

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5052 of 2002 (O&M)

Date of Decision: 14.10.2015

Dr. Rameshwar Gupta

... Petitioner

Versus

The State of Punjab and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amit Chopra, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The petitioner was a Medical Doctor in PCMS. He was born in 1949 and that makes him about 66 years of age today. He had not put in 20 years of actual service in PCMS when he sought voluntary retirement on December 10, 1997. The petitioner joined PCMS on March 27, 1975. In his application a copy of which has been placed as Annexure P-3 with the petition, the petitioner while applying for voluntary retirement made a statement that he is in service for more than 20 years. It is not incorrect as he had put in 22 years span of service but had not reached the age of 50 to seek premature retirement which would have entitled him to pension other than superannuation pension. In his request letter, he prayed that not only should his request for voluntary retirement be accepted but he be also granted proportionate pension. It appears that the petitioner having made his

request for voluntary retirement did not return to work and remained absent without receiving an order on the request passed by the competent authority. Since the relationship of employment was not snapped it continued as no orders were passed on Annexure P-3. He would be deemed to be in service for purposes of disciplinary action for willful absence from duty.

2. Consequently, the petitioner was charge-sheeted under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for major misconduct. The charge was of absence from duty without permission w.e.f. April 23, 1993 and getting his leave sanctioned and also for non-compliance of orders passed by the superior officers. It now appears plain that he had already remained absent from duty in the past for long spells when he made the request for voluntary retirement on December 10, 1997 and, therefore, he had not physically put in 20 years of continuous service entitling him to claim pension. The charge-sheet was issued on June 15, 1999. The inquiry officer afforded full opportunity to the Medical Doctor to plead his defence but the petitioner did not appear before the inquiry officer and he was proceeded ex parte and ex parte report was submitted to the disciplinary authority who agreed with the findings and took a decision proposing dismissal of the Doctor from service for unauthorized absence from duty which was viewed as a grave act of misconduct. The Government even sought approval of the Punjab Public Service Commission for action contemplated and on approval being conveyed vide letter dated June 01, 1999, The Governor of Punjab was pleased to agree with the report of the inquiry officer and dismissed the petitioner from service. The order was issued by the Principal Secretary to Govt. of Punjab Deptt. of Health &

Family Welfare, Punjab as a decision of the Government of Punjab.

3. Aggrieved by the dismissal order, the petitioner preferred CWP No.7790 of 2000 challenging the same. It was urged that the leave application of the petitioner was not considered. It was given out by the petitioner before the Division Bench which dismissed the petition *in limine* that the petitioner was suspended vide order dated July 07, 1999 which is not an order of suspension but an order of dismissal. The Court was made to fall to view that since the order of "suspension" was not challenged it was not possible to quash the order dated December 03, 1999 [which is not made part of the record of the present paper book].

4. In order to bring clarity to what appears to have been a mis-statement made before the Division Bench it is necessary to reproduce the order of the Division Bench passed on June 13, 2000:-

"Present: Rajiv Kataria,

Advocate for the petitioner

Challenge herein is to the order dated 3.12.1999 annexure P-16, vide which leave application of the petitioner was not considered. It has clearly been mentioned in the order annexure P-16 that the service of the petitioner was suspended vide order dated 7.7.1999. Without challenging the order of suspension no challenge is possible to annexure P-16.

Dismissed.

13.6.2000"

5. Thereafter, the review application was filed in the writ petition which was dismissed as withdrawn. It was urged in the review that the main relief asked for in CWP No.7790 of 2000 was that the respondents should be directed to consider the petitioner as voluntarily retired from service whereas while disposing of the petition this aspect of the matter was not

considered. The confusion was set right by the Division Bench in the review application and the order was recalled and the petition was dismissed as withdrawn with a direction to the Secretary, Health and Family Welfare Department, Punjab to deal with the representation placed at Annexure P-13 to that petition and dispose it of within three months from the date of receipt of certified copy of the Court order. The order in review was passed on December 15, 2000. The competent authority under mandate of the Division Bench considered the representation.

6. This is how the impugned order dated April 30, 2001 has been passed in the wake of the orders in review. At this stage the earlier charge-sheet dated February 19, 1991 deserves to be adverted to where following charges were recorded as follows:-

- "1) Remained absent from duty without any authority w.e.f. 13.11.1987 to 17.1.1988, w.e.f. 3.2.1988 to 18.9.1988 and w.e.f. 20.9.1988 to 18.3.1990.
- 2) Remained absent from duty from 19.3.1990 onwards without giving any information.
- 3) Non-compliance of the orders of the higher officers."

7. In the present exercise, the competent authority revisited the order dated June 17, 1995 where the Government had ordered the period of absence from duty to be treated as leave of kind due. By the fresh order, the period of absence from duty was ordered to be regularized. The periods are mentioned in the order which span for different periods starting November 13, 1987 to September 24, 1992 in three of its component parts.

