

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

RSA No.5538 of 2003(O&M)

Date of Decision : March 20, 2018

Prem Kumar Bhanot

..... Appellant

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Balwinder Singh, Advocate
for the appellant.

Mr. Sahil Sharma, DAG, Punjab.

RAJ SHEKHAR ATTRI, J. (Oral)

The civil service is not a slavery. A civil servant can abandon or resign his service at any time as per his desire but in order to claim the retiral benefits he has to abide by the service rules of the department and resign from service in accordance with the rules.

Instant appeal has been preferred by the plaintiff who remained unsuccessful before the courts below. Undisputedly, initially, he was appointed as a 'Ayurvedic Vaid' in Government Ayurvedic Dispensary at Noshira Dhala in District Amritsar on 15.04.1968. His services were regularized vide order dated 20.10.1970.

It is the case of the appellant/plaintiff that he had applied casual leave w.e.f. 22.03.1978 to 26.03.1978 which was duly sanctioned. However, due to unavoidable family circumstances, he could not join his duties after completion of the leave period. He claims that after 26.03.1978, he had applied for the extension of leave from time to time. But on 23.12.1978, he had received a letter from the defendants/respondents,

directing him to join his duties. In pursuance thereof, he prepared a joining report-cum-written application seeking permission to allow him to join the duties at Ayurvedic Dispensary at Bunga Sahib but Civil Surgeon vide letter dated 08.01.1979 declined the same and did not allow him to join the duties. However, thereafter, plaintiff was served upon a charge-sheet with regard to absence from duty but no enquiry was conducted and ultimately charge-sheet was dropped.

Plaintiff alleges that he made various written representations to allow him to join duties but all were declined. Ultimately, he submitted his resignation from service on 09.01.1984 with immediate effect. However, vide letter dated 16.06.1988, he was asked to resign from the previous date i.e. 27.12.1978 when he overstayed the leave period. But plaintiff submitted applications on 13.01.1989 with a request to allow him to join his duties but he was never allowed to join. Ultimately, his resignation was accepted vide office order dated 13.03.1991 w.e.f. the date of submitting thereof i.e. 09.01.1984. He has challenged the said order dated 13.03.1991 through instant suit on the following grounds:-

- i) That the office order in question dated 13.3.1991 passed by defendant No.2 whereby the resignation dated 9.1.1984 of the plaintiff has been accepted, is illegal and legally untenable and sustainable, as vide order dated 16.6.1988, the resignation sent by the plaintiff on 9.1.1984 had already been rejected.*
- ii) That after the rejection of the resignation tendered by the plaintiff on 9.1.1984, by the defendants, the plaintiff had always been and is still ready to join his duties, to which effect he has sent written applications to the authorities concerned on 31.1.1989 and 25.1.1991, to which the defendants gave no response, before passing*

the office order dated 13.3.1991.

- iii) That the defendants are not legally entitled and competent to accept the resignation in question of the plaintiff when the same has already been rejected by the defendants vide Order dated 16.6.1988.*
- iv) That the alleged charges as contained in the Charge Sheet dated 3.2.1979 have not been proved against the plaintiff and no regular enquiry proceedings were conducted qua the above said charges, nor any enquiry report whatsoever has ever been conveyed or sent to the plaintiff.*
- v) That it is pertinent to state here that after the rejection of his resignation dated 9.1.1984, the plaintiff made no new request to the defendants to accept his said resignation or thereafter tendered any new resignation, as such the office order dated 13.3.1991 is illegal and devoid of any legal force and is infact nonest.*
- vi) That the Defendants are not entitled, either under law or under any rules to pass the office Order dated 13.3.1991, in view of the facts detailed in paras above.*

The suit has been contested by the defendants. It is their case that the plaintiff had applied for the leave from 22.03.1978 till 26.03.1978, thereafter, he did not join the duties inspite of the fact that he was reminded by various letters; that the application submitted by him for extension of leave was already been declined and he was apprised accordingly and was asked to join the duties. But he neither joined the duties nor withdrew his resignation. Ultimately, resignation was accepted vide order dated 13.03.1991 w.e.f. 09.01.1984 and the period of absence from duty was considered as the leave of the kind due. It has been further submitted that the plaintiff failed to render the qualifying service for the purpose of grant

of pension. Therefore, he is neither entitled for the pension nor for the retiral benefits.

