

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

**CWP No. 14497 of 2015 (O&M)
Date of decision: 07.03.2017**

Sat Bhushan Garg

...Petitioner

Versus

The Punjab State Civil Supplies Corporation Limited and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. A.K. Walia, Advocate,
for the petitioner.

Ms. Suman Devi Saxena, Advocate, for
Ms. Deepali Puri, Advocate,
for the respondents.

JAISHREE THAKUR, J. (ORAL)

CM Nos. 1734-35-CWP-2017

CMs are allowed as prayed for.

Order dated 18.11.2016 is taken on record.

CWP No. 14497 of 2015

The instant writ petition came to be filed seeking to quash the impugned order dated 02.12.2014 by which the prayer of the petitioner seeking premature retirement after completing more than 25 years of service, has been declined.

In brief, the facts are that the petitioner is working as Senior Auditor with the respondents who sought voluntary retirement by giving three months' notice dated 02.09.2014 on having completed more than 25 years of qualifying service. The said notice was considered, however, respondent No.2 issued a letter to the District Manager, PUNSUP, Bathinda

stating that the case of the petitioner Sat Bhushan Garg cannot be considered on account of the fact that the department was proposing to initiate departmental action under under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. Aggrieved against denial of premature retirement, the instant writ petition has been filed.

Mr. A.K. Walia, learned counsel for the petitioner argues that the petitioner herein was not under suspension nor had any chargesheet being served upon him on the date when he had submitted his application for premature retirement. The chargesheet came to be served upon him on 02.02.2015 much after his application seeking premature retirement had been served upon the respondents. It is argued that as per the Punjab Govt. Memo No. 184/GOI-2-GS-177/40341 dated 14/15.09.1977 it has been clarified that there is no bar to a Government employee seeking voluntary retirement by giving requisite notice even if departmental or Court proceedings are pending against him "*unless he is under suspension*". It is further argued that as per Annexure P-8, memo referred to above, no specific approval of the competent authority is necessary in such cases and the retirement would be "automatic on the expiry of the notice period". Therefore, on the expiry of the period of notice it would be deemed that the petitioner had retired, therefore, any chargesheet that was issued subsequent thereto would be in violation of Rule 2.2 of Civil Services Rules, Volume-II.

Per contra, counsel for the respondents has placed on record order dated 18.11.2016 which would show that the chargesheet that had been served upon the petitioner has since been withdrawn.

Rule 3 of the Punjab Civil Services (Premature Retirement)

Rules, 1975 is reproduced as under :-

“(1)Premature Retirement:

(a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

(b) The period of such notice shall not be less than three months:

Provided that where at least three months’ notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, at the same rates at which he was drawing them immediately before the date of retirement, for a period of three months or, as the case may be, for the period by which such notice falls short of three months.

(2) Any Government employee may, after giving at least three months’ previous notice in writing to the appropriate authority retire from service on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice: Provided that no employee under suspension shall retire from service except with the specific approval of the appropriate authority.

(3)(a) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than three months in writing to the appropriate authority, retire from service.

(b) The notice of voluntary retirement given under this sub-rule shall require acceptance by the appropriate authority.

(c) Where the appropriate authority does not refuse to grant

the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(4) The employee, who has elected to retire under sub-rule (2) or sub-rule (3) and has given the necessary notice to that effect to the appropriate authority, shall be precluded from withdrawing his notice except with the specific approval of the appropriate authority.

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

Note 1:- An employee may make a request, in writing, to the appropriate authority to accept notice of less than three months giving reasons therefore and such a request for the curtailment of the period of notice shall be considered on merit and if the appropriate authority is satisfied that such curtailment will not cause any administrative inconvenience it may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice period of three months.”

Note 2:- If an employee retires under sub-rule (2) or (3) above while he is on leave not due, without returning to duty, the retirement shall take effect from the date of commencement of the leave not due and the leave salary paid in respect of such leave shall be recovered as provided in rule 8.119 (d) of the Punjab Civil Services Rules, Volume I, Part I.

Note 3:- In computing the notice period of three months referred to in rule 3, the date of service of the notice and the date of its expiry shall be excluded.”

A perusal of the said rule permits a person to submit an application for premature retirement on completion of 25 years service subject to the fact that he is not under suspension.

After hearing learned counsel for the parties, this Court is of the opinion that the writ petition deserves to be allowed. Admittedly, no disciplinary proceedings were pending against the petitioner on the date when he moved an application seeking voluntary retirement and it is only thereafter the disciplinary proceedings were initiated. Therefore, in view of Rule 3 of the 1973 Rules and the fact that the petitioner has served more than 25 years, he is entitled to be retired prematurely from the date, the notice period is over. Therefore, the impugned order is set aside.

In view of the fact that the petitioner is entitled to the relief of premature retirement, his retiral benefits as due to him, should also be calculated within a period of two months on receipt of certified copy of the order and be released within a period of two months thereafter. In case, the same is not done within the stipulated period then the petitioner would be entitled to get interest @ 6% per annum till the date the same is released.

Writ petition stands allowed.

07.03.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes.

Whether reportable

No.