

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.378 of 2013

DATE OF DECISION:21.12.2018

Mohar Singh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Sunil Kumar Vashisht, Deputy Advocate General,
Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the order dated 24.04.2012 (Annexure P-5) vide which, the petitioner has been removed from service on the basis of a chargesheet dated 22.07.2005. It has been further prayed in the writ petition that the petitioner be deemed to be retired on 02.03.2006 i.e. on the expiry of three months notice given by the petitioner for voluntarily retirement, as the request made by the petitioner seeking the said voluntarily retirement on 02.12.2005 has never been rejected by the respondents. The necessary facts, which led to the filing of the present writ petition are as under:

The petitioner joined as a Medical Officer on 20.09.1982. He kept on working as such till he was promoted as a Senior Medical Officer on 28.11.1988. The petitioner worked as Senior Medical Officer till 10.09.2003, when he was promoted as a

Civil Surgeon. He continued working as such till 22.08.2004 when he was posted as Deputy Director.

On 22.07.2005, the petitioner was issued a chargesheet under Rule 7 vide memo No.7/5/05-2HB-I dated 27.07.2005. The allegations in the said charge sheet was that the petitioner remained absent starting from 30.11.2004. Despite the issuance of the chargesheet, the petitioner only joined on 02.12.2005. Even on joining, the petitioner immediately submitted an application for earned leave from 05.12.2005 till 06.01.2006.

On the date when the petitioner joined, he not only submitted an application for earned leave, but also submitted an application seeking voluntary retirement and served the respondents with a notice for three months, which was to expire on 02.03.2006.

On 11.01.2006, a letter was issued by the respondents-State, copy of which has been attached as Annexure P-1 with the petition wherein the respondents-State wrote to the petitioner that he has given a notice for a period of three months seeking voluntary retirement on 02.12.2005 but as he has also given an application for the grant of earned leave from 05.12.2005 to 06.01.2006, the said period of one month will be added to the notice period of three months given by the petitioner seeking voluntarily retirement.

It is an admitted fact that except the above mentioned letter (Annexure P-1), no further correspondence has been done by the State in respect of the request made by the petitioner seeking voluntary retirement vide his letter dated 02.12.2005. Thereafter, the petitioner on his own considered himself retired from service on the expiry of three months and did not perform the duties. As per the respondent-State, the voluntary retirement request needs a specific approval/acceptance and as there was none, the State considered the petitioner absent from duty and

keeping in view this, another chargesheet was served upon the

petitioner on 27.07.2007 under Rule 7 of the Haryana Civil Services (Punishment and Appeal), Rules, 1987. The allegations in the said chargesheet was also absence from duty.

In respect of the chargesheet which was issued to the petitioner, the respondent-State got an inquiry conducted. Before the inquiry officer, the petitioner submitted that he has put in 22 years of service and has performed his duties diligently. He stated that his health deteriorated, he had ailing father to look after. Further the petitioner stated that his own son, who was doing MBBS died in a road accident and in view of the stress and family circumstances, he had already prayed for the voluntary retirement, which is deemed to be accepted as there was no refusal of the same.

On 12.03.2010, the Inquiry report was submitted by the Inquiry Officer which had been appended by the petitioner as Annexure P-3 alongwith the writ petition. In the inquiry report, the charges of absent from duty were proved against the petitioner but the inquiry officer also noticed the circumstances under which the petitioner remained absent such as death of his only son, illness of his aged father and his own medical health were also contributing factors in the said absence.

The said inquiry report was furnished to the petitioner, who filed a detailed reply on 11.10.2011, which has been appended as Annexure P-4 with the writ petition.

After considering all the relevant facts, the respondent passed an order on 24.04.2012. The said order was a joint order in respect of both the chargesheets issued to the petitioner i.e. chargesheet dated 22.07.2005 as well as the chargesheet dated 27.07.2007. The competent authority, after noticing the facts of the case, removed the petitioner from service. The said order of removal from service has been impugned by the petitioner in the present writ petition.

The petitioner in the above mentioned writ petition

has contended that the order of his removal from service is

contrary to the law and as per the provisions of Punjab Civil Services Rules, as applicable to Haryana, the petitioner already stands retired on expiry of three months notice which the petitioner had given on 02.12.2005 as the said request has never been rejected by the respondent and, therefore, once the petitioner stands retired on 02.03.2006, there is no competence with the respondent to pass an order of removal from service as done by them vide order dated 24.04.2012 (Annexure P-5) and, therefore, as there is no jurisdiction with the respondent to dismiss a retired employee, the order dated 24.04.2012 (Annexure P-5) is illegal.

Upon notice of motion, the respondent has put in appearance and filed reply. In reply, the only defence taken is that as the petitioner was wilfully absenting himself, he was served with a chargesheet on 22.07.2005, before he submitted his request for voluntary retirement on 02.12.2005 and keeping in view the disciplinary proceedings pending against him, the petitioner could not have been granted the voluntary retirement.

Counsel for the respondent states that there is no order, which has been passed except the order Annexure P-1 by which, it was mentioned that the period of earned leave for which the petitioner had made a request from 05.12.2015 to 06.01.2016, will be added to the notice period of three months given by the petitioner seeking voluntary retirement.

The respondent further states that until and unless there is acceptance of the voluntary retirement to the request made by the petitioner dated 02.12.2005, there cannot be automatic retirement of the petitioner of expiry of three months period. Once the chargesheets were being inquired into, the voluntary retirement request of the petitioner is deemed to be rejected even though there is no specific order passed in this regard by the State.