The trial court framed the following issues:-

- 1. Whether the order No.Aur-E-2-Pb-91/137 dt. 13.3.91 passed by defendant no.2 is illegal null and void as alleged ? OPP.*
- 2. Whether the plaintiff is entitled for the declaration as prayed for ? OPP*
- 3. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP*
- 4. Whether the plaintiff is entitled for mandatory injunction as prayed for ? OPP*
- 5. Whether the suit is not maintainable as alleged ? OPD*
- 6. Relief.*

Learned trial court has afforded adequate opportunities to both the parties to adduce evidence. On appreciation of evidence, the suit was dismissed. The appeal preferred by the plaintiff was also dismissed vide judgment dated 28.07.2003, passed by the learned Addl. District Judge, Chandigarh. Both the judgments and orders have been impugned before this court.

I have heard learned counsel for the parties and have gone through the record.

Learned counsel for the appellant vehemently contended that infact the resignation was not accepted by the State and same was deemed to be withdrawn when plaintiff had submitted application for permission to allow him to join the duties but he was not allowed to do so; that the period from 27.03.1978 till the date of resignation has been adjudged as the period on leave of the kind due, therefore, he deemed to be on duty and he

fulfilled the requisite qualifying service for pension and other retiral benefits. According to him, the Courts below failed to appreciate the facts and evidence on the record and wrongly dismissed the suit as well as the appeal.

On the other hand, learned counsel for the defendants-respondents submitted that it is a clear case of abandonment of service by the plaintiff without any reason and without any notice; that plaintiff was given adequate opportunities to join the duties but he wilfully and intentionally failed to join the same and his resignation was accepted vide order dated 13.03.1991 w.e.f. 09.01.1984; that plaintiff did not render the qualifying service for pension, therefore, he is not entitled to the relief as claimed for and the suit as well as appeal has been rightly dismissed by the courts below on appreciation of evidence.

This court has given thoughtful consideration to the rival contentions and carefully examined the evidence on the record.

In this case, the following facts are not in dispute:-

(a) The plaintiff was appointed as 'Ayurvedic Vaidya' on 15.04.1968 initially on adhoc basis. However, his service was regularized vide order dated 20.10.1970;

(b) He applied casual leave from 23.03.1978 to 26.03.1978 which was sanctioned. After availing the said leave, he never joined the duties;

(c) He was charge-sheeted for remaining absent from duty vide order dated 13.02.1979 and departmental enquiry was initiated but said enquiry was not completed and ultimately stood dropped;

(d) The plaintiff submitted his resignation from service with immediate effect on 09.01.1984. Said resignation was accepted vide Office order dated 13.03.1991 w.e.f. 09.01.1984. However, the period of his absence from duty

was converted into leave of the kind due.

The plaintiff has asserted that his resignation was not initially accepted by the defendants, rather, he was asked to submit his resignation w.e.f. 27.03.1978 vide letter dated 16.06.1988, due to the reason that he remained absent from this date w.e.f. 27.03.1978 onwards. According to the plaintiff, this letter dated 16.06.1988 amounts to rejection of the resignation. This court has considered this contention but it carries no weight. The plaintiff remained absent from duty w.e.f. 27.03.1978 onwards and he submitted resignation on 09.01.1984 with immediate effect. The integrum period from 27.03.1978 to 09.01.1984 was not covered by said resignation. Rather that period was under departmental enquiry at that time. In order to solve this matter, the department gave an offer to the plaintiff to submit his resignation w.e.f. 27.03.1978 so that complication in the service record may be corrected but this does not amount that his resignation was rejected. There is no other material on the record that the said resignation was withdrawn by the plaintiff or was declined to accept by the defendants till 13.03.1991.

The plaintiff has submitted that he had applied various times to the department to allow him to join duties. It seems that he was not serious about the joining of his duties. He placed on record certain applications vide which he requested to join the duties but infact he did not join. Apart from it, plaintiff has himself resigned from service on 09.01.1984 with immediate effect.

It has been argued that the resignation was kept pending till 13.03.1991 but the mere fact that the resignation was kept pending from 09.01.1984 to 13.03.1991, *ipso facto*, will not entitle the plaintiff any

benefit.

