
21. In view of the above, we quash the advertisement (Annexure P4) through which the applications for the posts of 400 Staff Nurses were invited. All the writ petitions are allowed. The respondents are, therefore, directed to offer appointment to the petitioners on regular basis on the same terms and conditions as mentioned in advertisement dated 31st August, 2004. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order No. order as to costs.

R.N.R.

Before Ashutosh Mohunta and R. S. Madan, JJ.

OM PARKSAH,—*Petitioner*

versus

THE FINANCIAL COMMISSIONER AND PRINCIPAL
SECRETARY TO GOVERNMENT OF HARYANA
AND OTHERS,—*Respondents*

C.W.P. NO. 10953 OF 2006

29th January, 2007

Constitution of India, 1950—Art.—226—Haryana Public Service Commission (Conditions of Service) Regulations, 1973—RI.5—Punjab Civil Services Rules, Vol.II (as applicable to Haryana)—Rls.4.19(b) and 6.16(2)—Acceptance of resignation of a District Attorney—Request for treating resignation as deemed retirement—Rejection of—Petitioner served department for about 13½ years—Whether entitled to pension and retiral benefits—Held, yes—Petitioner held entitled to pensionary benefits as provided under Rule 6.16 (2)—Petition allowed.

Held, that the petitioner who has resigned from the post of District attorney is entitled to the proportionate pension with respect to the services he has served i.e. 13 years 6 months and 25 days. He

is thus, entitled to the benefits as per provisions 6.16 (2) of the Punjab Civil Services, Vol. II.

(Para 7)

Bhoop Singh, Advocate for the petitioner.

Anmol Rattan Sidhu, Additional Advocate General, Haryana
with Deepak Jindal, Assistant Advocate General, Haryana.

JUDGEMENT

R. S. MADAN, J.

(1) The claim of the petitioner is that on 14th January, 1991, he joined as Deputy District Attorney with the Department of Director, Prosecution Haryana and later on he was promoted as Districtal Attorney in the Prosecution Department, Haryana after depositing one month's salary and his resignation was accepted on 9th August, 2004. On 10th August, 2004, he was appointed as Member of the Haryana Public Service Commission,—*vide* Haryana Government Notification dated 10th August, 2004 (Annexure) P1). It was on 23rd August, 2004, the petitioner wrote a letter to respondent No. 1 stating there in that his resignation be treated as deemed retirement in view of the provisions of Rule 5 of the Haryana Public Service Commission (Conditions of Service) Regulations, 1973 and Rule 4.19(b) of Civil Services Rules, Vol-II and emoluments deposited may be refunded to him.

(2) On 1st June, 2005, the petitioner again sent a letter to respondent No.1 requesting to refund the emoluments deposited by him in lieu of one month's notice. The petitioner further stated that he had served the Department for 13 years 6 months and 25 days as such he is entitled to pension, gratuity and other retiral benefits as per provisions of Rule 6.16(2) of the Punjab Civil Service Rules, Volume-II as applicable to the State of Haryana. *Vide* letter, dated 7th July, 2005, the petitioner's request was declined. This led to filing of the present petition by the petitioner.

(3) Upon notice, the respondents resisted the claim by filing a joint written statement on behalf of respondents No. 1 and 2.

(4) The claim of the petitioner was, however, rejected by respondents,—*vide* Annexure P8, which is reproduced as under :

“From

The Financial Commissioner and Principal
Secretary to Government, Haryana,
Administration of Justice Department.

To

The Director, Prosecution, Haryana,
Panchkula.

Memo No. 27/21/2004-2JII.

Dated, the Chandigarh : 28th April, 2006.

Subject : Regarding resignation from service by Shri Om Parkash,
Ex.District Attorney.

With reference to your Memo No.E/4/134-A.P.(1)-06/2880,
dated 22nd February, 2006 on the subject cited above.

It is regretted that the Government is unable to accede to your
proposal.

(*Sd.*) . . . ,

Superintendent Jails And Judicial,
For : Financial Commissioner And Principal
Secy. to Government Haryana,
Adminstration of Justice Department

DIRECTORATE OF PROSECUTION HARYANA

Endorsement No. A/3/134-AP(1)-06/7543, dated 11th May, 2006.

A copy of forwarded to Shri Om Parkash, Ex. District Attorney,
Member, Haryana Public Service Commission, Haryana, Chandigarh
with reference to his representation dated 1st June, 2005.

(*Sd.*) . . . ,

For : Director of Prosecution
Haryana 9th May, 2006”

(5) Learned counsel for the petitioner has placed reliance on **Mehar Singh versus State of Punjab (1)** wherein this Court in para 7 of the judgement held that since the petitioner resigned after he had put in more than 10 years of service, he is entitled to pension and other retiral benefits as premature retirement from service and voluntary resignation from service will have the same effect i.e. one is retiring.

(6) Learned counsel further referred to the judgement passed in **Haryana State versus Madan Pal Ahlawat (2)** wherein his Lordship Hon'ble Mr. Justice SS Nijjar while dealing with considered Rule 4.19(a) and 6.16(2) observed that Rule 4.19(a) of Punjab Civil Services Rules Vol. II Part II would apply only in cases where a resignation is submitted by a government servant to avoid an order of dismissal or removal from service either under proviso C to Article 311(2) for anti-national activities as sabotage, espionage etc. for misconduct. This provision cannot possibly be made applicable to a voluntary resignation from service for domestic reasons. Even in case of resignation, the case would clearly fall under Rule 6.16(2) of the Rules. Since the respondent resigned from service due to domestic reasons having put in more than 10 years of service, he was clearly entitled to proportionate pension as provided under Rule 6.16(2).

(7) After considering the observations made in **Mehar Singh (supra)** and **Haryana State versus Madan Pal Ahlawat (supra)**, we are of the view that the petitioner, who has resigned from the post of District Attorney is entitled to the proportionate pension with respect to the services he has served i.e. 13 years 6 months and 25 days, as is applicable to the State of Haryana. He is thus entitled to benefits as per provisions 6.16(2) of the Punjab Civil Services, Volume-II (as applicable to State of Haryana).

(8) We, therefore, allow the present writ petition and quash Annexure P8. The retiral benefits i.e. Pension, gratuity and leave encashment etc. be made payable to the petitioner within four months from the date of passing of this order.

R.N.R.

(1) 2003(2) R.S.J. 344

(2) 2003(1) R.S.J. 490