

2023 LiveLaw (SC) 807

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HRISHIKESH ROY; J., SANJAY KAROL; J.
CIVIL APPEAL NO(S).7351/2013; AUGUST 31, 2023
UNION OF INDIA & ORS. versus H.R. VIJAYA KUMAR

CCS Pension Rules; Rule 26 (2) - Unauthorized resignation from government service for another government job will result in the forfeiture of past service and pension benefits. (Para 17)

For Appellant(s) Mr. K Parmeshwar, Sr. Adv. Mr. B K Satija, Adv. Ms. Nidhi Khanna, Adv. Mr. P V Yogeswaran, Adv. Mr. Shantnu Sharma, Adv. Ms. Aarti Gupta, Adv. Mr. Arvind Kumar Sharma, AOR

For Respondent(s) Mr. Girish Ananthamurthy, Adv. Mrs. Vajjyanthi Girish, AOR

ORDER

Heard Mr. K Parmeshwar, the learned Senior Counsel assisted by Ms. Arti Gupta, learned counsel for the appellants. Also heard Mr. Girish Ananthamurthy, the learned counsel appearing for the respondent.

2. The present matter relates to entitlement of the respondent to pro rata pension benefits from his erstwhile employer i.e., Central Industrial Security Force (CISF) from where he resigned and joined the Hindustan Aeronautics Limited (HAL). The duration of the respondent's service in CISF was around 13 years and he joined the HAL in the year 1998 after submitting his resignation to his former employer on 16.06.1998.

3. The appellants on 10.05.1999 while ordering the terminal benefits, GPF and encashment of the Earned Leave mentioned that the following was payable to the respondent: -

a)	CGEGTS	Rs.8,917/-	SBI Sriharkota DD No.MTTB/62 555522 dated 26.11.98 sent to you on 26.11.98.
b)	GPF Final Payment	Rs.64,244/-	SBI Sriharikota DD payment No.5349933 dated 27.11.98 sent to you on 27.11.98.
b)	Encashment of EL balance held in your leave account.	Rs.12,513/-	Pre-receipt from you is received on 4.5.99 only. The amount of being remitted by Bank Draft."

4. However, on the claim for pro rata monthly pension, the employer noted that the respondent had not applied for employment through proper channel with due permission of the competent authority of the CISF and instead applied directly to the HAL in his private capacity. Accordingly, keeping in mind the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "CCS Pension Rules"), he was held to be disentitled to pro rata monthly pension retirement/service gratuity for the service rendered in the CISF.

5. The respondent being aggrieved filed WP(C) No.9473 of 2000 before the High Court of Karnataka at Bangalore and the learned Judge even, while adverting to Rule 26 of the CCS Pension Rules, opined that the CISF authorities have erred by denying the pro rata pension benefits to the respondent and accordingly, direction was issued to consider the respondent for the pensionary benefits.

6. Thereafter, on direction issued by the learned Single Judge, a speaking order came to be passed by DIG (DOS), CISF on 22.06.2002 which noted that the respondent never mentioned taking up employment with HAL, Bangalore in the resignation letter submitted.

Accordingly, after advertng to the Rule 26, he was again held disentitled to pension benefits from the former employer.

7. The respondent then filed the Writ Petition No.28751/2002 which came to be allowed on 18.02.2008 with the observation that the respondent submitted his application to the CISF on 25.06.1997 for permission to apply for the opening in HAL. Therefore, there was no delay on his part in making the application whereas there was delay in processing the application of the respondent by the CISF authorities. Consequently, the Court issued directions to grant the pro rata pension and gratuity benefits to the respondent-writ petitioner for the duration of service rendered by him from 15.07.1985 to 20.07.1998.

8. The resultant challenge before the Division Bench through Writ Appeal No.956/2008 by the CISF authorities was dismissed, endorsing the view taken by the learned Single Judge. The Division Bench adverted to sub-Rule (1) and (2) of Rule 26 of the CCS Pension Rules but observed that although the respondent had directly applied for the post in the HAL in anticipation of permission from the 3rd appellant, there was no intention by the respondent to conceal that he was seeking alternate appointment with HAL as Security Officer. Accordingly, relief granted by the learned Single Judge in favour of the respondent was sustained by dismissing the writ appeal.

9. The forfeiture of service on resignation is the normal rule under Rule 26 of the CCS Pension Rules. However, resignation shall not entail forfeiture of past service if an incumbent applies for the new job, with proper permission of the authorities.

10. In the instant case, the HAL notified the post of Security Officer on 19.08.1997 and granted a window of 10 days for submitting the application with the stipulation that the applications should be forwarded through proper channel in case of those who are serving in other establishments. The respondent applied to the Commandant on 25.08.1997, i.e., six days after the vacancy was notified in the HAL and in the meantime, he also directly applied to the HAL for the job of the Security Officer. The application filed by the respondent was returned by the CISF authorities on 23.09.1997 with the observation that the due date is already over.

11. Thereafter, the respondent informed about the call letter received by him on his advance application and requested for the No Objection Certificate ('NOC') for appearing in the interview. But such NOC was never issued and, in fact, was rejected through the communication dated 21.10.1997 for the reason that his application for permission to apply for the job of Security Officer in HAL was already rejected earlier on 23.09.1997.

