

(2022) 05 SHI CK 0043

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 4011 Of 2013

State Of H.P And Others

APPELLANT

Vs

Bachittar Singh And Others

RESPONDENT

Date of Decision : 13-05-2022

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 49(1), 49(3)

Citation : (2022) 05 SHI CK 0043

Hon'ble Judges : Mohammad Rafiq, CJ;Ajay Mohan Goel, J;Jyotsna Rewal Dua, J

Bench : Full Bench

Advocate : Ritta Goswami, Sanjeev Bhushan, Rakesh Chauhan

Judgement

Mohammad Rafiq, CJ

1. This reference stands received from the Division Bench of this Court in Letters Patent Appeal No. 4011 of 2013, titled as State of H.P. and another Vs. Sh. Bachittar Singh vide order dated 22.10.2019, which reads as under:-

"During the course of arguments, it transpired that there is apparent conflict between two Division Benches' judgments of this Court regarding interpretation of Rule 49 (3) of the CCS (Pension) Rules, 1972.

2. One of the (Coram: Hon'ble Mr. Justice and Hon'ble Chaudary, Judge) in Division Bench of this Court Justice Kurian Joseph, Chief Mr. Justice Dharam Chand State of Himachal Pradesh through Principal Secretary (Health) Vs. Joginder Singh, 2012 (3) Him L.R. (DB) 1288 has held as under:-

"xx xx xx Rule 49(3) of the CCS (Pension) Rules reads as follows:-

"In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service."

2. In terms of the above rule a person having three months service shall be

treated to have completed one half of service for being counted as qualifying service. Logically, a person having service of six months and above, should be treated to have completed two half years for the purpose of qualifying service. In other words, in the case of a person having service of nine years and six months, the qualifying service shall be taken as ten years and thus he shall be entitled to minimum pension. State has come up in appeal against the judgment, dated 9th March, 2010 whereby the learned Single Judge has granted relief to the petitioner to the effect that he should be deemed to be in service upto 30th June, 2008, in terms of the letter dated 25.09.2007. That letter pertains to the grant of extension of 10 months of service to complete 10 years of service. Subsequently, the same has been withdrawn. Thus aggrieved, the petitioner filed the writ petition. xx xx"

3. Notably, in the aforesaid case, the petitioner even though had put in service of nine years, nine months and five days, yet the Court had specifically held that a person having service of nine years and six months, the qualifying service shall be taken as ten years and thus he shall be held entitled to minimum pension. (see underlined portion above).

4. It was on the basis of the aforesaid judgment that learned Single Judge of this Court, vide impugned order held that the case of the petitioner herein to be covered under the said judgment since he had already rendered nine years, eight months and three days service.

5. However, when an identical question again came up for consideration before another Division Bench of this Court (Coram: Hon'ble Mr. Justice A.M. Khanwilkar, Chief Justice and Hon'ble Mr. Justice Rajiv Sharma, Judge) in CWP No. 7708 of 2012, titled as Prem Sagar Vs. State of H.P. and others decided on 11.6.2013, the Bench categorically held that the benefit under Rule 49(3) could be extended to an employee only if he has put in nine years and nine months of qualifying service, as is evident from para 3 to 5 of the judgment, which reads as under :-

"3. It is not in dispute that the petitioner has put in only nine years and seven months of service. The question is whether Rule 49 (3) of the CCS (Pension) Rules would oblige the respondents to reckon the period of service of the petitioner as complete year for determining the qualifying service. Rule 49 (3) reads thus:

"49. Amount of Pension

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service."

4. It would be apposite to also advert to the instructions issued by the

Government of India in furtherance of Rule 49 (3), which read thus:

"(2) Three months and above but less than six months treated as one-half year. - The intention of sub-rule (3) of Rule 49 is that, the period of three months and above but less than six months would be treated as a completed one-half year and reckoned as qualifying service for determining of pension. The period of nine months would, therefore, be two half years.

[D.O. No. 28 (15)/83PU, dated the 13th October, 1983, from Shri K.S. Mahadevan, Under Secretary to the Government of India, Ministry of Home Affairs, addressed to Shri P. Muthuswamy.]

