

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 21878 of 2012

Date of Decision : December 09, 2015

Ved Pal Petitioner
vs.
State of Haryana and another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. S. S. Mallik, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

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DEEPAK SIBAL, J. :

The relevant facts, which need to be stated for adjudicating upon the issue raised in the present petition, are that the petitioner, who was serving as a Lecturer in Economics (School Cadre), through application dated 30.04.2012, applied with effect from 31.08.2012 for the grant of voluntary retirement. In his application, the reasons given for seeking retirement were due to his non-fitness with regard to his health and domestic reasons.

Vide letter dated 27.07.2012, the aforesaid request of the petitioner seeking voluntary retirement was, with effect from 31.08.2012,

accepted by the Government.

However, in the morning of 31.08.2012, the petitioner made another application for withdrawal of his request for voluntary retirement. As his request had already been accepted before he had applied for withdrawal, the same was rejected through order dated 11.10.2012, which has been challenged through the present petition.

I have heard counsel for the parties and with their able assistance, have also gone through the record of the case.

Counsel for the parties are ad idem that the present case may be disposed of in terms of the judgment rendered by a Division Bench of this Court in **Punjab and Haryana High Court and another vs. Bidhi Chand – 2014 (3) RSJ 522**, wherein after interpreting Rule 3(4) of the Punjab Civil Services (Pre-mature Retirement) Rules, 1975 (hereinafter referred to as – the Rules), it was held that an employee, who has opted to seek retirement, cannot withdraw such a request except with the prior approval of the appropriate Authority. While interpreting the above Rule, in the light of the observations made by the Apex Court in **Director General, E.S.I.C. vs. Puroshottam Malani – 2008 (3) KTL 613**, the Division Bench has held as under :-

“16. There is no gain saying that in Balram Gupta's and J.N. Srivastava's cases (supra), rule of voluntary retirement did not contain a provision like sub-rule (4) herein-above, which mandates that an employee after giving notice for voluntary retirement is precluded from

revoking such notice except with the specific approval of the appropriate Authority. The decisions relied upon by the learned Single Judge are distinguishable and the principles propounded therein may not be attracted to a situation regulated by different set of Rules.

17. In Director General, ESIC's case (supra), Hon'ble Supreme Court considered Rule 48 (2) of the Central Civil Services (Pension) Rules, 1972, which reads as follows :-

“...Rule 48 (2) of the Central Civil Services (Pension) Rules, 1972 reads as under :-

*(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the Appointing Authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority :
Provided that the request for withdrawal shall be within the intended date of his retirement.....”*

(emphasis applied)

18. The above-stated Rule was interpreted to say that :-

“....10. The government service is not contractual. It is a service which confers status and a person who opts for voluntary retirement and later on wants to revoke the same

before the expiry of the period of notice has to satisfy the authorities why he is seeking to revoke the notice of voluntary retirement. Rule 48(2) of the Central Civil Services (Pension) Rules, 1972 clearly states that the incumbent can seek withdrawal of the notice of voluntary retirement but with the specific approval of the authorities. Therefore, as per sub-Rule (2) of Rule 48 of the CCS (Pension) Rules, 1972 specific approval of the authority is required for withdrawal of the notice of voluntary retirement. If the incumbent does not provide any reason or material for revoking his notice of voluntary retirement then it is always open for the authority to decline the request for withdrawal of notice of voluntary retirement. If such discipline is not read into the Rule then perhaps every employee can send a notice for voluntary retirement and revokes the same at his sweet will. This cannot be permitted. The Rule mandates that there should be a specific approval of the appointing authority. Clearly, the Rule provides that the appointing authority can certainly approve or disapprove a request for withdrawal of notice of

voluntary retirement.....” (emphasis applied)

19. *On facts also, the instant case is similar to the Director General, ESIC's case (supra). There the employee gave a notice of voluntary retirement on 31.12.1999 and the last date was 31.03.2000. He got all the post-retiral benefits also a few days before revoking the notice on 22.3.2000. He then approached the Central Administrative Tribunal questioning the rejection of his request for withdrawal of voluntary retirement notice. So has been done by the respondent in the instant case.*

20. *It may be seen that sub-rule (2) of Rule 48 of the CCS (Pension) Rules, 1972 is per-materia to sub-rule (4) of Rule-3 of 1975 Rules, as applicable in the case of the respondent. The aforesaid Rule has been interpreted by the Hon'ble Supreme Court laying down that the incumbent can seek withdrawal of voluntary retirement notice only with the specific approval of appropriate Authority. The onus has been shifted on the employee to provide reasons revoking the notice, failing which the appropriate Authority can decline his request for withdrawal of notice of voluntary retirement. We are, thus, of the view that the principle propounded in Director General, ESIC's case (supra) is applicable to the facts of the case in hand. The notice seeking voluntary retirement as also the application submitted by the respondent to the District & Sessions Judge, Mansa or to the High Court to*

permit him to revoke his request for voluntary retirement though are on record, none-the-less we do not express any views whether the respondent has made out a case duly supported with reasons or material for revocation of his request for voluntary retirement. Such an exercise, as contemplated under the Rules, is required to be undertaken by the District & Sessions Judge, Mansa.

