

(2009) 07 SC CK 0090

In the Supreme Court Of India

Case No : Special Leave Petition (C) No. 98 of 2007

Ghanshyam Dass Relhan

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Constitution Of India, 1950 — Article 311(2)
Punjab Civil Service Rules Volume I, — Rule 4.19, 4.19(a), 4.19(b), 4.23, 5.2(a), 5.32(b), 6.16(2)
West Bengal Services (Death- Cum-Retirement Benefit) Rules, 1971 — Rule 33(1), 33(2), 59
Central Civil Services (Pension) Rules, 1972 — Rule 48(a), 49

Citation : AIR 2009 SC 2412 : (2009) AIRSCW 4783 : (2010) 124 FLR 103 : (2009) 12 JT 86 : (2010) 1 PLJR 1 : (2009) 14 SCC 506 : (2010) 1 SCC(L&S) 362 : (2009) 10 SCR 603 : (2009) 3 SLJ 416 : (2009) 6 SLR 196 : (2009) 5 Supreme 615

Hon'ble Judges : Cyriac Joseph, J;Altamas kabir, J

Bench : Division Bench

Advocate : S. K. Dholakia and Balbir Singh Gupta, for the Appellant; P.S. Patwalia Manjit Singh, AAG, Nikhil Jain, Ajay Pal, Aman Preet Singh, Devesh Kumar Tripathi, Tushar Bakshi, Harikesh Singh and T.V. George, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, J.—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.

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 of Haryana the petitioner resigned from the post of 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 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 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 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 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. 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 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.

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 petitioner's case. For the sake of reference Rules 4.19(a) and (b) are extracted herein below:

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 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 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.

(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.

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 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.

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 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 from public service and would entitle 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 v. Union of India*, which involved the right to pension claimed by the 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 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 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 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 an 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, 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.

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

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) 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.

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.

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 SLP 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 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.

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 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 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 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.

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 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.

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.

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