IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 1885 of 2015
Date of Decision: 09.03.2017

Baljinder Singh ...Petitioners

Versus

Principal Secretary, Govt. of Punjab & Others ...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Surmukh Singh, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

JAISHREE THAKUR, J. *(Oral)*

The instant writ petition has been preferred seeking a writ in the nature of Certiorari for quashing the impugned order dated 22.09.2014 by which the request of the petitioner seeking premature retirement has been denied.

In brief, the facts of the case are that the petitioner, born on 06.07.1960, was appointed as a Math Master and joined services on 29.05.1995. On completion of 50 years of age, the petitioner, being eligible for premature retirement, submitted an application on 04.07.2013 in the office of respondent No. 4 with a prayer that he be relieved immediately. While moving the said application, salary of three months in lieu of three months prior notice, amounting to Rs. 1,10,352/-, was also deposited in the Government Treasury on 27.06.2013, thereafter was relieved from service. However, the matter was considered by the Director Public Instructions-respondent No. 2 and the said relieving order was cancelled on the ground

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that the Principal was not the competent authority nor was the said relieving order in consonance with Rule 3.2 of the Punjab Civil Services (Pre-mature Retirement) Rules, 1975 *(for short 'the Rules')* which clearly specifies that three months prior notice had to be given to the State while seeking premature retirement.

Mr. Surmukh Singh, learned counsel appearing on behalf of the petitioner, contends that on attaining the age of 50, the petitioner could apply for premature retirement as envisaged under the Rules and in lieu of three months' prior notice, the petitioner had already deposited the salary of three months amounting to Rs. 1,10,352/-. Therefore, three months prior notice period had been waived off by the Principal.

I have heard learned counsel for the parties and have perused the record of the case. Admittedly, in Rule 3.2 of the said Rules, it has been provided as under:

> **"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 to be specified in the notice."**

However, the Rules also specify that the notice of premature retirement given under this rule shall require acceptance by the appropriate authority and in case there is no communication of refusal to grant permission for retirement before the expiry of the period specified in the said notice, the retirement shall be effective from the date of expiry of the said period.

The question that arises herein is whether respondent No. 2 was justified in cancelling the order dated 04.07.2013 by which the petitioner stood relieved from service on account of having deposited three months'

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salary in lieu of notice period.

A perusal of the rule does not show that there is any provision for the period of notice to be waived off by deposit of three months' salary. Rule 3.1 of the Rules referred to above pertains to a situation where the services of the petitioner are no longer required and it is the duty cast upon the employer either to give a three months' notice before dispensing the services of the employee or in lieu thereof to give three months' salary. Therefore, there being no provision for the deposit of three months' salary by an employee, the same could not have been accepted by the Principal. A note appended to the Rules specifies *"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." A*t best, the authorities could have rejected the application on the ground that there was administrative inconvenience in releasing him from service on account of shortage of the staff which is not a ground taken.

It is evident from the record that the cancellation of the relieving order was passed on 22.09.2014 ,on the ground that three months' notice had not been issued prior to the relieving order. In fact, it is the opinion of the Court that a very hypertechnical ground has been taken without considering the fact that it is the Principal who is an employee of the State and under the

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control of the DPI, who had accepted an amount in lieu of three months notice. In case, the petitioner had submitted the application to the Principal, the Principal ought to have returned the application instead of accepting the same or should have forwarded to the DPI for appropriate orders. Even otherwise, the application seeking premature retirement was submitted in the office on 04.07.2013 and accepted immediately while the order setting aside the relieving order was passed almost fourteen months thereafter. As per the rules itself, the application seeking premature retirement has to be accepted by the appropriate authority within the specified time and in case the same is not done or any refusal order is not communicated to the applicant/employee, it will be deemed that the premature retirement has been accepted.

In the present case, admittedly, the petitioner is not suffering from any disqualification making him ineligible for seeking premature retirement. The only ground for rejection is that three months prior notice has not been given as envisaged under the rules which is not sustainable in view of the fact that the order setting aside the relieving order came to be issued on 22.09.2014 i.e. almost a year later.

Therefore the impugned order dated 22.09.2014 is set aside and it is directed that the petitioner herein be deemed to have retired on 04.10.2013.

Writ petition stands allowed accordingly.

March 09, 2017 **(JAISHREE THAKUR)**
Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*

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