

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

**Date of decision: 28.04.2016**

**CWP No.4123 of 2015**

Jagar Ram

...Petitioner

Vs.

State of Punjab & others

...Respondents

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

Present: Mr. Vikas Chatrath & Gurpreet Singh, Advocates,  
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

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

**RAJIV NARAIN RAINA, J. (ORAL)**

Extension in service is based on exercise of option in terms of the modified policy in Rule 3.26 of the Punjab Civil Service Rules, Volume II and the instructions issued by the Punjab Government since 2012. It is open to the person retiring to accept or refuse an extension in service.

The petitioner filed an affidavit with the employer that his health did not permit him to continue in service. The affidavit is dated 17.11.2014 and its copy is placed at Annex P-7. The making of this affidavit has been sought to be explained away by the petitioner in para.13 of the petition as a document signed under pressure of his superior officer who he says was smarting under court orders reinstating the petitioner in service whereby he received over 20 lacs in monetary compensation. Jealousy created by the receipt of such a large sum of money is imputed to the superior officer in taking adverse action against the petitioner visiting him with injury of his

rights. This is his line of reasoning to blunt the affidavit and distance himself from it to stake claim to extension in service.

If the affidavit was taken under duress, threat or compulsion, it becomes a seriously disputed question of fact which cannot be resolved in writ jurisdiction. Proof of undue pressure in the swearing of the affidavit is a question of fact open to evidence and therefore this writ petition is not the proper remedy to side step the affidavit waving rights and is consequently liable to be dismissed with liberty to the petitioner to approach the civil court for availing his remedies to resolve the disputed question of fact as to whether the affidavit was submitted under threat, duress or compulsion. However, till the affidavit holds the ground, the petitioner has to be seen as person having waived his right to extension in service on account of his admitted continued ill health.

Furthermore, it is not an acceptable argument to contend that because the petitioner was promoted seven days before his superannuation after a medical examination, it should be assumed that he was fit to work as a Carpenter during extension, in case it was offered. Promotion rights are based on rules and seniority. During extension, an employee has to perform the same duties as were performed by him while in service before superannuation.

The petition is hereby dismissed with liberty to avail civil remedy which is an alternative remedy of superior quality than writ jurisdiction where evidence cannot be taken to prove disputed facts upon which relief can rest.

The learned counsel then submits that the petitioner in the hope of the present litigation succeeding has not accessed his pension and retiral dues so far which are still lying with the department unclaimed. Pension and pensionary dues are the petitioner's right to property, which the respondents cannot alienate. He is thus free to accept these benefits without prejudice to his

rights, if any, leaving him to substantiate his claim in a suit in case brought before the civil court, to which remedy the petitioner is being relegated. This Court has no doubt that pension and pensionary benefits lying with the department will now be released to the petitioner without delay and preferably within a fortnight.

**28.04.2016**  
Vimal

**[RAJIV NARAIN RAINA]**  
**JUDGE**