

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1596 of 2007**

Abdul Malik, Commercial Tax Officer (Rtd), S/o Late Moosa Bhai, Aged about 59 yrs., R/o Golden House, Khamardih, Near VIP Club, Raipur Dist. C.G. State

---- **Petitioner**

Versus

1. State Of Chhattisgarh, Through Secretary, Commercial Tax Deptt. DKS Bhawan, Raipur, C.G. State
2. Jt. Secretary Commercial Tax Deptt. Govt. of C.G., DKS Bhawan, Raipur, C.G. State
3. Commissioner, Commercial Tax Deptt., Govt. of C.G., DKS Bhawan, Raipur, C.G. State,

---- **Respondents**

For Petitioner	:	Mr. K.R.Nair with Ms. Veena Nair, Advocates
For State	:	Mr. Manish Nigam, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

16.11.2017

Heard.

1. By this petition, under Article 226 of the Constitution of India, the petitioner has prayed for quashing of order dated 10.10.2006, by which, he has been reverted to the post of Assistant Commercial Tax Officer. The petitioner has also prayed for a command to respondent to sanction and release all retiral benefit to the petitioner as per rules.
2. Quintessential facts, necessary for decision of the issue raised in this petition are that the petitioner, at the relevant time, belonged to Commercial Tax Department of the State. On 19.12.2002, he was promoted as Commercial Tax Officer though, on ad-hoc basis. On certain allegations, he was placed under suspension vide order dated 11.04.2005. A charge-sheet

followed on 24.05.2005. While the departmental enquiry remained pending, the DPC was convened on 22.08.2005 to consider cases of all those adhoc Commercial Tax Officers, who were promoted along with the petitioner earlier in the year 2002. Except the case of the petitioner, all other adhoc officers were granted regular promotion. Because of the pendency of the departmental enquiry, recommendations in the case of the petitioner were kept in sealed cover.

3. Eventually, the suspension of the petitioner came to an end vide order dated 07.01.2006. The course of events changed quickly thereafter as a show-cause notice was issued on 13.01.2006 proposing imposition of a minor penalty on the petitioner. This was the stage when the enquiry officer was not appointed. On that day itself, the petitioner filed reply denying the allegations on the basis of which minor penalty was proposed.
4. In the conspectus of the aforesaid developments, the petitioner finally decided to seek voluntary retirement, therefore, he moved an application on 31.08.2006, seeking voluntary retirement, invoking his option available under Rule 42(1) of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (for short 'the Pension Rules, 1976'). The petitioner gave a month's notice and deposited two months salary, expressing his intention to retire after expiry of one month's notice. Though according to the petitioner, he stood retired from service immediately after expiry of one month's notice i.e. after 30th of September, 2006, the department did not treat him as retired and an order came to be passed on 10.10.2006, by which, he was reverted to the lower post, on considerations that the petitioner was an adhoc promotee and under Government instructions, initiation of departmental enquiry against an adhoc promotee would result in reversion. It is this order which is under challenge before this Court.
5. Learned counsel for the petitioner argued that the notice of retirement given by the petitioner was in accordance with the provision contained in Rule 42(1) of the Pension Rules, 1976 and it took effect upon expiry of one month as stated in the notice. He would contend that Rule postulates unilateral act of retirement from service at the instance of Government service and it needs no ratification much less approval or sanction of any authority to become effective. The contingency under which such permission was

required, was not present in the case because the petitioner's suspension already stood revoked on 07.01.2006. In the absence of there being any provision under the law, pendency of departmental enquiry by itself, could not be a ground to arrest the legal consequence flowing from exercise of option to voluntary retire with one month's notice. In support of his submission, learned counsel for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in the case of **Dinesh Chandra Sangma Vs. State of Assam and others, AIR 1978 SC 17** which was subsequently followed by the High Court of Madhya Pradesh in the case of **Indra Prakash Bhatnagar Vs. State of M.P. & another, 1985 MPLJ 229**.

6. The other submission of learned counsel for the petitioner is that even if it is accepted for the sake of argument that the petitioner was continuing in service, impugned order of reversion was illegal because the circular dated 09.01.2004 would not apply in the case of the petitioner as adhoc promotion was not only in respect of the vacancies prior to 2002 but the order itself was passed in the year 2002. The said circular in clause (क) clarified the scope of applicability of the instructions.
7. On the other hand, learned counsel for the State would submit that the promotion of the petitioner was purely adhoc without creating any right to hold the higher post and therefore, he could be reverted at any point of time irrespective of applicability of circular referred to in the order impugned. He would further submit that as a departmental enquiry was pending against the petitioner, he could not exercise his option of voluntary retirement and his retirement could be permitted only upon sanction of the department on relevant consideration and not otherwise. It is next contended that the petitioner could not be promoted on regular basis because of pendency of departmental enquiry and therefore, if the decision is taken to revert him back, he cannot claim parity with other employees promoted on adhoc basis along with him.
8. As back as in the year 1978, the Supreme Court dealing with a case of right of Government servant to voluntary retire from service, in the case of *Dinesh Chandra Sangma (supra)*, held :

