
(2009) 09 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 13 of 2009

State of Haryana and Others

APPELLANT

Vs

Dr. (Mrs.) Sudha Seth

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Punjab Civil Services Rules — Rule 3.17A, 4.19(1), 5.32A, 6.16(2), 6.19C

Citation : (2010) 2 ILR (P&H) 989 : (2011) 161 PLR 650

Hon'ble Judges : S.D. Anand, J;J.S. Khehar, J;Hemant Gupta, J

Bench : Full Bench

Judgement

J.S. Khehar, J.—The following question of law has been referred for our consideration:

Whether a government employee on resignation forfeits his past service for purposes of pensionary benefits?

2. During the course of hearing of this case, learned Counsel for the Appellant invited this Courts attention to Rule 5.32A (a) of the Punjab Civil Service Rules, Volume II, Part I. The aforesaid Rule is being extracted hereunder:

5.32A (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.

3. Based on the aforesaid Rule, a Division Bench of this Court in Ghanshyam Dass Relhan v. State of Haryana 2007(1) S.C.R. 159, inter-alia, held as under:

We have perused the rules relied upon by the counsel representing the rival parties. In our view, Rule 5.32A is a rule specifically drawn for a situation, as the one in hand, i.e. when 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 authorized 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. Insofar 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 retired on attaining the age of superannuation and not to employees like the Petitioner who sever the relationship with their employer before the age of superannuation." The aforesaid matter was taken to the Apex Court, by the Petitioner Ghanshyam Dass Relhan. The Supreme Court delivered its judgment on 16.7.2009 (reported as - Ghanshyam Dass Relhan v. State of Haryana 2009 (3) S.C.T. 617), wherein while making a reference to Rule 5.32A (extracted above), it was concluded as under:

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." It is, therefore, apparent that the claim of retiral benefits at the hands of a government employee whose conditions of service are governed by the Punjab Civil Service Rules, stands declared at the hands of the Apex Court. Since the decision of the Apex Court was only rendered on 16.7.2009, the same could not have been brought to the notice of this Court when the instant reference was made. The issue referred must necessarily be disposed of in terms of the order passed by the Supreme Court in Ghanshyam Dass Relhan's case (supra).

4. We also consider it just and appropriate to deal, in the first instance, with Rule 6.16(2) of the Punjab Civil Service Rules, Volume II, Part I which is repeatedly the basis of a claim for pensionary benefits, at the hands of government employees, who having resigned from service on completion of qualifying service in excess of 10 years. Rule 6.16(2) aforementioned is being extracted hereunder:

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 6.19C of these rules subject to a maximum of Rs. 3,000/- per mensem. However, in the case of a Government employee who at the time of retirement has rendered qualifying service often 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 minimum of Rs. 375/- per mensem.

Based on the aforesaid rule, employees who have completed 10 years or more qualifying service, prior to severing their ties with their employer, by resigning from service, claim pensionary benefits.

5. In our considered view, the benefit of Rule 6.16(2) certainly cannot be available to an individual who had severed his relationship with his/her employer by way of resignation. The aforesaid rule is applicable only to an individual who has retired from service. The benefit of Rule 6.16(2) aforementioned can, therefore, be availed of only by a person who retires on superannuation or invalid and compassionate grounds.

6. It is also necessary for us to make a reference to Rule 3.17A(d) of the Punjab Civil Service Rules, Volume II, Part I, which has been noticed in the reference order. The instant rule has been the basis of denial of pensionary benefits to a government employee, who had resigned from service. The same is being extracted hereunder:

3.17A (d). Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of Rule 4.19(1) of the Punjab Civil Service Rules Volume II.

7. A perusal of the aforesaid rule reveals, that a government servant, who resigns from service will forfeit his past service. In other words, the entire service rendered by an employee who has severed his relationship with his employer by virtue of his resignation, stands completely forfeited, and as such, cannot be made the basis of claiming pensionary benefits.

8. The aforesaid stance of the government has to be resolved, in view of the conclusion expressed by us hereinabove, on the basis of Rule 5.32A(a) (extracted above). In our considered view, the aforesaid rule is not an absolute rule, inasmuch as, Rule 5.32A(a), extracted hereinabove, is an exception to the aforesaid rule. As such, a person who has qualifying service of a minimum of 30 years prior to tendering his resignation, will still be entitled to retiral benefits. The aforesaid retiral benefits at the discretion of the State government, can extend to an individual, who has 25 or more years of qualifying service. Rule 3.17A extracted above will, therefore, result in forfeiture of service (in a claim for pension) where the qualifying service rendered by a government employee is less than 25/30 years (as the case may be) as per Rule 5.32A (extracted above).

9. The reference extracted at the inception of this order is, accordingly, answered in the manner expressed above.

Facts of the case.

10. The Respondent Dr. (Mrs.) Sudha Seth, joined government service as a

Dental Surgeon in April, 1983. She submitted her resignation, which was accepted by the State government in December, 2001. Whether or not, the period during which she remained absent from duty with effect from 2.1.1996 to 12.9.1999 is to be excluded from the qualifying service rendered by her prior to the acceptance of her resignation, would make no difference in the facts and circumstances of this case, as she would have, even in that eventuality, rendered qualifying service to the tune of only 18 years. Since the qualifying service of the Respondent at the time of acceptance of her resignation was not 25/30 years or more, she cannot, in our view, as a matter of right, claim retiral benefits consequent upon her resignation from the government service. For determining the instant claim of the Respondent-Dr. (Mrs.) Sudha Seth, Rule 3.17A (d) will be applicable. Under the aforesaid rule, the entire service rendered by the Respondent shall stand forfeited. As such, the service rendered by the Respondent-Dr. (Mrs.) Sudha Seth cannot be taken into consideration as qualifying service for computation of pensionary benefits.

11. In view of the above, the instant Regular Second Appeal deserves to be accepted. The same is, accordingly, allowed. The judgments rendered by the trial Court, as also, by the first Appellate Court, are hereby set aside.