

Before Hon'ble I. S. Tiwana & J. L. Gupta, JJ.

STATE OF PUNJAB AND ANOTHER,—Petitioners.

versus

HANS RAJ MITTAL,—Respondent.

Letters Patent Appeal 2054 of 1989.

October 29, 1991.

Letters Patent Appeal 1919, Clause X—Constitution of India 1950—Art. 309—Punjab Civil Service Rules, Volume-II—Rl. 3.17(A)—Respondent served with petitioner since September 6, 1954 till June 27, 1977—In October 1974 he resigned service to take up another appointment under the Government with its permission—Stand of Government that respondent having resigned from Government service and is not entitled to grant of pension not tenable—Respondent entitled that such period of service preceding resignation to be counted towards determination of pension.

Held, that the respondent was working in the Education Department since September 6, 1954 and he had submitted his resignation only for the purpose of joining an appointment under the Government. This appointment as Chairman of the Board had been made by the Government itself. The appointment having been made by the Government itself, "the proper permission" as contemplated under the rules was impliedly there. In this situation, we are of the considered view that the case of the respondent fell within the exception carved out in sub-clause (v). The respondent had resigned to take up another appointment under the Government with its permission and as such the period of service preceding the resignation had to count as qualifying service for the determination of pension.

(Para 7)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Single Judge Mr. Justice Harbans Singh Rai, passed in the Civil Writ Petition No. 4606 of 1982 on 11th September, 1989.

S. S. Saron, D.A.G. Punjab, for the Appellant.

R. L. Sharma, Advocate, for the Respondent.

JUDGMENT

Jawahar Lal Gupta, J.

The respondent herein served the State of Punjab from September 6, 1954 to June 27, 1977. His claim for pension and

other retirement benefits having been declined by the State of Punjab, he filed a writ petition in this Court, which was allowed by the learned Single Judge,—*vide* his judgment of September 11, 1989. Aggrieved by the judgment of the learned Single Judge, the State of Punjab has come up in this appeal.

(2) A few facts may be noticed. The respondent was appointed as a teacher on September 6, 1954. On September 13, 1960, he was promoted to the rank of a Master. At the expiry of one year, he was confirmed with effect from September 12, 1961. On October 1, 1966, the respondent was appointed as a Lecturer. On February 12, 1972, he was promoted to the post of Headmaster. On September 23, 1974, he was appointed to the Punjab Education Service Class-II. While he was working in Class-II, the respondent was appointed as Chairman of the Punjab Subordinate Service Selection Board (hereinafter referred to as 'the Board'),—*vide* orders dated October 15, 1974. The terms of appointment were also notified under Article 309 of the Constitution by a notification of the same date, viz. October 15, 1974. On having joined as Chairman of the Board, the respondent sought premature retirement from government service. When his request in this behalf was not accepted by the State Government, he submitted a resignation,—*vide* his letter dated May 23, 1975. On December 2, 1975, the resignation tendered by the respondent was accepted by the State Government with effect from May 29, 1975. Even though the respondent had not yet completed the requisite term of three years for which he had been appointed as Chairman of the Board, his services as such were terminated,—*vide* orders dated June 27, 1977. On August 17, 1977, he applied for the grant of pension. Repeated reminders and representations having elicited no response, he approached this Court through C.W.P. No. 464 of 1982 and prayed for the issue of an appropriate writ, direction or order declaring that he was entitled to the payment of pension and gratuity.

(3) The learned Single Judge having upheld the claim of the respondent, the State of Punjab has filed the present appeal.

(4) Mr. S. S. Saron, learned Deputy Advocate General appearing for the appellants has contended that the respondent having resigned from Government service and his resignation having been accepted with effect from May 29, 1975, the period of service from September 6, 1954 to May 29, 1975 does not qualify for the grant of pension. Further the services of the petitioner having been terminated on June 27, 1977, no claim for the grant of pension whatsoever was made out. In support of his contention, the learned counsel has

relied on the provisions of Rule 3.17-A (v). Mr. R. L. Sharma, on the other hand, has contended that under the rules, the claim for pension etc. has been rightly upheld by the learned Single Judge.

(5) The relevant provisions deserve to be noticed. Rule 3.17-A (v) of the Punjab Civil Services Rules, Vol. II provides as under :—

“3.17-A (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service :—

(i) to (iv) xx xx xx

(v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government where service qualifies for pension.”

