

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

**CWP No.10115 of 2017 (O&M)
Date of decision: 18.09.2017**

Bimla Devi

... Petitioner

Vs.

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. R.K. Arora, Advocate for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

...

TEJINDER SINGH DHINDSA, J.

Counsel for the parties have been heard.

The instant writ petition is directed against the charge sheet dated 06.03.2007 (Annexure P-17) issued by the Director, Education Department (Secondary Education), State of Punjab served upon the petitioner, who was serving as S.S. Mistress under the State Education Department.

The precise article of charge drawn against the petitioner was to the following effect:

“Article of Charges

Charge against Smt. Bimla Devi, S.S. Mistress, Govt. Sr. Sec. School (Boys), Phagwara, District Kapurthala is that while in service, she has obtained Green Card issued by the America without taking approval of the department. Meaning thereby, she is permanent resident of America. The delinquent employee

concealed the fact regarding permanent resident of America from the department. Being a teacher, this conduct of the employee is even more incorrect and condemnable. By doing so, the employee has rendered herself liable for major punishment under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970.”

The case set up on behalf of the petitioner was that while serving as S.S. Mistress, she had attained age of 55 years on 31.10.2015. She had served 3 months notice for voluntary retirement in terms of Rule 3.1 (c) of the Punjab Civil Services (Pre-mature Retirement) Rules, 1975. Having evoked no response by virtue of operation of the rules, the petitioner stood retired w.e.f. 31.01.2016.

Precise argument raised on behalf of the petitioner was that permanent residency (Green Card) of the United States of America was obtained w.e.f. 03.05.2016 (Annexure P-10) on account of sponsorship by her son, who was a citizen of United States of America and as such, post retirement, such a charge in terms of the impugned charge sheet could not sustain.

The instant petition had came up for preliminary hearing on 11.05.2017 and while issuing notice of motion, proceedings pursuant to the impugned charge sheet dated 06.03.2017 (Annexure P-17) were stayed.

Learned State counsel during the course of hearing today has filed a reply by way of counter affidavit of the Assistant Director (School Administration-II), O/o Director of Public Instructions (Secondary Education), Punjab along with Annexure R-1/1 and R-2/2. The same has been taken on record and a complete copy has been furnished to counsel

opposite.

With the consent of the counsel for the parties, the writ petition has been taken up for disposal today itself.

Appended along with the written statement at Annexure R-2/2 is an order dated 14.09.2017 passed by the Director of Public Instructions (Secondary Education), Punjab.

Perusal of the same would reveal that the issue has been re-visited and a decision in the following terms has been taken:

(a) To grant voluntary retirement to the petitioner namely Smt. Bimla Devi, SS Mistress, Government Senior Secondary School (Boys) Phagwara District Kapurthala with effect from 31.01.2016, the date on which the notice period expired under Rule 3(c) of the Punjab Civil Services (Premature Retirement) Rules, 1975, which is granted accordingly.

(b) To withdraw earlier charge-sheet dated 06.03.2017 issued to the petitioner as the same has been rendered meaningless in view of changed position.

(c) To issue fresh charge sheet under Rule 2.2 (b) of the Punjab Civil Services Volume-II. However, this would be done in case this Hon'ble Court permits the answering respondent to do so as the matter is sub judice before the Hon'ble Court.

6. Consequently, the petitioner shall be entitled to all due admissible retiral benefits provisionally. The concerned Drawing and Disbursing Officer is directed to release all dues and admissible retiral benefits to the petitioner accordingly henceforth but not later than three months."

What clearly emerges is that the notice of the petitioner seeking voluntary retirement from service stands accepted and she stands retired

w.e.f. 31.01.2016 i.e. upon expiry of the notice period under Rule 3 of the Punjab Civil Services (Pre-mature Retirement) Rules, 1975. Furthermore, the impugned charge sheet dated 06.03.2017 (Annexure P-17) has now been termed as “**meaningless**”.

In the light of such changed situation, nothing would survive in the instant petition as the impugned charge sheet dated 06.03.2017 (Annexure P-17) is not being pressed by the State against the petitioner.

Under such circumstances, the writ petition has been rendered infructuous.

However, in the order dated 14.09.2017 at Annexure R-2/2, State has shown its inclination to issue a fresh charge sheet under Rule 2.2 (b) of the Punjab Civil Services Volume 2. This apparently is on the basis that the petitioner had secured immigration visa of United States of America on 16.09.2015 i.e. prior in point of time to the service of notice dated 31.10.2015 seeking voluntary retirement.

This Court is not entering into the merits of such contemplated action. Suffice it to observe that it would always be open for the State to proceed further in the matter in accordance with law and as per mandate of Rule 2.2 (b) of the Punjab Civil Services Volume 2.

Counsel representing the petitioner would apprise the Court that till date, the retiral/pensionary benefits have not been released even though the petitioner's voluntary retirement from service w.e.f. 31.01.2016 stands admitted.

In such regard, while disposing of the instant writ petition as infructuous, directions are issued to the respondent/competent authority to release admissible retiral/pensionary benefits in favour of the petitioner and

in the eventuality of issuing a fresh charge sheet, the retiral/pensionary benefits be also dealt with as per mandate of Rule 2.2 (b) of the Punjab Civil Services Volume 2. The issue with regard to the petitioner claiming statutory interest on delayed release of pensionary/retiral benefits is left open.

Disposed of.

18.09.2017

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

(i) Whether speaking/reasoned?	Yes
(ii) Whether Reportable?	Yes