

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1051 of 2023

In
Civil Writ Jurisdiction Case No.1379 of 2023

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1. The Union of India through the Secretary Home, New Delhi.
 2. The Director General, B.S.F., CGO Complex, New Delhi.
 3. The Commandant, 61 Battalion, BSF, Patiram, Atrai, Distt-Dakshin Dinajpur, West Bengal-733158.

... .. Appellant/s

Versus

Alok Arya S/o Late Uday Shankar Bhagat R/o Village-Chandaniya, P.S. Sangrampur, Distt-Munger.

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Kanak Verma, C.G.C.

For the Respondent/s : Mr. Jai Prakash Verma, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 17-02-2025

We have heard Ms. Kanak Verma, the learned C.G.C. for the appellants and Mr. Jai Prakash Verma, the learned Advocate for the respondent.

2. The respondent was appointed in BSF in the year 2012 and had tendered his resignation from the post on 30.06.2022 i.e. after having completed 9 years, 7 months and 12 days. His past services were forfeited



and, therefore, he was not granted pension and gratuity.

3. However, when he approached the learned Single Judge *vide* C.W.J.C. No. 1379 of 2023, it was ordered on 03.05.2023 that the respondent be given the benefit of gratuity in view of Section 7 (3-A) of the Payment of Gratuity Act, 1972 and also interest on it, after calculating the same within a period of six weeks.

4. The aforementioned judgment has been put to challenge by the Union of India in the present appeal on the sole ground that if a person resigns from service, his past service is forfeited.

5. Section 26 (1) of the Central Civil Services (Pension) Rules, 2021 clearly provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

6. Sub-Clause (2) of Section 26 the Central Civil Services (Pension) Rules, 2021 further clarifies, by way of an exception, that 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 the service qualifies.

7. The respondent resigned without indicating to his employer that such resignation was for the purposes of taking up another appointment with the Government where he qualified.

8. Thus, his entire past service was forfeited making him ineligible for being paid pension.

9. Pension also includes gratuity.

10. The provisions contained in the Payment of Gratuity Act, 1972 would not apply to an employee of the Central Government, if he is governed by other Rules.

11. In any view of the matter, the judgment passed by the learned Single Judge is unsustainable in the eyes of law for not having considered the import of Section 26 (1) and (2) of the Central Civil Services



(Pension) Rules, 2021, which applies to the case of the respondent.

12. Learned counsel for the appellant/Union of India has also drawn the attention of this Court to a judgment of the Supreme Court in ***Union of India and Ors. vs. Braj Nandan Singh : (2005) 8 SCC 325***, wherein it has been explained that Section 26 (2) has to be read in conjunction with Section 26(1) and 26(2) only carves an exception under certain circumstances.:

“Rule 26, as the heading itself shows, relates to forfeiture of service on resignation. In clear terms, it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub-rule (2) is in the nature of an exception. It provides that 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.



Admittedly this is not the case of the Respondent. Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement to pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no



substance in the plea of the learned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. The said rule deals with amount of pension and not with entitlement.”

13. In the aforementioned judgment, the Supreme Court concluded that it is a well-settled principle in law that the Court cannot read anything into a statutory provision, which is plain and unambiguous. A statute is an edict of the Legislature and the language employed in a statute is the determinative factor of legislative intent.

14. On our finding that the resignation was simpliciter and not for the purposes of taking up appointment, for which no permission also was taken, the services of the respondent stood forfeited and less than ten years in service would not have otherwise also qualified the appellant for being paid pension.

15. The judgment passed by the learned Single Judge is, thus, set aside.



16. The respondent is not entitled for any pension because of his resignation in view of Section 26 (1) of the Central Civil Services (Pension) Rules, 2021.

17. The appeal stands allowed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

manoj/rajesh-

AFR/NAFR	NAFR
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