

(2009) 10 P&H CK 0028
In the Punjab And Haryana At Chandigarh

Padam Kumar Jain, Retd. A.D and S.J	APPELLANT
Vs	
The State of Punjab and Others	RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Citation : (2009) 6 SLR 193

Hon'ble Judges : Daya Chaudhary, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Daya Chaudhary, J.—The appellant is aggrieved by the order of the learned Single Judge declining the claim of pension after considering the period at the Bar and also interest at the rate of 18% per annum.

2. The appellant was working as Additional District & Sessions Judge and retired prematurely w.e.f. 20.3.1996 (afternoon) from service by the Punjab Government on the recommendation of the Punjab & Haryana High Court. His claim for monthly pension was rejected for which he filed CWP No. 12799 of 1998 contending that 10 years of practice at the bar was not added at the time of granting monthly pension for qualifying period of service for the purpose of granting retiral benefit. It was also case of the petitioner in the writ petition that 18% interest should have been awarded and only 6% interest has been granted. The learned Single Judge partly allowed the claim of the writ petitioner by relying upon the judgment of this Court in Avtar Singh v. State of Punjab 1989 (2) PLR 170. The relevant portion of the judgment is reproduced as under:

For the reasons stated above, this petition is allowed and a direction is issued to the respondents to pay to the petitioner his pension that may be admissible to him under the rules. Let orders with regard to payment of pension be passed within a fortnight from today and arrears, that might have accumulated, be made over to the petitioner within four weeks thereafter. Inasmuch as there is no justification whatsoever for rejecting the prayer of the petitioner for grant of

pension and as mentioned above, order came to be passed in teeth of recommendations made by the High Court otherwise, petitioner shall certainly be entitled to interest and the Court feels that interest of justice would be met if respondents are directed to pay interest @ 6% p.a. So ordered. Let the arrears of interest be also made over to the petitioner along with arrears of pension within the time stipulated above.

3. The appellant while appearing in person argued that in view of judgment of R.S. Randhawa v. State of Punjab and Ors. 1997(3) R.S.J. 318, he was entitled to interest at the rate of 12% per annum on delayed payment of pension. The appellant also relied upon judgment in case of Justice Balwant Rai v. Union of India and Anr. decided on 1st October, 1999, where interest at the rate of 12% per annum was granted on delayed payment of pension. The argument of the appellant is that the learned Single Judge has wrongly declined his claim, whereas he was entitled to pension being member of the Punjab Superior Judicial Service as per amended Rule 16 of Punjab Superior Judicial Service Rules, 1963.

4. The learned Single Judge relied upon Rules 4 and 5 of the Punjab Civil Services (Premature Retirement) Rules, 1975, which are as under:

4. (1) A retiring pension and death-cum-retirement gratuity shall be granted to an employee who retires or is required to retire under Rule 3.

5. Provisions of these rules shall have effect notwithstanding anything inconsistent therewith contained in any other rules for the time being in force.

The finding given by the learned Single Judge is reproduced as under:

This Court is of the firm view that the sole ground pressed into service to oppose the claim of the petitioner needs to be repelled. Rules 4 and 5 of 1975 rules, are special rules dealing with a particular situation, i.e. Compulsory/premature Retirement whereas the rule, pressed into service by the State, i.e. 6.16 of the Punjab Civil Services rules, It is too well settled by now that a special rule shall have precedence over a general rule. If the employee, on his own volition, may quit the job by resignation or otherwise, having not completed the minimum qualifying period of service, Rule 6.16 would naturally apply but the same is not true if the petitioner, by applying Rule 3.1 of 1975 Rules is asked to quit. This is what precisely the High Court also mentioned vide its letter dated 25.1.1997, Annexure P-12 and had even referred the case law but while rejecting the claim of petitioner vide order dated 31.12.1997, Annexure P-18, even advice of the High Court was not taken into consideration. The High Court, while recommending that the petitioner deserves to have pension, after reproducing rules 4 and 5, mentioned as follows in letter, Annexure P-12:

These rules has overriding effect to the rules contained in Punjab Civil Services Rules, at least 10 years service makes a Govt. employee entitled for pension. The rule of pension referred to above was framed much earlier before the premature retirement Rule 1975 and for that reason the over-riding effect have

been given to the premature retirement rules, by the law framers as the employee is not quitting the post either on superannuation or at his sweet will but is being forced to leave the job.

It may also be mentioned that this matter has already been decided by this Court in RSA No. 1692 of 1984 titled as Avtar Singh v. State of Punjab and Ors. in which it was held that a Govt. employee is entitled to pensionary benefits irrespective of the period during which he may have remained in service. The Govt. of Punjab preferred a SLP against the judgment of this Court in the Supreme Court of India which was also dismissed.

Attention Rule 4 of the Punjab Civil Service (Premature Retirement⁴) Rules, 1975 a retiring pension is granted to a Govt. employee who retires or is required to retire under the aforesaid rules.

5. We have heard the appellant in person and also perused the judgment of the learned Single Judge.

6. The benefit of 10 years" practice at the Bar is admissible only on superannuation in terms of Notification No. GSR-9/Const. Article 309/Admn (9)/90, dated 22.2.1990. Since the appellant was retired in public interest and not on superannation, he was not entitled to the benefit of 10 years practice at the Bar. Moreover, he had put in qualifying service of less than 10 years at the time of retirement. In terms of Rule 6.16 of Punjab Civil Services Rules, Vol. II, the appellant has already been granted service gratuity and death-cum-retirement gratuity as admissible to him.

7. Thus, we do not find any ground to interfere with the view taken by the learned Single Judge.

8. The appeal is dismissed.