

GHANSHYAM DASS RELHAN

v.

STATE OF HARYANA & ORS.

(Special Leave Petition (c) No. 98 of 2007)

JULY 16, 2009

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Punjab Civil Services Rules – Rules 6.16(2) and 5.32-A – Pension – Benefit of – Entitlement to – Confirmed employee in the service of State Government, resigning after completing 18 years to join bank service – Employee sought permission of State Government – Superannuation from bank service – Claim of benefit of pension – Rejection of, by High Court – Interference with – Held: Not called for – Rule 5.32-A provides that Government employee is entitled to pension on acceptance of his resignation subject to his completing qualifying service of not less than 30 years and 25 years in special cases – Petitioner did not complete qualifying service of 30 years – His service rendered with the bank would not be counted towards Government service, thus not entitled to pension under Rule 6.16(2).

In 1958, appellant was appointed as clerk in the office of State Government and confirmed to the said post. Thereafter, he was promoted as stenographer. In 1977, he resigned from the said post and joined the Kurukshetra Central Bank Limited as Senior Accountant. On 30.09.1997 he retired from the bank on superannuation. He was paid retiral benefits but was not paid pension. He made a representation but the same was rejected. Writ petition was also dismissed. Hence, the present petition.

Dismissing the Special Leave Petition, the Court

A HELD: 1.1 It cannot be said that in view of the provisions of Rule 4.19(b) read with the latter portion of Rule 6.16(2) of the Punjab Civil Services Rules, the petitioner will be eligible and entitled to pro rata pension having rendered more than 10 years' service which has been indicated as the qualifying service in the latter portion of the said Rule for the purpose of receiving pro-rata pension. [Para 15] [613-A-B]

C 1.2. The expression 'resignation from public service' will have to be read disjunctively from 'dismissal or removal from it' The expression 'resignation from public service' will not be qualified by the subsequent references relating to anti-national activities. The expression 'dismissal or removal from it' will be qualified by the said expression which would in both cases entail forfeiture of past service and disqualification so far as payment of pension is concerned. In other words, read disjunctively, resignation simpliciter from public service would entail forfeiture of past service and no pension is to be granted in the said circumstances. [Para 16] [613-C-D]

E 1.3. As far as Rule 4.19(b) is concerned it is quite clear that resignation to take up with proper permission another appointment, would have to be in a service, which would count towards pension in Government service. It means that the subsequent appointment must also be in public service and in such a case the resignation would not amount to resignation of public service. In such a case, continuity in public service would be accepted in computing the qualifying service of 30 years for grant of pension. [Para 17] [613-E-F]

G 1.4. Rule 6.16(2) cannot be divided into two separate compartments. The second part of the said Rule is a consequence of the first part, which deals with retirement upon superannuation and not resignation, as in the

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instant case. In order to be eligible for pension the Government employee at the time of superannuation would have to complete qualifying service of not less than 33 years or more. However, an exception has been made in the second part of the said Rule which also allows the benefit of pro- rata pension to employees who had rendered 10 years service or more. Not having superannuated from government service, the petitioner cannot come within the said category and his case would instead be governed by Rule 5.32-A, which deals with resignation. [Para 18] [613-H; 614-A-C]

1.5. Rule 5.32-A clearly provides that a Government employee is entitled on his resignation being accepted to a retiring pension subject to his completing qualifying service of not less than 30 years which in special cases could be reduced to 25 years. Since the petitioner has not completed the qualifying service of 30 years and since the service rendered by him with the Bank would not be counted towards Government service, the petitioner is not entitled to the benefit of pension under Rule 6.16(2) and the High Court has rightly decided the issue. Therefore, there is no reason to interfere with the judgment of the High Court. [Paras 19 and 20] [614-D-F]

Dr. Sajal Kanti Chakraborty vs. State of West Bengal and Ors. 2004(5) SLR 634, Distinguished.

Praduman Kumar Jain vs. Union of India (1994 Supp (2) SCC 548; *Union of India vs. Rakesh Kumar* (2001) 4 SCC 309; *Reserve Bank of India vs. Cecil Dennis Solomon and another* (2004) 9 SCC 461 and *UCO Bank vs. Sanwar Mal* (2004) 4 SCC 412, Referred to.

Case Law Reference:

2004(5) SLR 634

Referred to.

Para 7

A	1994 Supp (2) SCC 548	Referred to.	Para 8
	(2001) 4 SCC 309	Referred to.	Para 13
	(2004) 9 SCC 461	Referred to.	Para 14
B	(2004) 4 SCC 412	Referred to.	Para 14
	2004(5) SLR 634	Distinguished.	Para 17

CIVIL APPELLATE JURISDICTION : SLP (C) Civil No. 98 of 2007.

