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*Before Jawahar Lal Gupta & Balwant Rai, JJ.*

SHANGARA SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. NO. 19035 of 96

10th September, 1997

*Constitution of India, 1950—Arts. 226/227—Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981—Retirement Benefit Scheme, 1992—Voluntary retirement/resignation—Voluntary retirement sought by depositing one month's salary in lieu of notice—Denied retiral benefits on the ground that the petitioner resigned from service and thus, forfeited entire service—Not tenable—Scheme does not provide that pension is not admissible to a person who has resigned from service.*

*Held*, that the respondents have invoked the provisions of Rule 7.5 of the Punjab Civil Services Rules, Volume I, Part I to deny the benefit of the pension scheme to the petitioner. This rule provides that "resignation from a service or a post, unless it is allowed to be withdrawn in public interest by the appointing authority, entails forfeiture of past service." There is no rule for reading this provision into the Pension Scheme which is a complete Code. The Scheme provides under clause 8 that "an employee shall be entitled for pension under the Scheme only after he completes ten years (twenty half years) qualifying service." Under Clause 6, the provision for qualifying service has been made. The service which is on an aided post on regular basis counts as qualifying service. It is to be taken into account with effect from the date "an employee started contributing towards the contributory Provident Fund." The petitioner had admittedly started contributing towards the Contributory Provident Fund on April 1, 1969. He had continued to do so till March 30, 1991. He had, thus, completed more than 10 years of qualifying service. The Scheme is comprehensive. It does not specifically provide that the pension is not admissible to a person who had resigned from the service. Admittedly, the petitioner had exercised his option in accordance with the provisions of Clause 4. His case had been duly forwarded by the authorities to respondent No. 2. The respondents had not at any stage refunded the amount of Contributory Provident Fund deposited by the petitioner as far back as in 1992-93. In view of these facts, there appears to be no justification for declining the relief of retiral benefits to the petitioner.

(Para 10)

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Rajiv Narain Raina, Advocate, for the petitioner.

A.G. Masih, AAG, Punjab for respondents No. 1 to 3.

D.V. Sharma, Advocate for NO. 4.

### JUDGMENT

*Jawahar Lal Gupta, J.*

(1) The petitioner who was working as a teacher, has filed this petition with a prayer for the issue of a writ of mandamus directing the respondents to release his pension and other retiral benefits. The respondents contest the petitioner's claim primarily on the ground that he had resigned and was not retired. Consequently, he has forfeited the entire service of more than 23 years as rendered by him. Thus, he is not entitled to any retiral benefits. Is it so? A few facts may be noticed.

(2) The petitioner had joined service as a Master with the Public High School—Respondent No. 4 on August 1, 1967. This is an aided school. He alleges that on March 30, 1991, he had sought voluntary retirement by depositing one month's salary in lieu of notice on account of his failing eye sight. His request was accepted. While working in the school, his conditions of service were governed by the provisions of the Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979 and the Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981. In exercise of the powers conferred by Section 15 of the Act and the rules, the Government of Punjab had promulgated a Retirement Benefit Scheme,—*vide* notification, dated February 12, 1992. This scheme was enforced with effect from February 5, 1987. The petitioner had exercised option in terms of clause 4 of the Scheme for the grant of pension. He had also given an undertaking on May 25, 1992. This option was duly counter-signed by respondent No. 3 on August 7, 1992. The petitioner further alleges that at the time of his retirement, he had not drawn the employer's share of the contributory provident fund lying in his account which was duly transferred to the Government Treasury. The petitioner's papers for release of pension were sent by the School to respondent No. 3,—*vide* letter dated June 16,

1993. The case was duly forwarded to the Director. In spite of reminders, the petitioner's claim was not decided. In view of his failing eye-sight, he was not in a position to effectively pursue his case. As and when "his health permitted and he found a friend to accompany him, he visited the office of the second respondent (the Director) and met officials there to enquire about his case....but could not get any help." He even sent registered letters to various authorities. Having failed to get any relief, the petitioner has filed this petition for the release of the benefits as envisaged under the Scheme viz. superannuation pension, gratuity, family pension, invalid pension, compensation pension, compassionate allowance and retiring pension. He prays that the respondents be directed to release these benefits with interest and that he be also awarded damages for the harassment and delay caused to him.

(3) A written statement has been filed on behalf of respondent Nos. 1 to 3 by the District Education Officer, Kapurthala. It has been *inter alia* averred that the petitioner had "submitted his resignation on 27th March, 1991 which was duly accepted by the competent authority on 30th March, 1991....and the same was not withdrawn by the petitioner. As the petitioner has resigned from the service, so he is not entitled for any pensionary benefits under the Scheme....." The petitioner has not taken voluntary retirement but has resigned. It has been admitted that the petitioner had given his option and undertaking on May 25, 1992 but he "could not exercise the option because he had already resigned from post against which he is asking for grant of pension....." It has been stated that "contributory provident fund has been deposited by the petitioner at his own discretion on 15th July, 1992 and 21st December, 1993 respectively after resignation i.e. 27th March, 1991 in Government Treasury....." On these premises, the respondents maintain that the writ petition deserves to be dismissed. Alongwith the written statement, the respondents have produced a copy of the alleged resignation as Annexure R/1.