(6) In addition to the above, the terms and conditions of service of the respondent were prescribed under the Proviso to Article 309 of the Constitution by a notification dated October 15, 1974. The terms and conditions were thus statutory. Rule 6 of this notification provides as under :—

“6. *Pension.*—A person who immediately before the date of assuming office as Chairman or member was in the service of the State Government shall be deemed to have retired from service on the date of superannuation and his service as Chairman or member upto the said date, shall be reckoned continuing approved service counting for pension in the service to which he belonged.”

(7) On a perusal of Rule 3.17-A(1), we find that “all service rendered on establishment, interrupted or continuous” has to count for pension. Sub-clause (v) contains an exception. It excludes the service preceding the resignation. However, there is an exception even to this exclusion. In a case where a resignation is allowed to be withdrawn in public interest, the exception contained in sub-clause (v) is not attracted. Similarly, in a case where resignation has been submitted to take up “with proper permission, another

appointment whether temporary or permanent under the Government....." the service preceding the resignation shall count for computation of pension. In the present case, the respondent was working in the Education Department since September 6, 1954 and he had submitted his resignation only for the purpose of joining an appointment under the Government. This appointment as Chairman of the Board had been made by the Government itself. The appointment having been made by the Government itself, "the proper permission" as contemplated under the rules was impliedly there. In this situation, we are of the considered view that the case of the respondent fell within the exception carved out in sub-clause (v). The respondent had resigned to take up another appointment under the Government with its permission and as such the period of service preceding the resignation had to count as qualifying service for the determination of pension.

(8) A perusal of Rule 6, as contained in the notification of October 15, 1974, further shows that a person, like the respondent, who immediately before the date of assuming office as Chairman was in the service of the State Government is to be "deemed to have retired from service on the date of superannuation....." This provision, in our view, has been made to ensure that the legitimate claim to pension etc. which has been earned by a person is not defeated. It introduces a fiction in as much as it provides that the person concerned "shall be deemed to have retired from service on the date of superannuation." This might have entitled the respondent to claim that by legal fiction he is deemed to have continued in service till he attained the age of superannuation. viz. 58 years. However, no such claim having been made in the writ petition or before the learned Single Judge, we do not consider it necessary to go into the matter any further. However, a perusal of the rule further shows that the respondent "service as chairman upto the said date (which in our opinion is the date on which he attained the age of superannuation) shall be reckoned as continuing approved service counting for pension in the service to which he belonged." In view of this provision, the respondent's service as Chairman from October 15, 1974 till June 27, 1977 has to be considered as a part of the service to which he belonged i.e. P.E.S. Class-II. Consequently, under the provisions of Rule 3.17-A and Rule 6, the respondent's service from September 6, 1954 to June 27, 1977 qualifies for pension and other retirement benefits. We are of the considered view that the finding recorded by the learned Single Judge is in strict conformity with the rules and cannot be assailed on any of the grounds urged by the learned counsel for the appellant.

(9) Mr. Saron has contended that under the provisions of Rule 2 of the 1974 Rules, the respondent had drawn salary at the rate of Rs. 1,500 after having resigned from Government service. According to the learned counsel, a serving Government employee would have only earned a special pay of Rs. 200 per mensem in addition to the pay he was drawing while working on his original post. The pay drawn by a Chairman in our view is wholly irrelevant for the purpose of determining the qualifying service. The provisions of Rule 6 are in no way controlled by the terms and conditions relating to the grant of pay.

(10) We consequently find no merit in this appeal, which is hereby dismissed. We direct that the retirement benefits of the respondent shall be worked out on the basis that he rendered qualifying service from September 6, 1954 to June 27, 1977. The admissible arrears shall be worked out and paid by the appellants to the respondent within three months from the date of the receipt of a copy of this order. In the circumstances of the case, we limit the award of interest on these arrears from the date of the decision of the case by the learned Single Judge, viz. September 11, 1989. The appellants shall pay interest to the respondent at the rate of 12 per cent per annum from September 11, 1989 to the date of actual payment of the arrears. Thereafter, the amount shall be paid every month in accordance with law. We, however, make no order as to costs.

J.S.T.

Before Hon'ble J. L. Gupta, J.

SMT. AVTA SAHA,—Petitioner.

versus

CANARA BANK AND ANOTHER—Respondents.

Civil Writ Petition No. 14219 of 1991.

July 28, 1992.

Constitution of India, 1950—Arts. 24, 16 & 226—Bank appointing agent under the New Nitua Nidhi Scheme—Terms and conditions of such appointment—Agent not subject to the control and direction of the Bank in respect of the manner in which to work—Agent not required to attend office at fixed time every day—Whether such agent an employee of the bank—Widow of such agent claiming employment on compassionate grounds—Can such employment be claimed as a matter of right.