C From the Judgment & Order dated 7.8.2006 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 8666 of 2005.

S.K. Dholakia and Balbir Singh Gupta for the Appellants.

D P.S. Patwalia, Manjit Singh, AAG, Nikhil Jain, Ajay Pal, Aman Preet Singh, Devesh Kumar Tripathi, Tushar Bakshi and Harikesh Singh T.V. George for the Respondents.

The Judgment of the Court was delivered by

E **ALTAMAS KABIR, J.** 1. The petitioner was appointed as a clerk in the office of the Deputy Commissioner, Hisar on 7.11.1958 on being selected by the Punjab Subordinate Services Selection Board, Chandigarh. On 11.1.1970 he was transferred to the office of the Deputy Commissioner, Karnal, in a permanent vacancy and was confirmed in the said post therein with effect from 1.1.1970. He was promoted as Stenographer and was posted in the office of the Deputy Commissioner, Kurukshetra.

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G 2. On 11.10.1976 some posts of Senior Accountants were advertised by the Kurukshetra Central Bank Limited and upon his application through proper channel he was selected for one of the said posts. After taking permission of the Government

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of Haryana the petitioner resigned from the post of A
Stenographer and relinquished charge on 10.1.1977 when he
joined the said Bank as Senior Accountant. The petitioner
retired from the service of the Bank on superannuation on
30.9.1997 and was paid Contributory Provident Fund, Gratuity B
and Leave Encashment, but not pension. The petitioner
thereupon made a representation to the Chief Secretary,
Government of Haryana, for grant of pension as he had
rendered 18 years 2 months and 3 days of service between C
7.11.1958 to 10.1.1977 in the office of Deputy Commissioner,
Hisar, Karnal and Kurukshetra. On being asked to submit an
application for pension in the prescribed proforma the petitioner
submitted the same on 14.4.2003 to the Deputy Commissioner,
Kurukshetra. On 17.5.2005, the petitioner was informed by the D
Deputy Commissioner, Kurukshetra, that he could not be given
pension in view of Rule 4.19 and Note 1 of Rule No.5.32(b) of
the Punjab Civil Services Rules. The said decision was
challenged by the petitioner in Civil Writ Petition No.8666 of
2005 in the Punjab and Haryana High Court, which dismissed
the Writ Petition on 7.8.2006 upon holding that the petitioner
was not entitled to pension under Rule 5.2(a) of the aforesaid E
Rules because he had not rendered qualifying service of at least
30 years. The said decision of the High Court has been
challenged in this Special Leave Petition.

3. Appearing in support of the Special Leave Petition, Mr. F
S.K.Dholakia, learned senior counsel, submitted that since
payment of pension is intended to be a social security after
retirement, the rules relevant thereof should be interpreted
liberally in favour of grant of such pension, which had not been
done by the High Court while passing the impugned order.
Mr. Dholakia submitted that Rule 4.19(a) could not be applied G
to the petitioner's case, inasmuch as, the said Rules
contemplated resignation from public service on account of
anti-national activities such as sabotage, espionage etc. or for
misconduct, insolvency, inefficiency not due to age or failure to
pass a prescribed examination. H

A 4. Mr. Dholakia urged that none of the said contingencies
which entails forfeiture of past service and disqualification for
pension, apply to the petitioner's case. On the other hand,
according to Mr. Dholakia, the authorities, as well as the High
Court, should have applied the provisions of Rule 4.19(b) to the
B petitioner's case. For the sake of reference Rules 4.19(a) and
(b) are extracted hereinbelow:

C "4.19(a) Resignation from public service, dismissal or
removal from it, either under proviso (c) to Article 311(2)
of the Constitution for over anti-national activities such as
sabotage, espionage etc. or for misconduct, insolvency,
inefficiency not due to age or failure to pass a prescribed
examination, entails forfeiture of past service and no
pension shall be granted in the aforementioned
D circumstances:

Provided that in the cases of those Government
employees whose removal or dismissal results from
participation in other objectionable activities affecting or
endangering the security of the State, such proportionate
E pension may be granted as may be recommended by the
Committee by the Advisors constituted under the Haryana
Civil Services (Safeguarding of National Security) Rules,
1971.

F (b) Resignation of an appointment to take up, with proper
permission, another appointment, whether permanent or
temporary, service in which counts in full or in part, is not
a resignation of public service.