(emphasis supplied)"

5. On conjoint reading of the Rule and the instructions, we have no manner of doubt that unless the employee has put in at least "nine years and nine months" of service, it would not be permissible to treat the person having completed the qualifying service of ten years. The rounding off may not be possible even if there was to be shortfall of one day. The two half years can be reckoned only if the period is nine months or more.

6. In view of the apparent conflict between the two judgments referred to hereinabove regarding the interpretation of Rule 49(3) of the CCS (Pension) Rules, 1972, the matter is required to be decided by a Larger Bench of this Court. Accordingly, the Registry is directed to place the papers before Hon'ble the Chief Justice for appropriate orders."

2. The Division Bench of this Court has thus made a reference with regard to the interpretation of Rule 49 (3) of the CCS (Pension) Rules, 1972, in view of the two conflicting judgments on the same by the Division Benches of this Court in State of H.P. Versus Joginder Singh, [2012] (3) Him. L.R. 1288 and CWP No.7708 of 2012, titled Prem Sagar Versus State of H.P. & others, decided on 11.06.2013.

3. We have heard Ms. Ritta Goswami, learned Additional Advocate General for the appellants and Shri Sanjeev Bhushan, learned Senior Counsel, assisted by Shri Rakesh Chauhan, learned counsel, for the respondents.

4. Rule 49 (3) of the CCS (Pension) Rules reads as under:-

"(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service."

5. Similarly, the Government of India's decision in terms of D.O. No. 28 (15)/83-PU, dated the 13th October, 1983, from Shri K.S. Mahadevan, Under Secretary to the Government of India, Ministry of Home Affairs, addressed to Shri P. Muthuswamy reads as under:-

"(2) Three months and above but less than six months treated as one-half year.- The intention of sub -rule (3) of Rule 49 is that, the period of three months and

above but less than six months would be treated as completed one-half year and reckoned as qualifying service for determining of pension. The period of nine months would, therefore, be two half years."

6. While interpreting the above provisions, the Division Bench in State of H.P. Versus Joginder Singh (supra) held that in the case of a person having service of nine years and six months, the qualifying service shall be taken as ten years and thus, he shall be entitled to minimum pension as, in terms of Rule 49 (3) of the CCS (Pension) Rules, if a person having three months service, shall be treated to have completed one-half of service for being counted as qualifying service, logically a person having service of six months and above should be treated to have completed two-half years for the purpose of qualifying service.

7. In the said case, the facts were to the effect that the petitioner/employee was having nine years nine months and five days of qualifying service, yet as he was not having the qualifying service of ten years, he was denied pension by the Department which decision of the Department was held to be bad by the learned Single Judge in the writ petition filed by Joginder Singh.

8. Feeling aggrieved, the Department had filed a Letters Patent Appeal, which was finally disposed of by the Division Bench in the following terms:-

"4. During the pendency of the appeal, it was noted on facts that the writ petitioner had otherwise service of 9 years, 9 months and 5 days and, therefore, this Court issued a direction as to whether in terms of Rule 49 sub rule (3) of CCS (Pension) Rules, 1972, the same could be taken as 10 years. Now, the administrative department after consultation with the Finance Department has filed affidavit, dated 6th June, 2012, wherein it has been clarified that the period of 9 years and 9 months and above should be treated as 10 years in terms of sub rule (3) of Rule 49 of CCS (Pension), Rules, 1972, as qualifying service of 10 years for the pension. In that view of the matter, it has become unnecessary to go into the merits of the writ petition. Therefore, the judgment under appeal is set aside, with a direction to the appellants to work out th relief in terms of Annexure-C, dated 2nd June, 2012 and grant eligible benefits within a period of two months from the date of production of the copy of this judgment by the petitioner before the Director of Health Services, failing which the petitioner will be entitled to interest @ 12% per annum from the date of filing of the writ petition and the officer(s) responsible for the delay shall be personally liable for the same. In the event of interest thus being paid, the matter shall be report to the Accountant General for further action."

9. In Prem Sagar Versus State of H.P. & others, CWP No.7708 of 2012-A, decided on 11.06.2013, the petitioner therein had nine years and seven months of service and the question was whether Rule 49 (3) of the CCS (Pension) Rules would oblige the respondents to reckon the said period of service of the petitioner as complete years for determining the qualifying service.