The plaintiff did not qualify the minimum service for pension. It is settled law that resignation forfeits the past service. Rule 7.5 Chapter 7 Vol.1 Part 1 of the Punjab Civil Services Rules (in short 'Service Rules') reads as under:-

7.5. (1) Resignation from a service or a post, unless it is allowed to be withdrawn in public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government employee on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdraw his resignation in public interest on the following conditions, namely:

(i) that the resignation was tendered by the Government employee for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for

withdrawal was made, the conduct of the person concerned was in no way improper;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

(iv) that the aforementioned period of ninety days shall be observed in the manner that the employee concerned should put in his application for withdrawal of resignation within two months of being relieved and the same should as far as possible be processed within a period of one month; and

(v) that the post, which was vacated by the Government employee on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government employee resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

A bare perusal of the Service Rules establishes that the resignation from a service or a post entails forfeiture of past service.

However, a saving is added then, that in case said resignation is allowed to

withdraw in the public interest and subject to other conditions as contained

in sub-Rules 2 to 5 (supra). In this view of the matter, the period prior to submitting resignation stand forfeited and thus, plaintiff does not fulfill the condition of qualifying service.

A specific subordinate legislation has been enacted by the State of Punjab under the reference of Rule 5.32 of the Service Rules and it relates to the premature and voluntary retirement of an employee under the title **“The Punjab Civil Services (Premature Retirement) Rules, 1975”** [herein after shall be referred to as the Premature Retirement Rules]. These Rules dealt with the premature retirement of an employee by his department as well as voluntary retirement on the request of an employee. We here are concerned only with the voluntary retirement which has been defined under sub-Rule (3) of the Premature Retirement Rules. This Rule reads as under:-

(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 therefor 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 the rule 3, the date of service of the notice and the date of its expiry shall be excluded.”

A bare perusal of the abovesaid Rules makes it abundantly clear that an employee seeking voluntary retirement has to fulfill, *inter alia*, the following conditions:-

- a) he may apply for premature retirement at any time after the completion of 20 years of qualifying service.
- b) he has to give a notice to his department of not less than three months in writing to the appropriate authority showing his intention to retire from service.
- c) the notice of voluntary retirement given under this sub-rule shall require acceptance by the appropriate authority.
- d) however, 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.

In the case in hand, plaintiff did not fulfill any of the conditions as laid down under sub-Rule (3) of Rule 3 of the Premature Retirement Rules. Neither he fulfilled the 20 years qualifying service nor he had given a three months notice.

Infact, this is a case of abandonment of the service by the plaintiff. It is settled law that abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Hon'ble Supreme Court in **Vijay S.Sathaye vs. Indian Airlines Ltd. & others 2013 (10) SCR 73** has observed as under:-

“It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.

In M/s Jeewanlal (1929) Ltd., Calcutta v. Its Workmen, AIR 1961 SC 1567, this Court held as under:

“...there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee.”

(See also : Shahoodul Haque v. The Registrar, Co-operative Societies, Bibhar & Anr., AIR 1974 SC 1896).

For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as 'retrenchment from service.

(See: State of Haryana v. Om Prakash & Anr., (1998) 8SCC 733)

In Buckingham and Carnatic Co. Ltd. v. Venkatiah & Anr., AIR 1964 SC 1272, while dealing with a similar case, this Court observed:

“Abandonment or relinquishment of service is a always

a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf.”

A similar view has been reiterated in G.T.Lad & Ors. vs. Chemicals and Fibres India Ltd., AIR 1979 SC 582.

In Syndicate Bank v. General Secretary, Syndicate Bank Staff Association & Anr., 2000(2) S.C.T. 765 : AIR 2000 SC 2198; and Aligarh Muslim University & Ors. v. Mansoor Ali Khan, 2000(4) S.C.T. 313 : AIR 2000 SC 2783, this Court ruled that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceases to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities.

A similar view has been reiterated in V.C.Banaras Hindu University & Ors. v. Shrikant, AIR 2006 SC 2304; Chief Engineer (Construction) v. Keshava Rao (dead) by Lrs., 2005 (2) S.C.T. 420 : (2005) 11 SCC 229; and Regional Manager, Bank of Baroda v. Anita Nandrajog, 2009(4) S.C.T. 380 : (2009) 9 SCC 462.”

In the case in hand, plaintiff did not sought the voluntarily retirement under Premature Retirement Rules, rather, he had unilaterally submitted resignation with immediate effect, therefore, he is not entitled to the benefit of past service. He failed to fulfill the qualifying service. Thus, he is not entitled to the benefit of retiral benefits.