G In cases where an interruption in service is inevitable
due to the two appointments being at different stations,
such interruptions, not exceeding the joining time
permissible under the rules on transfer, shall be covered
by grant of leave of any kind due to the Government
employee on the date of relief or by formal condonation
H under Rule 4.23 to the extent to which the period is not

covered by leave due to the Government employee.”

5. In addition to the above Mr. Dholakia also referred to Rule 6.16(2) of the aforesaid Rules, which reads as follows:

“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 average emoluments as defined in Rule 6.19 –C of these rules subject to a maximum of (Rs.3000/-)(Substituted vide No.1/2/1/CSR Vol.II/91 – Sr.AO(FD) dated 31.1.92) 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 portion of the maximum admissible pension as such the qualifying service of thirty three years, subject to a maximum of (Rs.375/-) (Substituted vide No.1/2/1/CSR.Vol.II/91-Sr.A.O.(FD) Dated 31.1.92) per mensem...”

6. Mr. Dholakia submitted that the first part of Rule 6.16(2) would not apply to the petitioner since he had resigned from the service of the Government of Haryana on 11.10. 1976, i.e. prior to the date mentioned in the first part of said Rule. However, according to Mr. Dholakia, the second part of the Rule would apply since it indicates that in the case of a Government employee, who at the time of retirement has rendered qualifying service of 10 years or more, but less than 33 years, he would be entitled to pension which would be subject to such portion of the maximum pension on completion of the qualifying service of 33 years subject to a maximum of Rs.375/-. Mr. Dholakia urged that the petitioner was at least entitled to the benefit of the second portion of Rule 6.16(2) since he had completed more than 18 years of service in the employment of the Government of Haryana.

A 7. In support of his submissions Mr. Dholakia referred to
and relied upon a Division Bench decision of the Calcutta High
Court in the case of *Dr. Sajal Kanti Chakraborty vs. State of*
West Bengal and ors. [2004(5) SLR 634] wherein Rule 33(1)
and (2) of the West Bengal Services (Death-cum-Retirement
B Benefit) Rules, 1971, which are *pari materia* to Rule 4.19(a)
and (b), fell for consideration and by applying Rule 33(2), which
is akin to Rule 4.19(b), the Calcutta High Court held that the
resignation of the employee would not be treated as resignation
C from public service and would entitled him to pension in terms
of Rule 59 of the said Rules.

8. Reference was also made to the decision of this Court
in *Praduman Kumar Jain vs. Union of India* [(1994 Supp (2)
SCC 548] which involved the right to pension claimed by the
D appellant after having completed more than 10 years service
without interruption. This Court held that despite the fact that
the appellant had not been confirmed in service, but having
resigned to join as Central Government Undertaking, he must
be held to have fulfilled the requirement of substantive
E appointment and the requisite length of qualifying service.

9. Mr. Dholakia urged that since Rule 4.19(b) provides that
resignation of appointment to take up, with proper permission
another appointment, whether permanent or temporary, service
in which counts in full or in part, is not a resignation of public
F service, the petitioner should also be given the benefit thereof
for the purpose of computing qualifying service at the time of
his superannuation from the service of the Bank.

10. On the other hand, Mr. P.S.Patwalia, learned senior
G counsel appearing for the respondents, began where Mr.
Dholakia ended and urged that the expression used in Rule
4.19(b) namely "service in which counts in full or in part" can
only mean that a employee who after resignation claims the
benefit of Rule 4.19(b) has to subsequently join a service which
is pensionable. He also urged that Rule 6.16 (2) of the Rules,
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on which reliance has been placed by Mr. Dholakia, would not apply in the facts of this case in view of Rule 5.32-A which deals with grant of retiring pension. A

11. For the sake of reference the said Rule is extracted hereinbelow: B

"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. C

(b) A retiring pension is also granted to a Government employee who is required by Government to retire after completing 25 years qualifying service or more and who has not attained the age of 55 years." D

12. Mr. Patwalia submitted that the aforesaid Rule takes into account the resignation of a Government employee and his right to pension after such resignation is accepted and the same contemplates a qualifying service of not less than 30 years in order to be eligible to a retiring pension. Mr. Patwalia pointed out that as far as Rule 6.16(2) is concerned the same does not deal with resignation but only retirement and that too after 1.4.1979. He also urged that the said Rule could not be divided into two compartments, as has been sought to be done by Mr. Dholakia. He urged that the said Rule provides for pension on retirement after completion of qualifying service. The latter part of Rule 6.16(2) flows from the first half and contemplates a situation where an employee may not have completed 33 years but 10 years of service and had made such an employee who retired in the normal course entitled to the benefit of pro rata pension in relation to his length of service. E F G H

