

Before Ranjit Singh, J.

STATE OF PUNJAB AND ANOTHER,—Appellants

versus

SHAMSHER SINGH,—Respondent

RSA No. 4811 of 2004

12th March, 2010

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Vol.II Part I—Rls. 3.17A(d) and 6.16(2)—Resignation from service by a Constable after rendering about 16 years service—Whether a person on resignation from service is entitled to pension and pensionary benefits—Held, no—Benefit of Rl. 6.16(2) entitling an employee to pensionary benefits on completion of qualifying service in excess of 10 years not available who severed his relationship with his employer by way of resignation—Rl.3.17A(d) provides that a Government servant on resignation from service forfeits his past service for purposes of pensionary benefits—Appeal allowed, judgment of trial Court holding respondent not entitled to pension restored.

Held, that it was on the basis of Rule 6.16(2) of the Punjab Civil Service Rule that the employees used to stake their claims for grant of pensionary benefits, even after resigning from the service. The Hon'ble Full Bench of this Court in State of Haryana and others versus Dr. (Mrs.) Sudha Seth, has taken a clear view that benefit of this Rule is not available to an individual who had severed his relationship with his/her employer by way of resignation. This rule was held applicable only to individual who had retired from service. It is accordingly held that benefit of this Rule can be availed only by a person who retires on superannuation or on compassionate grounds or on being declared invalid. Rule 3.17 A (d) of Punjab Civil Services Rule provides that a Government servant who resigns from service will forfeit his past service. It is accordingly observed that the entire service rendered by an employee who had severed his relationship with his employer by virtue of resignation would stand completely forfeited and as such, cannot be made basis for claiming benefits. No case for grant of pension is made

out. The respondent-plaintiff had only rendered about 10 years of service and had resigned. He would, thus, not be entitled to pension in view of the law laid down.

(Paras 8, 9 & 11)

Ms. Ambika Luthra, AAG, Punjab, *for the appellants.*

Dharampal, Advocate, *for the respondent.*

RANJIT SINGH, J.

(1) The respondent-plaintiff had filed a suit for declaration to the effect that the act of the appellants in not granting pension, gratuity and other service benefits to him was illegal and he was entitled to receive the same with interest at the rate of 12% per annum alongwith other consequential reliefs.

(2) The suit filed by the respondent-plaintiff was dismissed against which he filed an appeal, which was allowed. The said judgment is now impugned through the present Regular Second Appeal.

(3) The conceded factual position is that respondent-plaintiff was enrolled as Constable in Punjab Police on 26th June, 1953 and had submitted his resignation due to unavoidable family circumstances, which was accepted on 29th April, 1969. The respondent-plaintiff would accordingly plead that he had rendered more than 10 years of service in Police Department and, thus, was entitled to all service benefits of pension and gratuity. He had approached the appellant officials for release of his retiral benefits but no decision was communicated to him in this regard. The respondent-plaintiff accordingly served a notice under Section 80 CPC on 11th September, 2001 and thereafter filed the suit on 19th November, 2001. The appellants contested the suit by filing a written statement, raising preliminary objection regarding maintainability of the suit and also on the ground that it was time barred. The service details of the respondent-plaintiff were otherwise admitted and so too the fact that he had submitted his resignation on 28th April, 1969, which was accepted on 29th April, 1969 by the competent authority. As per the appellants, the respondent-plaintiff was not entitled to any service benefits in terms of Rule 3.17-A (1) (v) of C.S.R., Volume I and II as he had submitted his resignation voluntarily. The suit filed by the respondent-

plaintiff was dismissed, against which he filed an appeal. The Appellate Court allowed the appeal and decreed the suit entitling the respondent-plaintiff to all pensionary benefits alongwith simple rate of interest at 10% per annum from the date of filing the suit till realisation.

(4) The State has accordingly filed appeal against this order, The State counsel would plead that a substantial question of law would arise in this case as to whether the person would be entitled to pension and pensionary benefits even when he has voluntarily resigned from the service.

(5) Learned counsel for the appellant submits that the issue of grant of pension in the event of resignation has now been settled by Full Bench decision of the Court in **State of Haryana and others versus Dr. (Mrs) Sudha Seth** in R.S.A. No. 13 of 2009 decided on 18th September, 2009. The question of law that was referred to consideration for Full Bench was :—

“Whether a Government employee on resignation forfeits his past service for purposes of pensionary benefits ?”

(6) Rule 5.32-A(a) of Punjab Civil Services Rules, Volume II, Part 1 and the Division Bench Judgment of this Court in **Ghanshyam Dass Relhan versus State of Haryana (1)** were cited before the full Bench and also the fact that the decision in Ghanshyam Dass Relhan’s case (supra) was taken to the Hon’ble Supreme Court, where the Hon’ble Supreme Court, while upholding the view of this Court has held as under in a case reported as **Ghanshyam Dass Relhan versus State of Haryana (2)**

“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.”

