules 9 were to be considered, the only reasonable conclusion would have been that the writ petitioner would be disentitled to relief. Unfortunately, the implication of the

Rules was not appropriately considered despite the specific direction of this Court in the earlier round on 25.02.2011.

19. Considering the above, the appellants in our understanding have made out a case for interference with the impugned judgments. Accordingly, the appeal is allowed by setting aside the Judgment dated 08.07.2011 of the Division Bench as also the order dated 18.02.2008 of the learned Single Judge of the High Court. It is ordered accordingly.”

Learned counsel for the petitioner has not been able to rebut the fact that in the present case, the petitioner deposited one month salary, which was must for an employee for resigning in the normal circumstances and had not competed for the post of Assistant Public Relation Officer through proper channel.

At this stage, learned counsel for the petitioner submits that the respondent-State has clarified the technical resignation while issuing instructions dated 19.02.2016 and in the said instructions, even if an employee has not applied through the proper channel but gives description of the same at the time of joining, the Department will be at discretion to decide as to whether the resignation to be accepted so as to be treated as a technical resignation or a normal resignation hence, in the present case, as in the resignation, the petitioner had submitted that he intends to join the new post, which was accepted by the respondents hence, the claim of the petitioner will be covered under the instructions dated 19.02.2016.

It may be noticed that in the present case, despite mentioning in the resignation that the petitioner intends to join the new Department, the Department of Education never accepted the said claim of the petitioner and

as a condition was imposed to pay one month salary which is not to be paid in case the technical resignation is to be given, Department of Education never allowed discretion in favour of the petitioner to treat the resignation as technical resignatioin. This fact clearly shows that the Department of Education did not accept the plea of the petitioner that the resignation submitted by the petitioner is to be treated as a technical resignation as it is conceded fact that the petitioner himself deposited one month's salary along with resignation, which is to be submitted in the normal course hence, no benefit of the instructions dated 19.02.2016 can be extended in favour of the petitioner.

No other argument can be raised.

Hence, the present petition is dismissed.

Pending application, if any, also stands disposed of.

23-09-2024

Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking : YES/NO
Whether reportable: YES/NO