

STATE OF PUNJAB AND ORS.

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v.

GURBARAN SINGH

(Civil Appeal No. 2411 of 2019)

MARCH 01, 2019

[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]

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Service Law:

Pensionary benefits – Claim of – Respondent working as pharmacist in the State Health Services on regular basis, tendered his resignation – Acceptance of resignation, however respondent not granted pension and service benefits but only gratuity and Provident Fund – Suit by respondent seeking pensionary benefits – Suit decreed and issuance of direction to the appellant to pay pensionary benefits – Said order upheld by courts below – On appeal, held: In case of resignation from service or a post, unless the matter was covered u/r.26(2) of the Central Civil Service (Pension) Rules, it would entail forfeiture of past service – Since the past service would stand forfeited, the same would be excluded from the period of qualifying service, and as such for deciding the entitlement to pension, the employee would not have the qualifying period of service – Thus, the order passed by the courts below is set aside – However, amount made over to respondent would not be recovered from him – Punjab Civil Services Rules – r. 7.5(1) – Central Civil Service (Pension) Rules – r. 26.

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Disposing of the appeal, the Court

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HELD: 1.1 In case of resignation from service or a post, unless the matter was covered under Rule 26(2) of the Central Civil Service (Pension) Rules, it would entail forfeiture of past service. Since the past service would stand forfeited, the same would be excluded from the period of qualifying service, and as such for deciding the question of entitlement to pension, the employee would not have the qualifying period of service. [Para 9][843-B, C]

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Union of India and others v. Braj Nandan Singh (2005)
8 SCC 325 : [2005] 4 Suppl. SCR 356 - referred to.

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4. The respondent being aggrieved by non grant of pension, filed Civil Suit No.74 of 2009 claiming pensionary benefits in respect of service rendered by him. Since the appellants failed to file written statement, their defense was struck off. On 16.11.2012 the Civil Judge, Senior Division, Bathinda, decreed the suit and directed the appellants to pay to the respondent pensionary benefits with interest @ 9% per annum from the date of decree.

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5. The decision of the Trial Court was appealed against by the appellants by filing Civil Appeal No. 2 of 2013 before the Additional District Judge, Bathinda, which also came to be dismissed on 23.12.2014. The judgments rendered by the Trial Court and the Appellate Court were challenged by filing Second Appeal No.1576 of 2015 in the High Court of Punjab and Haryana at Chandigarh. It was submitted by the appellant that the matter was covered by Rule 7.5(1) of the Punjab Civil Services Rules, Volume-I, Part-I (for short 'the Rules') in terms of which no retiral benefits would be admissible to an employee who resigned from service. The submission was rejected and the High Court dismissed said Second Appeal on 31.08.2017. The view taken by the High Court is presently under challenge.

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6. We have heard Ms. Uttara Babbar, learned advocate for the State and Mr. Kumar Shashank, learned advocate for the respondent. Ms. Babbar relied upon the decision of this Court in ***Union of India and others vs. Braj Nandan Singh***¹, which considered Rule 26 of the Central Civil Service (Pension) Rules ('CCS Rules' for short) and held that resignation from service would entail forfeiture of past service.

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7. Sub-Rules (1) and (2) of Rule 7.5 of the Rules which are relevant for the present purposes are to the following effect:-

"7.5 (1) 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.

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(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension."

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8. In ***Braj Nandan Singh***¹ a *pari materia* provision viz. Rule 26 of CCS Rules came up for consideration. Para 5 of the decision was as under:-

¹ (2005) 8 SCC 325

- A “5. In order to appreciate rival submissions Rule 26 which is the pivotal provision needs to be quoted. The same reads as under:
- “26. *Forfeiture of service on resignation.*—(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.
- B (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.”
- C Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub-rule (2) is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Admittedly this is not the case in the present appeal.
- D Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement to pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of
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service. There is no substance in the plea of the learned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. The said rule deals with amount of pension and not with entitlement.” A

9. It was thus clearly laid down that in case of resignation from service or a post, unless the matter was covered under Sub-Rule 2 of Rule 26 of CCS Rules, it would entail forfeiture of past service. Since the past service would stand forfeited, the same would be excluded from the period of qualifying service, and as such for deciding the question of entitlement to pension, the employee would not have the qualifying period of service. B C

10. We see force in the submission advanced by Ms. Babbar, learned advocate for the appellant. She is absolutely right on the scope and interpretation of Rule 7.5(1) of the Rules and the decision relied upon completely supports her submissions. Mr. Kumar Shashank, learned advocate for the respondent did not seriously contest the matter on the scope and interpretation of Rule 7.5(1) of the Rules, and finally submitted that whatever monetary benefits the respondent had received in terms of the orders passed by the courts below may not be recovered from him. We are given to understand that in May, 2018 i.e. after the judgment of the High Court, which is presently under appeal, an amount of Rs.3,94,474.89 was made over to the respondent. D E

11. Considering the totality of the circumstances we direct:-

- a) This appeal stands allowed. The judgment and order dated 31.08.2017 passed by the High Court is set aside and Civil Suit No.74 of 2009 filed by the respondent before the Civil Judge, Senior Division, Bathinda stands dismissed. F
- b) The amount which was made over to the respondent in May, 2018, as aforesaid, shall not be recovered from the respondent, but no further payments shall be released or paid to the respondent.
- c) This appeal stands disposed of in aforesaid terms. G
- d) No costs.