Learned counsel for the appellant has also argued that vide order 13.03.1991, the period between 27.03.1978 to 09.01.1984 was treated as leave of the kind due. According to him, this period has been validated and treated to be on sanctioned leave therefore, the plaintiff has fulfilled the qualifying service. This court has considered the contention but it is

devoid of any merit. The plaintiff overstayed the leave period and in fact he remained absent from duty. For the purpose of maintaining correct service record of plaintiff, said period was treated as leave of the kind due but no leave was remained in the account of plaintiff.

Rule 4.10 of the Service Rules, Volume II, Chapter IV specifically provides that a period of overstay of leave does not count for pension. Chapter IV of the abovesaid Rules specifically provides the reckoning of service for pension. Rule 3.12 thereof generally provides as under:-

“The service of a government employee does not qualify for pension unless conforms to the conditions as prescribed under the Service Rules.

Rule 3.17-A specifically provides reckoning of the service period for the purpose of qualifying service. The provisions relevant hereto are reproduced as under:-

3.17-A (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-

(i) and (ii) Omitted

(iii) casual or daily rated service.

(iv) Suspension adjudged as a specific penalty.

***Note-** In cases where an officer dies or is permitted to retire while under suspension will not be treated as an interruption.*

(v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the government where service qualifies for pension.

(vi) xxx

(vii) If any unauthorized leave of absence occurs in continuation of authorized leave of absence and if the post of the absentee has been substantively filled up, the past service of the absentee is forfeited.

(viii) xxx

(ix) Removal from public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of the past service.

(x) xxx

(2) An interruption in the service of a government employee caused by willful absence from duty or unauthorized absence without leave, shall entail forfeiture of the past service.

(3) Willful abstinence from performing duties by a government employee by resort to pen down strike shall be deemed to be willful absence from duty and shall also entail forfeiture of the past service.

Note- *In the case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, the pensionary benefits admissible for service under Central government would be that admissible under the Government of India rules and the liability for such benefits shall be allocated in accordance with the prevalent orders.*

Clarification(1)-*Even after the introduction of rule 3.17(A) and deletion of rule 4.21 the following cases do not entail forfeiture of past service:-*

(a) authorized leave of absence;

(b) abolition of post or loss of appointment owing to reduction in establishment.

(“Post” or “appointment” means a post or appointment service in which qualifies for pension).

(2) While counting such qualifying service for working out aggregate service the period of break in service shall be omitted.”

A three judge bench of Hon'ble the Supreme Court in case of ***State of Madhya Pradesh Vs. Harihar Gopal, AIR 1969 (SC) 36*** has already discussed a similar matter. In that case, the government employee was dismissed from service due to a period of absence from duty, after his dismissal second order was passed granting leave of the kind due during the period of absent. It was held that second order was made for purpose of maintaining a correct record of duration of service and such an order will not invalidate termination. This precedent was followed in ***Maan Singh Vs. State of Punjab, AIR 2003 (SC) 1800*** wherein it was held in para No.5 as under:-

“5. In Harihar Gopal's case this Court noticed that the delinquent officer in failing to report for duty and remaining absent without obtaining leave had acted in a manner irresponsibly and unjustifiedly; that, on the finding of the Enquiry Officer, the charge was proved that he remained absent without obtaining leave in advance; that the order granting leave was made after the order terminating the employment and it was made only for the purpose of maintaining a correct record of the duration of service and adjustment of leave due to delinquent officer and for regularising his absence from duty. This Court's attention was not invited to any for rule governing the respondent's service conditions under which an order regularising absence from duty subsequent to termination of employment had the effect of invalidating termination. Thus, this Court concluded that it could not be held that the authority after terminating the employment of delinquent officer intended to pass an order invalidating that earlier order by sanctioning leave so that the was to be deemed not to have remained absent from duty without leave duly granted.”

Viewing from all the angles, the plaintiff does not fulfill the qualifying service for pension. In this view of the matter, the mere mentioning of order dated 13.03.1991 (supra), that the period of absence shall be treated on the leave of the kind due, does not validate his service

between the period 27.03.1978 to 13.03.1991 nor in any way invalidates the acceptance of the resignation.

On the independent appraisal of the evidence available on the record, this court is of the considered view that the findings of the learned courts below are based on appreciation of evidence, therefore, do not call for interference and are hereby affirmed.

In view of my aforesaid discussion, the instant appeal being devoid of any merit and is hereby dismissed with no order as to costs.

March 20, 2018
mamta-M

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No