(4) A separate written statement has been filed on behalf of respondent No. 4 by the Head Mistress of the School. The sequence of events has been given in detail.

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(5) The petitioner has filed a replication. He has reiterated his claim. He has produced an extract from the Service Book to support the claim that he had retired from service.

(6) Counsel for the parties have been heard.

(7) The short question that arises for consideration is—Has the petitioner forfeited his right to the grant of retiral benefits as envisaged under the Scheme promulgated in the year 1992?

(8) The petitioner had admittedly joined service on August 1, 1967. A perusal of the document at Annexure R-4/1 produced with the written statement of the fourth respondent shows that the petitioner had given one month's notice on March 20, 1991 "for leaving" his job. Thereafter, on March 27, 1991, he had written to say that "now the problem of my eyes has worsened and I feel it difficult to teach the school nor I can do real justice with children. Therefore, my notice dated 20th March, 1991 for leaving service may kindly be treated as cancelled and I am leaving my job with 24 hours' notice from today i.e. 27th March, 1991. My resignation may kindly be accepted." The actual letter had been written by the petitioner in Gurmukhi. It is the use of the word 'Asteefa'—resignation in the last sentence of the letter that is sought to be made the basis for denying the benefit to the petitioner. Can it be so construed?

(9) Apparently, the petitioner was conscientious worker. He had sought permission "to leave" the service on account of his failing health and his "inability to do justice with the children". He was under no cloud. There was no allegation against him. He was not leaving the service to avoid any adverse consequences. Still further, at that time, even the Scheme for the grant of pension had not been promulgated. The respondents did not treat the petitioner as having actually retired. In fact, the following entry was made in his Service Book:—

"The incumbent retired from service,—vide Manager order dated 30th March, 1991 with effect from 30th March, 1991 afternoon due to his ill health. His eye sight did not stand to the satisfaction of the status of

teacher. He himself applied for retirement with twenty four hours' notice. One month's pay was deposited by him...."

If the respondent themselves understood the petitioner's request to mean that he was seeking retirement, it cannot be said that he would not be entitled to the retirement benefits as claimed by him. Besides this, the petitioner had not even withdrawn the employer's share out of the amount of money deposited in his Provident Fund Account. He had clearly exercised his option within the prescribed time after the promulgation of the Pension Scheme. This option was duly forwarded by one respondent to the other. The Government Treasury had accepted the petitioner's deposit of the employer's share of the Provident Fund. Taken cumulatively and in the facts and circumstances of this case, it appears that the action of the respondents in denying the benefits admissible to the petitioner under the 1992 Scheme is wholly arbitrary and unfair.

(10) The respondents have invoked the provisions of Rule 7.5 of the Punjab Civil Services Rules, Volume I Part I, to deny the benefit of the pension scheme to the petitioner. This rule provides that "resignation from a service or a post, unless it is allowed to be withdrawn in public interest by the appointing authority, entails forfeiture of past service." There is no rule for reading this provision into the Pension Scheme which is a complete Code. The Scheme provides under Clause 8 that "an employee shall be entitled for pension under the Scheme only after he completes ten years (twenty half years) qualifying service." Under Clause 6, the provision for qualifying service has been made. The service which is on an aided post on regular basis counts as qualifying service. It is to be taken into account with effect from the date "an employee started contributing towards the Contributory Provident Fund." The petitioner had admittedly started contributing towards the Contributory Provident Fund on April 1, 1969. He had continued to do so till March 30, 1991. He had, thus, completed more than 10 years of qualifying service. The Scheme is comprehensive. It does not specifically provide that the pension is not admissible to a person who had resigned from the service. Admittedly, the petitioner had exercised his option in accordance with the provisions

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of Clause 4. His case had been duly forwarded by the authorities to respondent No. 2. The respondents had not at any stage refunded the amount of Contributory Provident Fund deposited by the petitioner as far back as in 1992-93. In view of these facts, there appears to be no justification for declining the relief of retiral benefits to the petitioner.

(11) In view of the above, the writ petition is allowed. The respondents are directed to determine the amount due to the petitioner on account of the retiral benefits as envisaged under the Scheme within three months from the date of receipt of a copy of this order. The petitioner shall be entitled to the payment of the amount found due with interest @ 12% from May 15, 1992 (after allowing three months to the respondents from the date of the promulgation of the Scheme) till the date of actual payment. He will also be entitled to his costs which are assessed at Rs. 5,000/-.

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*J.S.T.*