10. The Division Bench after taking into consideration the provisions of Rule 49

(3) of the CCS (Pension) Rules as well as the instructions issued by the Government of India in furtherance of Rule 49(3) held that the petitioner having completed only nine years and seven months of service would not qualify for the benefit of Rule 49 (3) so as to be treated having qualifying service for the reason that the plain language of Rule 49 (3) read with the instructions issued by the Government of India did not permit such construction.

11. For completion of record, it is necessary to mention that CWP No. 7708 of 2012-A, titled as Prem Sagar Vs. The State of H.P. and others was earlier allowed vide judgment dated 3rd January, 2013 by the Division Bench by relying upon the judgment in LPA No. 285 of 2010, titled as State of H.P. and another Vs. Joginder Singh, decided on 22.06.2012. However, a review petition, i.e., Review Petition No. 4004 of 2013, titled as State of H.P. & others Vs. Prem Sagar preferred against the said judgment by the State was allowed by the Division Bench on 11th June, 2013 and the writ petition was ordered to be restored to the file. Pursuant thereto, the matter was heard afresh and the writ petition was dismissed in terms of judgment dated 11.06.2013, already referred to hereinabove. For the purpose of record, it is also pertinent to mention that before the abovementioned review petition was allowed, another Division Bench of this Court in CWP No. 8786 of 2012-I, titled as Lashkari Ram Vs. State of H.P. and others, decided on 8th May, 2013, while following the earlier judgment passed by the Division Bench in Prem Sagar Vs. State of H.P. and others, decided on 3rd January, 2013, held that an incumbent, who had put in 9 years and 8 months service, would be deemed to have rendered 10 years service, which qualifies him for pension.

12. Before proceeding further, it is necessary at this stage to refer to Rule 49 (1) of the CCS (Pension) Rules also. This sub-rule deals with the amount of pension and the same reads as under:-

“(1) Final amount of service gratuity to be rounded off to the next higher rupee- With a view to simplifying the procedure for payment of service gratuity as admissible under Rule 49(1) of the CCS (Pension) Rules, 1972, it has been decided that the amount of service gratuity as finally calculated should be rounded off to the next higher rupee.”

13. A plain reading of the said Rule demonstrates that sub-rule (1) thereof stipulates that in the case of a Government servant retiring in accordance with the provisions of CCS (Pension) Rules, before completing qualifying service of ten years, the amount of gratuity payable to such Government servant, shall be calculated at the rate of half months emoluments for every completed six monthly period of qualifying service. Thus, the period of six monthly qualifying service is taken as one unit to calculate the service gratuity. It is in continuation thereof, that sub-rule (3) of Rule 49 provides that in calculating the length of of qualifying service, fraction of a year equal to three months and above shall be treated as completed one-half year and reckoned as qualifying service. If one has to correctly understand the import of Rule 49 (3), then one has to read it

harmoniously with Rule 49 (1). Sub-rule (3) only clarifies as to how fraction of a year equal to three months and above has to be construed while reckoning the qualifying service for the purpose contemplated under Rule

49. It states that for the purposes of taking into consideration the service put in by an incumbent which does not amount to one full calendar year, how said period has to be calculated for determining the qualifying service. All that this sub-section provides is this that fraction of a year equal to three months and above shall be treated as completed one-half year and reckoned as qualifying service. To understand it better, the following four illustrations are given:-

"1. Candidate 'A' superannuates after putting in nine years two months and twenty nine days of service;

2. Candidate 'B' superannuates after putting in nine years three months of service;

3. Candidate 'C' superannuates after putting in nine years eight months and twenty eight days of service; and

4. Candidate 'D' superannuates after putting in nine years and nine months of service."

14. In the case of the first candidate who has put in nine years two months and twenty nine days of service, for the period of qualifying service of nine years, the gratuity shall be calculated by taking each six months as a unit, meaning thereby that for nine years, the petitioner gets eighteen six monthly period/units. In addition to the nine years of service, such a candidate has also put in two months and twenty nine days of service. However, as this service rendered by the candidate does not amount to fraction of a year equal to three months and above, therefore, he does not get any benefit of this service rendered by him and for the purposes of calculating the gratuity etc., his service has to be construed as having put in eighteen six monthly period/units with the Department.