“8. As is well known Government servants hold office

during the pleasure of the President or the Governor, as the case may be, under [Article 310](#) of the Constitution. However, the pleasure doctrine under [Article 310](#) is limited by [Article 311\(2\)](#). It is clear that the services of a permanent Government servant cannot be terminated except in accordance with the rules made under [Article 309](#) subject to [Article 311\(2\)](#) of the Constitution and the Fundamental Rights. It is also well-settled that even a temporary Government servant or a probationer cannot be dismissed or removed or reduced in rank except in accordance with [Article 311\(2\)](#). The above doctrine of pleasure is invoked by the Government in the public interest after a Government servant attains the age of 50 years or has completed 25 years of service. This is constitutionally permissible as compulsory termination of service under F.R. 56(b) does not amount to removal or dismissal by way of punishment. While the Government reserves its right to compulsorily retire a Government servant, even against his wish, there is a corresponding right of the Government servant under F.R. 56(c) to voluntarily retire from service by giving the Government three months' notice in writing. There is no question of acceptance of the request for voluntary retirement by the Government when the Government servant exercises his right 'under F. R. 56(c)'. Mr. Niren De is therefore right in conceding this position."

9. In a similar situation as in the present case, the High Court of Madhya Pradesh also had an occasion to examine the issue as to whether any acceptance was necessary to bring the voluntary retirement into effect, in the case of **Indra Prakash Bhatnagar (supra)**. The view taken by the Hon'ble Supreme Court earlier was reiterated in the aforesaid decision to hold that the Rules applicable in the present case i.e. Rule 42 of the Pension Rules, 1976, do not contemplate any acceptance necessary in bringing into effect and operation, voluntary retirement of a government servant provided the government servant exercises option of voluntary retirement in the manner prescribed under the law.

10. The applicable Rule in the present case is as below :

"Rule 42. Retirement on completion of [20 years] qualifying service-(1)(a)- A Government servant may retire at any time after completing 20 years qualifying service, by giving a notice in Form 28 to the appointing authority at least three months before the date on which he wishes to retire or on payment by him of pay and allowances for the period of three months or for the period by which the notice actually given by him falls short of three months:

Provided that where the Government servant giving such notice

is under suspension, he shall not be allowed to retire from service without the prior permission in writing of the appointing authority.

(b) The appointing authority may in the public interest require a Government servant to retire from service at any time after he has completed [20 years qualifying service or he attains the age of 50 years whichever is earlier], with the approval of the State Government by giving him three months notice in Form 29 :

Provided that such Government servant may be retired forthwith and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing then immediately before his retirement or, as the case may be, for the period by which such notice falls short of three months."

11. The statutory scheme of the aforesaid Rule is crystal clear that as far as voluntary retirement is concerned, it would essentially be a matter of unilateral act on the part of the Government servant. He has the option to voluntarily retire from service by giving three months' notice or three months' pay allowance or for the period by which the notice actually given by him falls short of three months. The only exception to this general rule is that in a case where the Government servant giving such notice is continuing under suspension, he shall not be allowed to retire from service without the prior permission in writing of the appointing authority. The aforesaid provision is in the nature of exception to the general rule. Ordinarily, therefore, once a notice of retirement is given in prescribed Form 28 and in the manner provided under Rule 42 (1)(a) of the Pension Rules, 1976, upon expiry of the period of notice, retirement comes into effect and the legal consequences are not arrested for want of any acceptance or order of the Government or appointing authority or any other authority. In the present case, it is not in dispute that the petitioner's suspension had come to an end on 07.01.2006. If that be so, there was no impediment under the law to withhold statutory consequences to follow in terms of law.

12. Though, learned counsel for the State vociferously argued that it would not be in public interest to allow the Government servant to retire voluntarily without permission where he may be facing charges of misconduct and departmental enquiry pending, with all justification, such submission made have in the absence of there being any such provision in the rule, itself, the argument is liable to be rejected.

13. Learned State counsel also advanced submission on the basis of amendment having been brought in the year 2002 in the relevant rules in the

State of Madhya Pradesh providing that in case where departmental enquiry is pending, voluntary retirement cannot take effect unless it is duly accepted by the government.

14. The amendment having taken place in the State of Madhya Pradesh after 01.11.2000 i.e. the appointed date when the State of Chhattisgarh came into existence under Madhya Pradesh Reorganization Act, 2000, cannot be pressed into service to justify submission that retirement would not come into effect for want of acceptance by the Government.
15. There is yet another interesting feature which was fairly brought to the notice of the Court at the fag end of hearing by the counsel for the respondent. The respondents have placed on record an order dated 12.03.2007 of the State Government, by which, petitioner's application for voluntary retirement has been accepted with retrospective effect i.e. 30th of September, 2006. The State though, on erroneous assumption of law that the application for voluntary retirement required acceptance, has in fact, passed an order for retirement of the petitioner would take effect from 30th of September, 2006.
16. Therefore, viewed from any angle, there was no occasion for the respondent to pass an order of reversion of the petitioner after his retirement had become effective and operative.
17. In view of the aforesaid consideration, it is not necessary to dwell into the aspect of applicability of circular dated 09.01.2004.
18. In the result, impugned order dated 10.10.2006 is hereby set aside. The petitioner shall be treated as having voluntarily retired from service on 30.09.2006. All consequential steps of preparation of pension case, payment of dues will have to be worked out treating the petitioner as having retired with effect from service on 30th of September, 2006 as ad-hoc Commercial Tax Officer. Whatever retiral dues have been given to the petitioner during the pendency of this petition, will have to be adjusted in appropriate manner.
19. The petition is accordingly allowed in the manner and to the extent indicated above.

Sd/-
(Manindra Mohan Shrivastava)
Judge