Consequently and for the reasons afore-stated, we allow this appeal; set-aside the order dated 08.11.2013 passed by the learned Single Judge. With a view to offer yet another opportunity to the respondent to make out a case for revocation of his request of voluntary retirement, we also set aside the order dated 31.05.2011 passed by District & Sessions Judge, Mansa, leaving it open to the respondent to submit a fresh representation-cum-application so as to make out a case within the ambit of sub-rule (4) of Rule-3 of 1975 Rules. If the appropriate Authority is satisfied and convinced with the reasons that may be assigned by the respondent, it shall pass an appropriate order, notwithstanding the rejection of his representation by the High Court. The appropriate Authority shall take the decision within a period of three months from the date of receiving the representation-cum-application from the respondent. If the request of respondent is accepted, in that event, he shall be granted the benefits notionally only though with the benefit of seniority and pay fixation.”

From the perusal of the above-quoted judgment, it is clear that the Division Bench, after considering Rule 3(4) of the Rules, held that no employee could withdraw his request for seeking voluntary retirement without prior approval of the competent Authority.

The case before the Division Bench was pertaining to an employee of the State of Punjab, whereas in the case in hand, the petitioner is an employee of the State of Haryana. In the petitioner's case, Rule 5.32-B of the Punjab Civil Services Rules, Volume II, as applicable to the State of Haryana, applies. Rule 5.32-B of the Punjab Civil Services Rules, Volume II, as applicable to the State of Haryana, is para materia Rule 3(4) of the Rules and the same is reproduced below :-

“5.32-B. (1) At any time a Government employee has completed twenty years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reason therefor. On receipt of a request, the appointing may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three

months on the condition that the Government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority subject to rule 2.2 of Punjab Civil Service Rules Volume II : Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1) supra, the retirement shall become effective from the date of expiry of the said period : Provided further that before a Government employee gives notice of voluntary retirement with reference to sub-rule (1) he should satisfy himself by means of a reference to the appropriate authority that he has, in fact, completed twenty years service qualifying for pension.

[(3) The qualifying service as on the date of intended retirement of the Government employee seeking retirement under this rule or under clause (e) of rule 3.26 of Pb. C.S.R. Vol. I, Part I with or without permission shall be increased by the period not exceeding 5 years subject to the condition that the total qualifying service rendered by the Government employee does not in any case exceed 33 years and it does

not take him beyond the date of superannuation. The weightage of five year shall not be admissible in case of those Government employee who are prematurely retired by the Government in public interest under the relevant rules.]

(4) A Government employee, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority.

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) The pension and death-cum-retirement-gratuity of the Government employee retiring under this rule shall be based on the emoluments as defined under rule 6.24 of Punjab Civil Services Rules, Volume n and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for the purpose of calculating pension and gratuity.

(6) The amount of pension to be granted after giving the weightage will be subject to the provisions of rule 6.4 of Punjab Civil Services Rules Volume II.

(7) This rule shall not apply to a Government, employee who retires from Government service for being absorbed

permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

Explanation - For the purpose of this rule the expression “appointing authority” shall mean the authority which is competent to make appointments to the service or post from which the Government employee seeks voluntary retirement. [Emphasis supplied]”

In view of the consensus arrived at between the parties and the issue raised in the present petition being covered by the above quoted judgment in **Bidhi Chand's** case (*supra*), against which **SLP No. 21464 of 2014 – Bidhi Chand vs. Punjab and Haryana High Court, Chandigarh** has also been dismissed on 06.02.2015, I have little hesitation in disposing of the present petition in terms of **Bidhi Chand's** case (*supra*).

Consequently, while setting aside order dated 11.10.2012 (Annexure P-4) the petitioner is granted another opportunity to make an application to the respondents in terms of sub-rule (4) of Rule 5.32 of the Punjab Civil Services Rules, Volume II, as applicable to the State of Haryana, requesting them to revoke his earlier request seeking voluntary retirement. If the appropriate Authority is satisfied and convinced with the reasons that may be assigned by him, an appropriate order would be passed within a period of three months from the date of receipt of representation/application by the petitioner. If the request of the petitioner

is accepted, he would be granted the benefits notionally only, though with the benefit of seniority and pay fixation.

The writ petition stands disposed of in the above terms.

(DEEPAK SIBAL)
JUDGE

December 09, 2015
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