

Before M. M. Kumar, J.

HANS RAJ,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 19484 OF 1998

6th January, 2004

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Volume II—Rls. 3.17 A(1)(v), 4.23 and 5.3(1)—A permanent substantive Agriculture Inspector with more than 14 years service while on deputation with State Bank of Patiala submitting resignation for permanent absorption with the Bank—Government accepting resignation by conceding that absorption of petitioner with the Bank was in public interest—Respondents raising no objection while accepting his resignation nor passing any order forfeiting his qualifying service for the purposes of pension—Resignation of petitioner with a view to join another appointment and the same was duly accepted in public interest—Petitioner held to be entitled for pensionary benefits.

Held, that the Petitioner has rendered more than 14 years of service to the respondents and he had sent his resignation through proper channel to them. The resignation has been duly accepted by conceding that the absorption of petitioner as Technical Officer (Agriculture) with the State Bank of Patiala was in public interest. It is established that the petitioner was working as a temporary employee but by no stretch of imagination, it could be concluded that his service was not under the Government or that he was not holding substantive and permanent post in terms of Rule 3.12 of the Rules. It has to be declared that the petitioner was a permanent substantive employee of respondents 1 to 3 when he tendered his resignation with effect from 14th October, 1978. The petitioner was sent on deputation by the respondent—department which necessarily imply according to consent. The resignation was tendered to take up a job with another department which was considered to be in public interest. No objection was raised by respondents 1 or 2 while accepting his resignation nor any order was passed refusing acceptance of his resignation forfeiting his qualifying service for the purposes of pension. Moreover, the petitioner was on deputation with the State Bank of Patiala himself.

(Para 6)

Further held, that a perusal of Rule 5.3 makes it evident that on transfer from a pensionable service to a non-pensionable service, the petitioner is not to become eligible for claiming pension till the date of his retirement. However, under Rule 5.3(2) of the Rules, such an employee may be permitted to be permanently absorbed in service on a post wholly or substantially controlled by the Government or other agencies as long as it is in public interest and he would be deemed to have retired from government service from the date of absorption. It is, thus, clear that an employee does not become entitled to pension until he retires if he is transferred to another department or another Government agency. Therefore, the petitioner having retired on 31st December, 1997 would become entitled to get pension for the service he had rendered to respondents 1 to 3 in terms of Rule 5.3 of the Rules.

(Para 7)

V. K. Sharma, Advocate, for the petitioner.

A. G. Masih, D.A.G., Punjab for respondents 1 to 3.

JUDGMENT

M. M. KUMAR, J.

(1) The short question raised in this petition filed under Article 226 of the Constitution is whether the service rendered by the petitioner from 19th May, 1964 to 14th October, 1978 while working as Agriculture Inspector with respondents 1 to 3 has to be considered as qualifying service for the purposes of granting him pension within the meaning of Rule 3.17A(1)(v) of the Punjab Civil Service Rules, Volume II, or on account of his resignation it would be forfeited as no permission to join service with the State Bank of Patiala—respondent 4 was obtained from the competent authority.

BRIEF FACTS :

(2) Petitioner was appointed on the post of Agriculture Inspector and joined as such on 19th May, 1964. He was sent on deputation as Technical Officer (Agriculture) to the State Bank of Patiala on 23rd May, 1977. On 13th October, 1978 he formally submitted his resignation with the object of getting permanently absorbed with the State Bank of Patiala which was considered in public interest. It is appropriate to mention that service rendered by the petitioner with respondents 1 to 3 was pensionable. Therefore, he retired from the service of State Bank of Patiala on 31st December, 1997. On 7th February, 1998, the petitioner submitted a representation to respondents 1 to 3 for grant of pensionary benefits which culminated into sending a legal notice

through his counsel. It is appropriate to mention that some queries on the representation dated 7th February, 1998 were raised and the same were answered on 12th April, 1998.