12. Notwithstanding the fact that NOC was refused, the respondent while on leave, appeared for the interview. After his selection for the post of Security Officer in HAL, he submitted a resignation letter on 16.06.1998 indicating therein that due to some unavoidable circumstances, he is unable to continue his service with the CISF. The resignation letter was accepted on 20.07.1998 followed by the discharge certificate on 20.07.1998.

13. The learned counsel for the appellants would point out firstly that the respondent was a member of a security organisation and therefore he could not have applied for job in another organisation without permission from the competent authority. In this case, the competent authority refused the NOC for applying to HAL for the post of Security Officer. In the meantime, the respondent without informing his employer appeared in the interview by taking leave from his employer. With this projection, it is argued on behalf of the appellants that the respondent cannot be held entitled to the benefit of pro rata pension since he obtained employment in HAL, without permission of his former employer.

Therefore, the provisions of sub-Rule (2) of Rule 26 CCS Pension Rules would be triggered to disentitle the respondent from the benefit of pro rata pension.

14. On the other hand, Mr. Girish Ananthamurthy, the learned Counsel would submit that the respondent had applied to his Commandant for permission to apply for the job of Security Officer in HAL. He kept his employer in the loop about the application and also informed them of the scheduled viva-voce by seeking permission once again to appear in the interview. The counsel would submit that this was during 1997-1998 when there was no e-mail or other facilities, and correspondence had to be undertaken physically. Taking those circumstances into account, the counsel sought that the relief granted in favour of the respondent be upheld.

15. The respondent's resignation letter dated 16.06.1998 reads as under: -

"To,

*The Deputy Inspector General,
CISF HQrs (SZ)
Chennai*

(Through Proper Channel)

SUB: SUBMISSION OF RESIGNATION FROM SERVICE -REG

Respected Sir,

With due respect and humble Submission, I beg to state the following for your kind consideration and favourable order please.

I No.85438048 inspector/Exe H.R. Vijay Kumar is working in CISF Unit SHAR (C) w.e.f. June 1996. Due to some unavoidable circumstances I am unable to continue my service in the Force, as such hereby tendering by resignation from service on Personal Reasons.

Hence I am humbly requesting your honour my resignation from service may please be accepted at the earliest please.

For that I shall be ever grateful to you Sir.

Your faithfully

Sd/ xxxx 16.6.98

*H.R Vijaya Kumar Inspector/Exe.,
CISF Unit, SHAR (C) PO; Sriharikota A.P.*

*Sriharikota
16.06.98"*

16. In the said letter, the respondent did not indicate that he is resigning to join services in another organisation. Forfeiture of service on resignation is prescribed under Rule 26(2) of the CCS Pension Rules unless the incumbent joins another job, with proper permission of the competent authority of the former employer.

17. This Court in ***Union of India and Others vs Braj Nandan Singh reported in (2005) 8 SCC 325***, while considering Rule 26 of the CCS Pension Rules observed that Rule 26 in clear terms provides that resignation from a service for another post, without due permission will entail forfeiture of service. In this case, although the respondent did seek permission of his employer to apply for the opening in HAL, such permission was not forthcoming. In the meantime, the respondent applied directly, appeared in the selection process availing leave despite denial of permission, and then took up the new assignment. The circumstances here would show that the present case is squarely covered by sub-Rule (2) of Rule 26 of CCS Pension Rules. In such circumstances, we are of the

considered view that the High Court erred in granting relief to the respondent by ordering that his resignation shall not entail forfeiture of past service. The reading of the applicable statutory provision does not warrant an interpretation which will enure to the benefit of an incumbent merely because he applies directly when such application is not supported by due permission of the competent authority.

18. At this stage, we may also usefully refer to the judgment of this Court rendered on 25.02.2011 in SLP (C) No.31788 of 2009 **Union of India vs. H. R. Vijaya Kumar**, where in the earlier round, on the decision given in favour of the respondent by the High Court, the Supreme Court indicated that the effect of the relevant Rules including Rule 26(2) of the CCS Pension Rules was not appropriately considered by the High Court. Therefore, the judgment passed by the High Court on 18.02.2008 in the Writ Petition No.28751 of 2002 was set aside and the matter was remitted back to the Division Bench of the High Court for a fresh decision, in accordance with the law.

19. When we examine the impugned judgment of the learned Single Judge and also of the Division Bench, it is seen that the Court failed to consider the implication of sub-Rule (2) of Rule 26 of the CCS Pension Rules. If the relevant Rules were to be considered, the only reasonable conclusion would have been that the writ petitioner would be disentitled to relief. Unfortunately, the implication of the Rules was not appropriately considered despite the specific direction of this Court in the earlier round on 25.02.2011.

19. Considering the above, the appellants in our understanding have made out a case for interference with the impugned judgments. Accordingly, the appeal is allowed by setting aside the Judgment dated 08.07.2011 of the Division Bench as also the order dated 18.02.2008 of the learned Single Judge of the High Court. It is ordered accordingly.

20. The parties to bear their own costs.

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