8. On the same day, after regularizing the period of absence, the competent authority revisited the entire facts of the case and took a decision

rejecting the request for voluntary retirement on the ground that the petitioner did not complete 20 years of qualifying service for pension and therefore he was not entitled to pension. Thereby, two disparate concepts were inter-linked; One, there was a request for voluntary retirement and the other was a claim for pension. The facts reveal that there are two charge-sheets against the petitioner. One dated February 19, 1991 covering period of absence from November 13, 1987 to March 18, 1990 which remained pending till the date the request for voluntary retirement was made. The second charge-sheet related to the period from April 23, 1993 onwards. What was regularized was the period of absence in the charge-sheet dated February 19, 1991 but the period after 1993 was not condoned. Therefore, the dismissal order to my mind is legal and valid based on charge-sheet of willful absence. The inquiry report being ex parte itself proves that the petitioner abandoned the inquiry before the inquiry officer by not joining issue to defend himself despite proper service on him and knowledge of the pending inquiry proceedings. It is not possible to mix up the two charge-sheets and agree with the petitioner that since the period of absence covered by the previous charge-sheet was regularized, therefore, it follows sequitur that the subsequent period should also be regularized in the same fashion which had become the gravamen of the charge of major misconduct committed by a doctor in PCMS Class-I service. It is not possible for this Court to give a direction to regularize that period when the dismissal from service is based on valid grounds and punishment proportionate to the misconduct of long absences from duty and proceeding without awaiting orders on the request for voluntary retirement.

9. It may be mentioned that aggrieved by the impugned order dated April 11, 2001 the petitioner filed a statutory appeal, a copy of which is placed at Annexure P-10 dated May 25, 2001 which has been rejected on February 11, 2002 by passing a speaking order. It has been held that period of absence cannot be regularized nor the request for voluntary retirement can be accepted in the face of previously pending charge sheet.

10. Against these impugned orders, the petitioner has approached this Court in its extraordinary jurisdiction under Articles 226 & 227 of the Constitution of India praying for quashing of the impugned orders.

11. The argument raised by Mr. Chopra is that the dismissal order is excessive and the request of the petitioner for voluntary retirement should have been accepted and if the orders are left to stand it would deprive the petitioner of the right to pension.

12. The scheme of pension falls in the Punjab Civil Services Rules, Vol. II, Part 1 and informs how pension would be calculated in cases of Government servants retiring on superannuation or seeking premature retirement. Rule 4.2 is cited reads as follows:-

4.2 (1) A government employee appointed to a service or post after the twenty-sixth day of October, 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds twenty-five years or a period of five years, whichever is less, if the service or post to which the government employee is appointed is one -

(a) for which post-graduate research or specialist qualification, or experience in scientific, technological or professional fields is essential, and

(b) to which candidates of more than twenty five years of

age are normally recruited :

Provided that this concession shall not be admissible to a government employee unless his actual qualifying service at the time he quits government service is not less than ten years :

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

(2) Government employee who is recruited at the age of thirty five years or more, any within a period of three months from the date of his appointment elect to forego his right to pension whereupon he shall be eligible to subscribe to a contributory provident fund.

(3) The option referred to in sub-rule (2) once exercised, shall be final.

(4) A government employee, who is blind, deaf, dumb or otherwise orthopaedically handicapped or widow at the time of his entry into government service, shall be eligible to add to his service qualifying for superannuation pension a period of five years.

(5) A government employee, who becomes blind, deaf, dumb or otherwise orthopaedically handicapped during the service and is retired from service as a result thereof shall also be eligible to add to his service qualifying for superannuation pension, a period of five years".

(2) They shall be deemed to have come into force on and with effect from the 22nd day of December, 1980."

13. The Government employee is entitled under the aforesaid rule to be declared eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds twenty-five years or a period of five years, whichever is less. If one of the two conditions (a) and (b) are fulfilled the first proviso to the rule prohibits concession of pension

admissible to Government employee unless his **actual qualifying service** at the time he quits Government service not less than ten years.

14. Any argument on the right to pension, superannuation or otherwise would strictly not arise in this case in the face of the dismissal order which if upheld would deprive the petitioner to pension absolutely without further reference to any other fact. Unless the dismissal order is set aside, the result cannot be achieved and the case of the petitioner for pension is rendered academic since I am inclined to uphold the order of dismissal inflicted after following due procedure at the inquiry. If the petitioner went *ex parte* on his own volition and of his own making the Court will not lend its helping hand to such a person to pull him out of the morass he has landed himself in. He has not even explained in the petition as to what he was up to for such a long spell of time playing merry hell with the Government, his department, his Hippocratic oath and his responsibilities to society as a medical doctor in PCMS which he once chose as a career to faithfully discharge now with everything thrown to the winds and to honestly plead before he expects equity to flow from this Court. Since this Court is not at all persuaded to the point of striking down the dismissal order, then interference is not possible to interrupt the smooth flow of the administrative dispensation in the impugned order as a rational fall out of the second charge-sheet which the charge proven which would rule the day. The petitioner has no case for pension for which he has come looking expecting magic to happen in Court or Government money is free to dole out. Thereby, and for the reasons recorded above, this petition is found without substance and is accordingly commended to be dismissed for want

of any merit. It is so ordered.

(RAJIV NARAIN RAINA)
JUDGE

14.10.2015
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