

CWP No.26165 of 2013

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.26165 of 2013
Date of decision:10.07.2015**

Hans Raj

...Petitioner

Versus

High Court of Punjab and Haryana, Chandigarh & anr.

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. B.S.Mittal, Advocate,
for the petitioner.

Mr. Raman B. Garg, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

The petitioner was appointed as Sweeper in the year 1985 in the office of respondent no.2. He gave 3 months' notice on 02.08.2013 for seeking voluntary retirement, alleging that he was on commuted leave, suffering from severe pain in his legs and cannot continue in his job. However, he moved an application on 07.10.2013 to respondent no.2 to withdraw his earlier notice dated 02.08.2013, on the ground that the same was given under influence of someone, in a hurry. Respondent no.2 called the petitioner on 08.10.2013 to find out the actual reason for seeking voluntary retirement. He made a statement that *"I withdraw my application dated 07.10.2013 and request that my earlier application dated 02.08.2013*

CWP No.26165 of 2013

[2]

may kindly be considered. I have made my abovesaid statement at my own free will and without any pressure”.

Respondent no.2, on 08.10.2013, allowed the application of the petitioner for seeking voluntary retirement asking him to submit the pension papers before relinquishing the charge on 01.11.2013 and that he would not apply for commutation of part of his pension before the expiry of the notice period of 3 months, as stipulated in Rule 5.32 (B)(1) of the CSR Volume-II.

The petitioner, on 21.10.2013, applied to respondent no.2 for withdrawing his application dated 02.08.2013 alleging that he is a poor person, having daughter of marriageable age and is in dire need of job. He alleged that even as per Haryana Civil Service Rules, the application for voluntary retirement can be withdrawn within a period of 90 days. On the same day, the petitioner also applied to the Inspecting Judge of the Sessions Division, Sirsa in which it was rather averred that “on 08.10.2013, the ld. District and Sessions Judge called the applicant personally and pressurized the applicant to stick on his earlier application regarding voluntary retirement and not to withdraw his application dated 02.08.2013 and threatened the applicant if he will not do so, the action will be taken against his son who is also working as sweeper and he will be transferred to some remote area”.

Respondent no.2 served a show cause notice dated 25.10.2013 upon the petitioner for approaching the Inspecting Judge of the Sessions Division, Sirsa in violation of the instructions contained in letter No.597/HRC dated 04.08.1983, issued by the High Court and other

CWP No.26165 of 2013

[3]

instructions issued in that regard from time to time. The petitioner gave a reply to the show cause notice dated 25.10.2013.

Finally, vide its order dated 31.10.2013, the petitioner was retired voluntarily. It was observed in the order that the petitioner remained on commuted/earned leave for a long period in the year 1989 i.e. from 17.04.1989 to 15.12.1989 for construction of house/due to fracture of his leg. Recently also, he remained on commuted leave from 29.11.2012 to 31.05.2013 on account of cervical spondylitis & Hemiplegia. As a result thereof, working of cleanliness had suffered badly and the petitioner, because of his poor health, is still unable to do his job properly.

Counsel for the petitioner has submitted that according to Rule 5.32-B of the Punjab Civil Service Rules, Volume-II, as applicable to the State of Haryana (hereinafter referred to as the "Rules"), a government employee, who has completed twenty years' qualifying service, may retire from service by giving notice of not less than three months in writing. According to him, the petitioner was well within his right to withdraw the notice of 3 months' notice before expiry of the stipulated period which actually has been done and the respondent no.2 should have accepted the withdrawal application instead of passing the impugned order, accepting the notice for his voluntary retirement. In support of his submission, he has relied upon a judgment of the Supreme Court in the case of **Balram Gupta vs. Union of India and another**, 1987 AIR (SC) 2354.

On the other hand, counsel for the respondents has submitted that Rule 5.32-B(4) of the Rules is applicable in the present case which

CWP No.26165 of 2013

[4]

provides that “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”. In support of his submission, he has relied upon a decision of the Supreme Court in the case of **Director General, E.S.I.C. vs. Puroshottam Malani**, 2008(3) KLT 613 and a Division Bench judgment of this Court in the case of **Punjab and Haryana High Court and another vs. Bidhi Chand**”, LPA No.2066 of 2013, decided on 12.12.2013.

I have heard learned counsel for the parties and examined the record with their able assistance.

The decision in **Balram Gupta's case (supra)** has been discussed in **Punjab and Haryana High Court's case (supra)** in which it has been held that “there is no gain saying that in **Balram Gupta's and I.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”. The Division Bench further discussed the applicability of the judgment in **Director General, ESIC's case (supra)** in which the Supreme Court was considering Rule 48(2) of the Central Civil

CWP No.26165 of 2013

[5]

Services (Pension) Rules, 1972, which is *para materia* to Rule 5.32-B(4) of the Rules, being discussed in the present case, and in para 10 of the said judgment, it was held as under:-

“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 revoke 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.”

Moreover, the petitioner, who had himself suffered the statement on 08.10.2013 before respondent no.2 that he wanted to withdraw his application dated 07.10.2013 to pursue his application dated 02.08.2013

CWP No.26165 of 2013

[6]

and made the statement without any pressure or influence, turn around and made an unsavory statement in his letter written to the Inspecting Judge on the same day that he was called personally by respondent no.2 and threatened him to stick to his earlier application dated 02.08.2013, otherwise action would be taken against his son, who is also working as a Sweeper in the same Sessions Division, and he would be transferred to some remote area. He did not stick to his stand as in the notice dated 02.08.2013, it was stated by him that he is suffering from severe pain in his legs, remained on commuted leave earlier and cannot continue in his job and in the letter dated 07.10.2013, the reason assigned by him is that the notice dated 02.08.2013 was given in a hurry and under the influence of someone.

Thus, keeping in view the totality of the facts and circumstances, narrated here-in-above, I do not find any merit in the present writ petition and hence, the same is hereby dismissed.

July 10, 2015
vinod*

(Rakesh Kumar Jain)
Judge