

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

**CWP-19859-2012 (O&M)
Date of decision : 23.08.2018**

Dr. K.L. Sethi

...Petitioner(s)

Versus

The State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Madhav Pokhrel, Advocate,
for Dr. M.L. Sachdeva, Advocate,
for the petitioner.

Ms. Deepali Puri, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for issuance of a direction in the nature of Certiorari for setting aside order dated 09.03.2011 (Annexure P-9), whereby, the services of the petitioner were dismissed on the ground that he did not join his duties consequent upon rejection of the three months' notice dated 11.02.2000, served by him seeking voluntary retirement on the ground of non-completion of the requisite 20 years of service.

The petitioner joined as PCMS Class-II Medical Officer on 13.04.1983. On 11.02.2000 (Annexure P-1), he served three months' advance notice upon respondent No.1, seeking premature retirement under Rule 3.3 of the Punjab Civil Services (Premature Retirement) Rules, 1975 with a further request to be relieved from duties by 17.05.2000. However,

vide memo dated 20.04.2000, the request of the petitioner had been also rejected on the ground that he had not qualified for premature/voluntary retirement as per Rules. However, the petitioner relinquished charge on 17.05.2000 and relieved himself from duty. The respondents vide memo dated 13.07.2000 directed the petitioner to join duties, which he failed to do. Meanwhile, the petitioner served legal notice dated 26.07.2000 (Annexure P-4) stating therein that he had relinquished the charge on 17.05.2000 and thus, his retiral benefits be released to him. Thereafter, a charge-sheet was served upon the petitioner on 18.12.2000 (Annexure P-5). The petitioner submitted reply to the charge-sheet vide Annexure P-6 to the effect that he had already relinquished the charge on 17.05.2000 and thereafter, was no more a Government servant. Thus, no charge-sheet could be served upon him.

Thereafter, the petitioner approached this Court by way of filing CWP-2271-2002, which was decided on 25.08.2010 (Annexure P-7), with the following observations:-

“This Court is of the view that the respondent-Department has taken a very harsh view in the facts and circumstances of the case. The Government had been encouraging the employees to take retirement and seek self employment so that State is able to fulfill the object of generating maximum employment. Notice sent by the petitioner was rejected by the Government vide Annexure R1, on 20.4.2000 on the ground that he has not completed the qualifying service. In these circumstances, this Court is of the view that the State Government may consider the prayer of the petitioner for grant of pro-rata pension under Rule 6.16 of the Punjab Civil Service Rules, Volume II sympathetically, as this

*Court cannot give a categoric finding that the petitioner stood retired as he had not completed 20 years of qualifying service on the expiry of period of notice. Counsel for the petitioner has relied upon **Ganga Bishan v. State of Haryana**, 1994(3) PLR 691, wherein considering the fact that the petitioner had completed 18 years, 5 months and 15 days of service instead of 20 years of service, it was held that Rule 6.16 can be invoked. Therefore, in view of the observations made, the authorities may also consider the the ratio of judgment relied upon by counsel for the petitioner, while sympathetically considering the case of the petitioner.”*

In pursuance of the aforesaid directions issued by this Court, the respondents passed impugned order (Annexure P-9), whereby, his services stood terminated, primarily, on the ground that the petitioner had remained continuously absent w.e.f. 18.05.2000.

The contention of the petitioner that at the time of issuance of chargesheet, Annexure P-5, he had already ceased to be a government servant is misconceived as even after 17.05.2000, in the absence of any communication with regard to acceptance of his request/resignation, the employer-employee relationship between the parties was still subsisting. It is to be noticed that the petitioner's request for premature/voluntary retirement w.e.f. 17.05.2000 was rejected by the respondent-authorities vide memo dated 20.04.2000, i.e. well before the expiry of notice period. The petitioner has nowhere disputed the issuance and receipt of memo dated 20.04.2000. Thus, the charges with regard to continuous absence w.e.f. 18.05.2000 and wilful disobedience of orders of the higher authority in not joining back to his duties also stand proved.

The notice sent by the petitioner for grant of premature/voluntary retirement was rejected on the ground that he did not complete the qualifying service. The petitioner was also requested time and again to rejoin his duties. Rather than agitating his claim for premature/voluntary retirement with the authorities and to continue in service till the dispute could reach to a logical end, the petitioner himself chose to relinquish his charge w.e.f. 17.05.2000. The services of the petitioner have been terminated on the ground of wilful absence from duties and not on account of the fact that he did not complete the qualifying service.

The petitioner cannot take benefit of ratio of law laid down in Ganga Bishan's case (supra) as the facts of the cited case are distinguishable. In the cited case, the petitioner was permitted to retire from service, whereas, in the instant case, the petitioner opted to relinquish his charge without approval of the competent authority. The Court feels that Rule 6.16 of the Punjab Civil Services Rules, Volume II, cannot be invoked as the instant case is a case of wilful absence of the petitioner.

In view of the above discussion, this Court feels that no case for interference is made out in the impugned order of dismissal and the same is hereby upheld.

Dismissed. .

23.08.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No