(3) In reply, respondents 1 to 3 have filed their written statement it is admitted that petitioner rendered service to them and was also sent on deputation. However, the case set up is that an application Annexure R-1 dated 12th October, 1978 was sent through State Bank of Patiala to them forwarding resignation of the petitioner in order to enable the State Bank of Patiala to approve his absorption in the Bank service in public interest. It has been pointed out that the petitioner never applied for absorption in State Bank of Patiala as Technical Officer (Agriculture) through proper channel as per the requirement of Rule 3.17-A(1)(v) of the Punjab Civil Service Rules, Volume II, (for brevity, the Rules), when the applications were invited by issuing advertisement for filling up the aforementioned posts. It has further been averred that the petitioner has not been working on any permanent or a confirmed post in the respondent-department and as such was never permitted to be permanently absorbed in the State Bank of Patiala by an order passed by the competent authority. It has been claimed that the petitioner has resigned which has been accepted by respondent 2 with effect from 14th October, 1978,—*vide* Annexure R-2. According to the averments made, the service rendered by the petitioner stood forfeited as per the provisions of Rule 4.23 of the Rule on account of resignation and cannot be considered as qualifying service for the purposes of pension.

(4) Mr. V. K. Sharma, learned counsel for the petitioner has raised two-fold submission ; firstly the learned counsel has submitted that by no stretch of imagination the petitioner could be considered as a temporary employee and in any case even the temporary employees are entitled to grant of pension under Rule 3.17 of the Rules. In support of his submission, the learned counsel has placed reliance on a judgment of this Court in the case of **M. M. Lal Bareja versus State of Haryana, (1)**. The other submission made by the learned counsel is that his case is fully covered by Rules 3.17A(1)(v) read with Rules 4.23 and 5.3(1) of the Rules. According to the learned counsel for the petitioner at the time of his transfer/deputation from the respondent, it was a pensionable service and he had gone to State Bank of Patiala, where the service was non-pensionable. It was on his absorption that the petitioner was asked to tender resignation in public interest. He has referred to the orders Annexures R-1 and R-2 attached with the

written statement filed by respondents 1 to 3 to urge that under the Rules, the principle recognised is that once a resignation has been tendered to take up another appointment, then the principle of forfeiture of service contemplated by Rule 3.17-A(1)(v) read with Rules 4.23 and 5.3(1) of the Rules. According to the learned counsel for the petitioner at the time of his transfer/deputation from the respondent-department, it was a pensionable service and he had gone to State Bank of Patiala, where the service was non-pensionable. It was on his absorption that the petitioner was asked to tender resignation in public interest. He has referred to the orders Annexures R-1 and R-2 attached with the written statement filed by respondents 1 to 3 to urge that under the Rules, the principle recognised is that once resignation has been tendered to take up another appointment, then the principle of forfeiture of service contemplated by Rule 3.17-A(1)(v) of the Rules, would not be attracted. According to the learned counsel, apart from the hyper technical objection raised by respondents 1 to 3 that he had not applied through proper channel, there is no violation of the Rules considering the service rendered by the petitioner as qualifying service for pension. The learned counsel has argued that at the time of accepting his resignation with effect from 14th October, 1978, no objection was raised nor the petitioner was apprised that his past service would be forfeited and it would not qualify for pension.

(5) Mr. A. G. Masih, learned State counsel has argued that Rule 5.3 of the Rules would not be attracted to the facts of the present case because the transfer of a Government employee contemplated under Rule 5.3(1) of the Rules is limited to transfer of a Punjab Government employee to a non-pensionable service of the Punjab Government. According to the learned counsel the absorption of the petitioner is in another agency i.e. State Bank of Patiala, therefore, the service rendered by him to respondents 1 to 3 cannot be considered as qualifying service. The learned counsel has also pointed out that the basic ingredients of Rule 3.17-A(1)(v) of the Rules is that at the time of appointment as Technical Officer (Agriculture), the petitioner should have applied through proper channel and only then he could have saved forfeiture of his qualifying service for the purposes of pension. He has also referred to the definition of expression Government in Rule 2.4 of the Rules to argue that expression 'Government' used in Rule 5.3 of the Rules only means Punjab Government.

(6) After hearing learned counsel for the parties and perusing their pleadings, I am of the considered view that this petition deserves to be accepted. The petitioner has rendered more than 14 years of

