
(2014) 07 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11258 of 1992 (O&M)

Kabal Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Punjab Reorganisation Act, 1966 — Section 58

Citation : (2014) 3 SCT 775

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Manish Dadwal, Advocate for the Appellant; Ranbir Singh Pathania, DAG and D.D. Gupta, Additional Advocate General, Advocate for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The point involved in the case is a claim for pension which was denied to the petitioner on the ground that he had voluntarily resigned from service and, therefore, he had forfeited his right to pension.

2. There is no dispute about the fact that the petitioner had served in the military from 29.10.1942 to 04.08.1948 and later appointed as a driver under the Punjab Roadways on 11.08.1951, confirmed in that post and remained as such till he resigned voluntarily due to domestic reason on 24.08.1965. The petitioner invoked a circular issued by the Director State Transport Department, Punjab, on 29.01.1985, that all the persons, who had confirmed on 01.11.1955, will be entitled to pension if they refunded the component of State contribution of interest in contributory provident fund scheme. The claim for pension was, however, denied by the Haryana Roadways as a successor institution after the states reorganization carving out separate State of Haryana from Punjab. The order denying the same was cryptic in the sense that there was no issue regarding the fact that he did not have the requisite number of years of service but the only point taken was that since he had resigned from service, he was not entitled to pension.

3. The Civil Services Rules as applicable to Haryana is contained in Rule 7.5, Part I which states that resignation from service from a post unless it is allowed to be withdrawn in public interest or by the appointing authority entails forfeiture of past service. The counsel for the petitioner seeks to contend that this provision will not apply in a case where the resignation was not with an intent to evade any punishment but due to domestic reason. I find such an argument to be unacceptable but I will not hold out my objection since that is incidentally the view expressed by the Division Bench in *Om Parkash and Others Vs. Financial Commissioner Delhi and Others*, I find myself bound by the ruling of the Division Bench and hold that the denial of pension cannot, therefore, be upheld.

4. The issue is to only be considered with reference to the particular State on which the liability for payment of pension arises. Admittedly, the voluntary resignation had taken place on 24.08.1965 in a place at Ambala within the unified State of Punjab and after the Punjab Reorganization Act of 1966, Ambala came within the State of Haryana. As regards the liability in respect of pension, the same is governed by the 14th schedule read with Section 58 of the Punjab Reorganization Act of 1966. Section 58 deals with the provision for pension and the said provision contemplates an apportionment between the State of Punjab and successor State as contained in the 14th schedule. The 14th schedule sets out 6 clauses, of which, clauses 2 and 3 are relevant and hence, reproduced:-

2. Subject to the said adjustments, the liability in respect of pensions of officers serving in connection with the affairs of the existing State of Punjab who retire or proceed on leave preparatory to retirement before the appointed day, but whose claims for pensions are outstanding immediately before that day, shall be the liability of the State of Punjab.

3. There shall be computed, in respect of the period commencing on the appointed day and ending on the 31st day of March, 1967, and in respect of each subsequent financial year, the total payments made in all the successor States in respect of the pensions referred to in paragraphs 1 and 2. That total representing the liability of the existing State of Punjab in respect of pensions shall be apportioned between the successor States in the population ratio and any successor State paying more than its due share shall be reimbursed the excess amount by the successor State or States paying less.

5. Since the voluntary resignation has taken place before the Act, as per clause 2, the liability shall be on the State of Punjab. Reading with it clause 3, the computation shall be in respect of the period commencing on the appointed date, namely, on 01.11.1966. The total payments made in all the successor States in respect of pension and the total representing the liability of the existing State of Punjab shall be apportioned between the successor States in the population ratio and any successor State paying more than its due share shall be reimbursed the excess amount by the successor State or States paying less. It would, therefore, seem that the liability is primarily on the State of Punjab and the manner of its securing the apportionment from the State of Haryana, it shall invoke its rights

under clause 3 to the extent to which reckoning has been made between them as regards the total representing the liability of the existing State. There shall be, therefore, a direction to the State of Punjab to compute and release the entitlements to the petitioner taking the voluntary resignation as not forfeiting the right of pension for the reasons stated above, take into reckoning the military service and release past arrears within a period of 12 weeks with interest at 6%. The future payments shall also be done by the State of Punjab and the entitlement to refund or the apportionment shall be worked out by the State by engaging the appropriate authorities with the State of Haryana. If the amount is not paid, the amount assessed shall also attract interest at 9% per annum from the time when the respective liability arose till the date of payment. No portion of the entitlements to the petitioner shall be fettered by any delay or communication inter se between the respective States of Punjab and Haryana.

6. The Union of India is not a party, but to the extent to which the apportionment arises that casts a liability between the Union as well, the State of Punjab will be at liberty to exercise such a right against the Union also.

7. The impugned order is quashed and the writ petition is allowed on the above terms.