

(1999) 12 P&H CK 0108
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4255 of 1998

Om Prakash Vashist

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 10-12-1999

Acts Referred:

Citation : (2000) 125 PLR 354

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : K.K. Dhingra, for the Appellant; Nitin Kumar, for the Respondent

Judgement

1. The controversy herein is in a very narrow compass. The admitted facts reveal that the petitioner joined service as Class IV employee with State of Haryana on 27-5-1972 and sought voluntary retirement on 18-3-1994 vide letter Annexure R-1. On receipt of request, as referred to above, prompt came an order dated 31-3-1994 (Annexure P1) which reads thus :-

"You are requested to submit your pension papers to this office so that the papers are sent to the concerned authority for sanction, you were to give three months notice for which amount would be deducted from your payments. Your request for retirement is accepted."

2. It is common case of the parties that the petitioner did not carry out his job any further and stood prematurely retired. However, when he claimed post retiral benefits, the petitioner was confronted with the situation that he did not have qualifying service to earn the pension, the same being less than 20 years. If one is to go by the date of joining and the date of which the petitioner sought voluntary retirement, the period comes to about 22 years. In the written statement filed by respondent it has, however been averred that the petitioner remained on leave for a total period of 768 days from time to time spanned over his service career of 22 years. The details of the period, the petitioner remained on leave have been given in the written statement. If one is to calculate after

deducting this period of 768 days from the period the petitioner spent in service from May 1972 to March 1994, it is the case of the respondent State that the same will work out to 19 years 6 months and 24 days. The petitioner, thus, not having qualifying service of 20 years has been denied post retiral benefits.

3. Mr. Dhingra, learned counsel for the petitioner vehemently contends that when petitioner applied for leave and the same was sanctioned for the period referred to in the written statement, he was never conveyed that the same shall not be treated as service rendered by him for the purposes of pension and further that once the respondent State had accepted request for voluntary retirement of the petitioner by specifically saying in the order that pension papers have been received and are being sent for sanction thereof to a competent authority they cannot turn around now to say that the petitioner did not have qualifying service to earn post retiral benefits.

4. Mr. Nitin Kumar learned Deputy Advocate General however, relies upon Rule 5.32B of C.S.R, Vol. II, proviso whereof has been passed into service which reads thus :-

"Provided further that before Govt. employee gives notice of voluntary retirement with reference to sub-rule (1) he should satisfy himself by means of reference to the appropriate authority that he has in fact, completed twenty years service qualifying for pension.

5. On the basis of proviso to Rule 5.32B reproduced above, it is the contention of the learned Deputy Advocate General that the petitioner while making a request for voluntary retirement did not satisfy the conditions mentioned in the proviso and therefore, he is not entitled to earn any post retiral benefits.

6. After hearing the learned counsel for the parties, I have no hesitation whatsoever in rejecting the only ground pressed into service by the learned Deputy Advocate General in opposing the claim of the petitioner with regard to post retiral benefits. It is conceded position that the petitioner made application on 18-3-1994 for voluntary retirement which was accepted on 31-3-1994. While accepting request of the petitioner, the respondents themselves asked the petitioner to submit his pension papers to office so that the said papers could be sent to the concerned authority for sanction. The petitioner was clearly given to understand vide acceptance letter dated 31-3-1994, Annexure P1 that he shall be entitled to post retiral benefits. If it was the case of the respondent State that the petitioner had not qualifying service of twenty years and had only qualifying service for a period of 19 years six months 24 days, he ought to have been confronted with that situation at that time. Quite to the contrary as mentioned above, he was given to understand in unambiguous terms that he shall be entitled to pension as otherwise he was not required to be called upon by the respondent authority to have addressed a letter to the petitioner asking him to send his pension papers so that the same be sent for acceptance to the concerned authority. This Court is of the firm view that in the welfare State like India, State

cannot make a person believe in no uncertain terms that he shall be entitled to a particular relief and then turn around and reject it on technical grounds. If supposing the petitioner was told that the period of 768 days that he remained on leave shall be deducted from his qualifying service, he could have withdrawn his letter of voluntary retirement in time before the expiry of three months and served for few months to earn pension but by its act and conduct the respondent State prevented the petitioner to change his position, which he could certainly do. In these circumstances, the State cannot be permitted to take the objection as pressed by Mr. Nitin Kumar, learned Deputy Advocate General, as has been noted above.

7. Before I part with this order, I would like to mention that the learned Counsel for the petitioner has relied upon Division Bench judgment of this Court in *Ramesh Chand Kaushik, v. State of Haryana* Recent Services Judgments 1994 (3) RSJ 792 (sic) to contend that when an employee seeks voluntary retirement, it is the duty of respondents to ensure compliance of the statutory rules which enjoin a duty upon their respondents to see that an employee is permitted to proceed on voluntary retirement if he qualifies twenty years service so that his right to pension is not adversely affected. Petitioner has been permitted to proceed on voluntary retirement, and in fact, he has so retired, it is no longer open to the respondents to tell him that instead of 20 years he has put in 19 years 5 months of service and on that count he was not entitled to any pension. This judgment, thus, supports the case of the petitioner. Mr. Nitin Kumar learned Deputy Advocate General, however says that proviso to section Rule 5-32-B did not come up for any discussion before the Division Bench. Applicability of the Division Bench judgment of this Court in *Ramesh Chand Kaushik v. State of Haryana* (supra) apart, this Court is allowing this writ petition primarily on the ground that the State in facts and circumstances of this case is estopped by its own act and conduct to oppose the prayer for post retiral benefits based upon proviso to Rule 5-32-B of C.S.R. Vol. II.

8. In view of the discussion made above, this petition succeeds and a direction, is issued to the respondents to work out post retiral benefits of the petitioner within four weeks from today and make over the arrears to the petitioner within two weeks thereafter. The Court is of the view that this is not a case where the petitioner may be granted any interest on non-payment or delayed payment on post retiral benefits as State was perhaps labouring under a wrong impression that in the facts and circumstances of this case proviso to Rule 5-32-B would disentitle the petitioner to earn post retiral benefits. Parties are left to bear their own costs.

9. Petition allowed.