(1) 2007 (1) SCR 159

(2) 2009 (2) S.C.T. 617

(7) The Full Bench accordingly observed that this case decided by the Hon'ble Supreme-Court on 16th July, 2009 apparently was not brought to the notice of the Bench of this Court, which had made reference to the Full Bench. The Court accordingly observed that the case has now necessarily to be disposed of in terms of **Ghanshyam Dass Relhan's case** (*supra*). The Full Bench also thought it appropriate to deal with Rule 6.16 (2) of the Punjab Civil Service Rules, which was repeatedly made the basis for claim for pensionary benefits by Government employees, who had resigned from the service on completion of qualifying service in excess of 10 years. The Rules 6.16 (2) may be reproduced for ready reference :—

“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 of ten 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.”

(8) It was on the basis of the Rule that the employees used to stake their claims for grant of pensionary benefits, even after resigning from the service. The Hon'ble Full Bench has taken a clear view that benefit of this Rule is not available to an individual who had severed his relationship with his/her, employer by way of resignation. This Rules was held applicable only to individual who had retired from service. It is accordingly held that benefit of this Rule can be availed only by a person who retires on superannuation or on compassionate grounds or on being declared invalid.

(9) The Full, Bench also made reference to Rule 3.17 A (d) of Punjab Civil Service Rules, which was the basis for denying the claim for pension of the employees in such cases. This Rules provides that a Government servant who resigns from service will forfeit his past service.

It is accordingly observed that the entire service rendered by an employee who had severed his relationship with his employer by virtue of resignation would stand completely forfeited and as such, can not be made basis for claiming pensionary benefits. In fact, the Full Bench has accordingly answered this reference primarily in view of the settled position of law in this regard as held by the Hon'ble Supreme Court in **Ghanshayam Dass Relhan's case (supra)**, The counsel for the State in **Ghanshayam Dass Relhan's case (supra)** has placed reliance on the case of **Union of India versus Rakesh Kumar (3)**, where similar Rules were under consideration. Analyzing the provision of Rule 48 (a) and 49 of the Central Civil Services (Pension) Rules, 1972 in conjunction with the provisions of B.S.F. Rules, 1969, the Hon'ble Supreme Court has taken a view that in the event of a Government servant retiring before completing the period of qualifying service for pension, he would be entitled to gratuity, which was to be calculated at a half month's emoluments for every completed six months qualifying service. Reference was also made to the judgment in the case of **Reserve Bank of India versus Cecil Dennis Solomon and another, (4)**, Where benefit of voluntary retirement which was equated with resignation by the High Court was held to be erroneous since it did not fall within the definition of retirement contemplated under the R.B.I. Regulations, 1948. **UCO Bank versus Sanwar Mal, (5)** was also referred to where the difference between words resignation and retirement were noticed and explained. It was observed that two expressions carried different meanings in common parlance. An employee could resign at any time but in the case of retirement he could retire only upon attaining the age of superannation or in the case of voluntary retirement, on completion of qualifying service. Having considered these submissions, the Hon'ble Supreme Court in **Ghanshayam Dass Relhan's case (supra)** observed as under :—

“In our view, Rule 4.19 (a) has to be read and understood differently from what has been urged by Mr. Dholakia. The expression ‘resignation from public service’ will have to be read disjunctively from dismissal or removal from it. The expression ‘resignation from public service’ will not be qualified by the subsequent

(3) 2001 (4) SCC 309

(4) 2004 (9) SCC 461

(5) 2004 (4) SCC 412

references relating to anti-national activities. On the other hand, the expression 'dismissal of removal from it will be qualified by the said expression which would in both cases entail forfeiture of past service and disqualification so far as payment of pension is concerned. In other words, read disjunctively, resignation simpliciter from public service would entail forfeiture of past service and no pension is to be granted in the aforesaid circumstances."

(10) Ultimately, the Hon'ble Supreme Court has held as under :—

"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."

(11) In view of this position of law, no case for grant of pension in the present case is made out. The respondent-plaintiff had only rendered about 10 years of service and had resigned. He would, thus, not be entitled to pension in view of the law laid down in the above noted judgments. The question of law stands fully settled by now.

(12) The question of law whether a Government employee on resignation forfeits his past service for purposes of pensionary benefits arising in this case is fully settled by the above noted judgments.

(13) The present appeal is accordingly allowed and the judgement and decree under appeal is set-aside. The judgement and decree passed by the Trial Court is restored. The suit filed by the respondent-plaintiff shall stand dismissed.