**(2006) 08 P&H CK 0472**

**In the Punjab And Haryana At Chandigarh**

**Case No :** CWP No. 8666 of 2005

Ghanshyam Dass Relhan APPELLANT

Vs

State of Haryana and Others RESPONDENT

**Date of Decision :** 07-08-2006

**Acts Referred:**

**Citation :** (2006) 08 P&H CK 0472

**Hon'ble Judges :** Kiran Anand Lall, J;J.S. Khehar, J

**Bench :** Division Bench

**Advocate :** H.N. Khanduja, for the Appellant; Rameshwar Malik, Addl. A.G. for respondent Nos. 1 to 4, for the Respondent

**Final Decision :** Dismissed

## Judgement

J.S. Khehar, J.—The petitioner was inducted into service in the office of the Deputy Commissioner, Hisar, as a clerk on 7.11.1958. He continued to discharge his duties in the aforesaid office till 10.1.1970 whereafter, he came to be transferred to the office of the Deputy Commissioner, Karnal, on 11.1.1970.

2. During the course of his posting in the office of the Deputy Commissioner, Karnal, the petitioner was selected as a Senior Accountant by the Kurukshetra Central Bank Limited, Kurukshetra. Consequent upon his aforesaid selection, the petitioner tendered his resignation, which was accepted by his principal employer. In sum and substance, the petitioner is stated to have rendered service for a period of 18 years 2 months and 3 days with the Government from 7.11.1958 to 10.1.1970. On the basis of his aforesaid service the petitioner seeks pensionary benefits. This claim of the petitioner is based on his assertion, that as soon as he can establish that he has rendered more than 10 years regular service with his principal employer i.e. the Government, he would be entitled to claim pensionary benefits. To substantiate his aforesaid claim, the petitioner relies on Rule 4.19 and Rule 6.16 of the Punjab Civil Services Rules, Volume II, Part I (as are applicable to the State of Haryana). A relevant extract of the aforesaid rules is being reproduced hereunder:

 

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 (Safe-guarding 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.

6.16.(1) In the case of a Government employee retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be the appropriate amount as set out in the table below, and no additional or special additional pension shall be granted to him.

xxx xxx xxx

6.16(2) In the case of a Government employee retiring on or after the Ist 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. 3,000/-) (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 proportion 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.AO(FD) dated 31.1.92) per mensem....

3. According to the learned Counsel for the petitioner, under Rule 4.19 resignation tendered by an employee, with proper permission, to seek further employment, would not disentitle him from retiral benefits including pension. On the basis of Rule 6.16(2), learned Counsel for the petitioner states that an

 

employee having 10 years qualifying service is statutorily entitled to the benefit of retiral benefits including pension. In order to controvert the contention of the learned Counsel for the petitioner, learned Counsel for the respondents has placed reliance on Rule 5.32-A of the Punjab Civil Service Rules, Volume II, Part I (as is applicable to the State of Haryana). The aforesaid rule is being extracted hereunder:

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.

4. We have perused the rules relied upon by the counsel representing the rival parties. In our view, Rule 5.32-A is a rule specifically drawn for a situation, as the one in hand, i.e., where an employee during his service tenders a resignation, such an employee is entitled to pension subject to the condition that he has qualifying service to his credit, of at least 30 years. The competent authority has been authorised to relax, in special cases, the prescribed years of qualifying service to 25 years. In the background of the aforesaid statutory rule and keeping in mind the case set up by the petitioner, namely, that he has to his credit 18 years 2 months and 3 days qualifying service to his credit, we are of the view that the petitioner is not entitled to pension after he tendered his resignation from the employment of his principal employer because he did not acquire, at the time of his resignation, the minimum prescribed qualifying service. In so far as the applicability of Rule 6.16(2) is concerned, we are of the view that the same is applicable only to those employees who retire on attaining the age of superannuation, and not to employees like the petitioner who severe their relationship with their employer before the age of superannuation.

5. For the reasons recorded above, we find no merit in this petition. The same is accordingly dismissed.

 