service to the respondents and he had sent his resignation through proper channel to them. The resignation has been duly accepted by conceding that the absorption of the petitioner as Technical Officer (Agriculture) with the State Bank of Patiala—respondent 4 was in public interest. It is established that the petitioner was working as a temporary employee but by no stretch of imagination, it could be concluded that his service was not under the government or that he was not holding substantive and permanent post in terms of Rule 3.12 of the Rules. It has to be declared that the petitioner was a permanent substantive employee of respondents 1 to 3 when he tendered his resignation with effect from 14th October, 1978. I am further of the view that the petitioner was sent on deputation by the respondent-department which necessarily imply according of consent. Later on when the advertisement was issued for filling up the posts of Technical Officer (Agriculture) by the State Bank of Patiala, the petitioner applied and was selected. On his selection, the authorities of the State Bank of Patiala wrote to respondent 2 forwarding the resignation of the petitioner from the post of Agriculture Inspector on account of the fact that he was to be permanently absorbed by State Bank of Patiala—respondent 4. The resignation in such a situation was tendered to take up a job with another department which was considered to be in public interest. No objection was raised by respondent 1 or 2 while accepting his resignation nor any order was passed refusing acceptance of his resignation forfeiting his qualifying service for the purposes of pension. Moreover, the petitioner was on deputation with the State Bank of Patiala himself. It is in this background that application of Rules 3.17-A(1)(v) and 5.3(1), (2) of the Rules is required to be considered. The rules are reproduced below for facility of reference :—

“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) ** ** *
- (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.”.

“5.3(1) When a Government employee is transferred from pensionable Government service to a non-pensionable establishment, he cannot be granted any pension or gratuity admissible to him for the qualifying portion of his service until he actually retires from the non-pensionable establishment to which he is transferred.

(2) A permanent Government employee who may be permitted to be permanently absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by Government, or Municipality, Panchayat Samiti or Zila Parishad, shall, if such absorption is declared by Government to be in the public interest, be deemed to have retired from Government service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from, the date of such absorption or the date of his voluntary retirement, whichever is later. Each such Government employee is required to exercise an option within six months of his absorption for either of the alternative as indicated below :—

- (a) receiving the monthly pension and death-cum-retirement gratuity under the usual Government arrangements ; or
- (b) receiving the death-cum-retirement gratuity and a lump sum amount in lieu of pension worked out with reference to the commutation table obtaining on the date from which the commuted value becomes payable.”

(7) A perusal of Rule 5.3 makes it evident that on transfer from a pensionable service to a non-pensionable service, the petitioner is not to become eligible for claiming pension till the date of his retirement. However, under Rule 5.3(2) of the Rules, such an employee may be permitted to be permanently absorbed in service on a post wholly or substantially controlled by the Government or other agencies as long as it is in public interest and he would be deemed to have retired from government service from the date of absorption. It is thus clear that an employee does not become entitled to pension until he retires if he is transferred to another Department or another government or another government agency. Therefore, the petitioner having retired on 31st December, 1997 would become entitled to get pension for the service he had rendered to respondents 1 to 3 in terms of Rule 5.3 of the Rules.

(8) The question whether his resignation would entail forfeiture of qualifying service has to be answered with reference to Rule 3.17-A(1)(v) of the Rules. A perusal of the rule shows that if an employee tenders resignation from a post to take up an appointment with proper permission, then the service rendered preceding the resignation would not attract the forfeiture of past service. The admitted position is that the petitioner was sent on deputation by the approval of the Government and no objection was raised when he was absorbed permanently as Technical Officer (Agriculture). When he sent his resignation through State Bank of Patiala, nothing was pointed out that the resignation was not acceptable and his qualifying service would result into forfeiture. It is further evident that when the State Bank of Patiala forwarded the resignation of the petitioner to absorb the petitioner permanently as Technical Officer (Agriculture). The resignation was accepted which would imply that the petitioner was allowed to be absorbed permanently with the State Bank of Patiala and the same was considered to be in public interest. It is appropriate to refer to the letter of State Bank forwarding the resignation of the petitioner which reads as under :—

“We forward herewith the resignation letter dated 14th September, 1978 of Shri Hans Raj, Agriculture Inspector, presently on deputation with our Bank as Technical Officer (Agriculture) for its approval so as to enable us his absorption in the Bank service in public interest.”

(9) It is thus clear that resignation of the petitioner was with a view to join another appointment and the same was duly accepted in public interest.

(10) There is ample support for the aforementioned view from the decisions in **M. M. Lal Bareja's case** (*supra*) and **Balwant Singh versus State of Haryana and others** (2). I am further of the view that the rules concerning grant of pension deserves to be construed liberally so as to advance beneficiary effects of the rules to employees and not strictly so as to defeat these benefits.

(11) In view of the above, this petition succeeds. Respondents 1 to 3 are directed to calculate the pension of the petitioner and pay the same to him within a period of three months from the date of receipt of a copy of this order. As interpretation of rules was involved, I make no order as to costs.

R.N.R.