A 13. To bolster his submissions Mr. Patwalia referred to the
decision of this Court in *Union of India vs. Rakesh Kumar*
[(2001) 4 SCC 309] in which the BSF Rules which are similar
to the Rules under consideration in this Special Leave Petition
B were considered. Analyzing the provisions of Rule 48(a) and
49 of the Central Civil Services (Pension) Rules, 1972, along
with the provisions of the BSF Rules 1969, the Court was of
the view that in the event the Government servant retires before
C completing the period of qualifying service for pension he would
be entitled to gratuity which was to be calculated at a half
month's emolument for every completed six months of
qualifying service. However, those Government servants, who
completed the qualifying service of 10 years, would be entitled
to payment of pro-rata pension in relation to their length of
service.

D 14. Mr. Patwalia also referred to another decision of this
Court in *Reserve Bank of India vs. Cecil Dennis Solomon and*
another [(2004) 9 SCC 461] where the benefit of voluntary
retirement, which was equated with resignation by the High
E Court, was held to be erroneous since it did not fall within the
definition of "retirement" contemplated under the RBI
Regulations, 1948. He then referred to the decision of this Court
in *UCO Bank vs. Sanwar Mal* [(2004) 4 SCC 412] where the
difference between the words 'resignation' and 'retirement' was
F noticed and explained. It was observed that the two
expressions carry different meanings in common parlance. It
was held that an employee could resign at any time, but in the
case of retirement he could retire only upon attaining the age
of superannuation or in the case of voluntary retirement on
completion of qualifying service. Mr. Patwalia submitted that the
G decision of the High Court had been rendered on the basis of
the Rules relevant to the petitioner's case and did not warrant
any interference.

H 15. Having considered the submissions made on behalf
of the respective parties and the provisions of the Punjab Civil

Services Rules, we are unable to accept Mr. Dholakia's submissions that in view of the provisions of Rule 4.19(b) read with the latter portion of Rule 6.16(2) of the aforesaid Rules, the petitioner will be eligible and entitled to pro rata pension having rendered more than 10 years' service which has been indicated as the qualifying service in the latter portion of the said Rule for the purpose of receiving pro-rata pension.

16. In our view, Rule 4.19(a) has to be read and understood differently from what has been urged by Mr. Dholakia. The expression 'resignation from public service' will have to be read disjunctively from 'dismissal or removal from it'. The expression 'resignation from public service' will not be qualified by the subsequent references relating to anti-national activities. On the other hand, the expression 'dismissal or removal from it' will be qualified by the said expression which would in both cases entail forfeiture of past service and disqualification so far as payment of pension is concerned. In other words, read disjunctively, resignation simpliciter from public service would entail forfeiture of past service and no pension is to be granted in the aforesaid circumstances.

17. As far as Rule 4.19(b) is concerned it is quite clear that resignation to take up with proper permission another appointment, would have to be in a service, which would count towards pension in Government service. It means that the subsequent appointment must also be in public service and in such a case the resignation would not amount to resignation of public service. In such a case, continuity in public service would be accepted in computing the qualifying service of 30 years for grant of pension. It is a provision similar to Rule 4.19(b) which was relied upon by the Division Bench of the Calcutta High Court in deciding the case of Dr. Sajal Kanti Chakraborty (supra), and distinguishes the said case from the facts of this case.

18. As far as Rule 6.16(2) is concerned, in our view, the

A same cannot be divided into two separate compartments as has been suggested by Mr. Dholakia. The second part of the said Rule is a consequence of the first part, which deals with retirement upon superannuation and not resignation, as in the instant case. In order to be eligible for pension the Government employee at the time of superannuation would have to complete qualifying service of not less than 33 years or more. However, an exception has been made in the second part of the said Rule which also allows the benefit of pro-rata pension to employees who had rendered 10 years service or more. In our view, not having superannuated from government service, the petitioner cannot come within the said category and as submitted by Mr. Patwalia, his case would instead be governed by Rule 5.32-A, which deals with resignation.

D 19. The said Rule clearly provides that a Government employee is entitled on his resignation being accepted to a retiring pension subject to his completing qualifying service of not less than 30 years which in special cases could be reduced to 25 years. Since the petitioner has not completed the qualifying service of 30 years and since the service rendered by him with the Bank would not be counted towards Government service, the petitioner is not entitled to the benefit of pension under Rule 6.16(2) and the High Court has rightly decided the issue.

F 20. We, therefore, see no reason to interfere with the judgment of the High Court and the Special Leave Petition is, therefore, dismissed, but without any order as to costs.

N.J. Special Leave Petition dismissed.