15. Now, coming to the second candidate who has completed nine years and three months of service, he will get eighteen six monthly period/units for nine years of service and as thereafter, he has put in three months of service, the same shall be treated as a completed one-half year and reckoned as qualifying service, meaning thereby that for the purpose of calculating gratuity etc., such an incumbent would be deemed to have put in nineteen six monthly period/units of qualifying service. However, still such an incumbent cannot get the benefit of pension because even by giving him this benefit, in all, he gets only nineteen blocks of six monthly period of qualifying service, which do not constitute ten years.

16. Now, coming to the third candidate, who has completed nine years eight months and twenty eight days of service, such an incumbent will get nineteen six monthly period of qualifying service for having put in nine years and six months of service but for the remaining period of two months and twenty eight

days, he will not get any benefit as this does not amount fraction of a year more than three years. Therefore, such an incumbent also cannot be held entitled for service for want of completed qualifying service.

17. Now, when we come to the fourth incumbent, who has completed nine years and nine months of service, such a candidate will get nineteen six monthly units of qualifying service and in addition as he has put in three months of service thereafter, this fraction of a year of three months shall be treated as a completed one-half year and reckoned as a qualifying service so as to take the completed six monthly units of qualifying service of said incumbent to be twenty in numbers. As these six monthly period of qualifying service become twenty in numbers and each group comprises of six monthly period, then, but natural, the incumbent will be held entitled to receive pension as twenty complete six monthly period of qualifying service means ten years of service.

18. Therefore, it is evident that in terms of the provisions of Rule 49 (3) of the CCS (Pension) Rules, an incumbent can get the benefit of qualifying service for the fraction of a year equal to three months and above for pension provided such an incumbent has put in more than nine years and nine months of service.

19. Hon'ble Supreme Court of India in Union of India and others Versus Gandiba Behera, 2019 SCC Online SC 1444, while dealing with a similar situation, has been pleased to hold that on a plain reading of the Rule 49 (3) of the CCS (Pension) Rules, it was evident that the Rule contemplated one time benefit in case of service of more than three months in fraction of a year and it rejected the contention that if within a period of one year an employee has served more than six months, then employment term ought to be computed as twice the period and one year in two branches and one year ought to be added to the service. This contention was rejected by the Hon'ble Supreme Court while holding that the provisions of Rule 49 (3) of the CCS (Pension) Rules contemplated one time benefit in case of service of more than three months in fraction of a year.

20. It is relevant to refer to the provisions of the Swamy's Hand Book, 2018 in this regard, which also refer to 'rounding off' and provides as under:-

"8. Rounding off- Qualifying service of pension/gratuity is calculated and expressed in completed half-years. Fractions equal to three months and above shall be treated as one half-year. Fraction of less than 3 months will be ignored, e.g.-

Period of Service

Six-

Period of Service

Six- monthly periods

Years

Month s

Day s

monthly periods

Years

Months

Day s

9

19

24

32

8

8

7

5

29

20

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(Swamy's Hand Book, 2018, Section 24 Clause-III)

21. Thus, it is evident from what has been discussed hereinabove, that Rule 49 (1) of the CCS (Pension) Rules has to be construed harmoniously with Rule 49 (3) thereof and when one reads the said provisions with the clarifications which have been given by the Department of Personnel, dated 13.10.1983, the only conclusion which can be drawn is that an incumbent who has not completed ten years of service and is thus not qualified for receiving pension, can be held to be entitled to the said benefit only if such an incumbent has put in more than nine years nine months of service in the respondent-Department. Any view taken to the contrary will do injustice with the letter and spirit of the provisions of Rule 49 (1) and Rule 49 (3) of the CCS (Pension) Rules.

22. Accordingly, we hold that the view which has been taken by the Division Bench in CWP No.7708 of 2012, titled Prem Sagar Versus State of H.P. & others (supra) is the correct view with regard to the interpretation of Rule 49(3) of the CCS (Pension) Rules, 1972, whereas, the view which has been expressed by the Division Bench in State of H.P. Versus Joginder Singh, [2012] (3) Him. L.R. 1288 (supra), so also in CWP No. 8786 of 2012-I, titled as Lashkari Ram Vs. State of H.P. and others, decided on 8th May, 2013 cannot be treated as the right precedent, especially in view of the judgment of the Hon'ble Supreme Court in Union of India and others Versus Gandiba Behera, 2019 SCC Online SC 1444. Reference is answered accordingly.