I have heard the counsel for the parties.

The learned Senior counsel appearing on behalf of the

petitioner contends that though the chargesheet had been served upon the petitioner on 22.07.2005 with an allegation of absence from duty, still the request of the petitioner for grant of voluntarily retirement is deemed to be accepted on the expiry of three months as there was no rejection of the same by the competent authority. In the support of the said argument, learned Senior counsel relied upon the Rule 5.32 B of the Punjab Civil Services Rules as applicable to Haryana. The relevant Rule is as under:

“5.32-B (1) At any time a Government employee has completed twenty years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reason thereof. On receipt of a request, the appointing authority may consider such request for curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) The notice of voluntary retirement given under sub rule (1) shall require acceptance by the appointing authority subject to rule 2.2 of Punjab Civil Services Rules Volume-II.

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub rule (1) supra, the retirement shall become effective from the date of expiry of the said period: Provided further that

before a Government employee gives notice of voluntary retirement with reference to sub rule (1) he should satisfy himself by means of a reference to the appropriate authority that he has, in fact, completed twenty years service qualifying for pension.”

A bare perusal of the above Rule would show that under Clause 2 of the Rule 5.32-B, the request of voluntary retirement requires an acceptance of the appointing authority but the proviso to the said Rule states that in case the appointing authority does not refuse to grant the permission for retirement before the expiry of three months period, the retirement shall become effective from the date of expiry of the said period.

The senior counsel appearing on behalf of the petitioner argues that in view of the proviso of Rule 5.32 (B)(2) as there is no rejection by the State of Haryana to the request made by the petitioner seeking voluntary retirement made on 02.12.2005, giving three months notice, the petitioner is deemed to be retired on expiry of three months period. The petitioner stands retired w.e.f. 02.03.2006.

The argument raised on behalf of the petitioner has substance. Though Rule 5.32 (B)(2) requires an acceptance of the request made by an employee for voluntarily retirement but the provision is unambiguous to show that where there is no rejection of the request, the employee stands retired on the expiry of three months.

The arguments which have been raised by the respondent-State that there was a chargesheet pending against the petitioner and, therefore, proviso to clause 5.32 (B)b(2) will not come into being, cannot be accepted. Once all the facts were to the knowledge of the respondent-State including the pendency of chargesheet against the petitioner, nothing restrain the respondent to pass appropriate orders declining the request which was made by the petitioner for the grant of voluntary retirement vide his application dated 02.12.2005. The Rule was in

the knowledge of the department which clearly stipulated that in case of non-refusal of the request, there is a deeming fiction that the employee will stand retired on expiry of notice period. The department should have been more vigilant to pass appropriate orders within the time frame. The only letter which the respondent wrote after the receipt of the request for voluntary retirement from the petitioner on 02.12.2005 was on 11.01.2006 by which the respondents only added a period of one month to the notice period of three months which was given by the petitioner and that too on the ground that the petitioner had made a request for grant of earned leave from 05.12.2005 till 06.01.2006. It is further admitted that even if the said period is added to the notice period, this also makes no difference as there is no order passed by the competent authority till 06.04.2006 refusing the request made by the petitioner for the grant of voluntary retirement. Rather, there is no order passed declining the permission for the grant of voluntary retirement at all by the respondent at any stage.

Counsel for the respondent in support of his argument has relied upon a judgment of the Hon'ble Apex Court in **Dr. Baljit Singh Vs. State of Haryana, 1997(1) SCC 754**. Counsel for the respondent-State contends that the acceptance of the request of the voluntary retirement is must and no one can be granted voluntary retirement merely by applying for the same by simply giving three months notice. Though, the said judgment rendered by two Judges Bench holds that there has to be acceptance of the request of voluntary retirement and till there is no acceptance, there cannot be any deeming fiction of retirement on completion of three months but the said judgment was considered by the Hon'ble Apex Court again in an appeal filed by the State of Haryana being Civil Appeal No.2325 of 1995 decided on 16.04.1999, titled as **State of Haryana Vs. S.K. Singhal**.

After noticing the judgment in **Dr. Baljit Singh (supra)**, the appeal filed by the State of Haryana was dismissed

wherein also, the same question of law arose as to whether an employee will be retired automatically on the expiry of three months period notice or not in case the request made by an employee for the grant of voluntary retirement is not rejected within the time frame. The relevant para of the said judgment is as under:

“Before referring to the second category of cases where the rules require a positive acceptance of the notice of voluntary retirement and communication thereof, it is necessary to refer to the decision of this Court in **Dr. Baljit Singh Vs. State of Haryana** 1997 (1) SCC 754 strongly relied upon by the learned counsel for the appellants and to **Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia** 1997 (4) SCC 280. the format case arose under Rule 5.32(b) of the Punjab Civil Service Rules. That rule extracted earlier contains an express provision in the proviso to sub-section (2) that the retirement takes effect automatically if refusal is not communicated within 3 months. In that case, when the employee gave notice for voluntary retirement on 20.9./1993, criminal cases were pending against him. After expiry of 3 months, on 25.2.1994, the competent authority declined to accept the notice. A two Judge Bench of this Court, however, held that the voluntary retirement did not come about automatically on the expiry of the notice period but that it could take effect only upon acceptance of the notice by govt. and that the acceptance must also be communicated and till then the jural relationship of master and servant continues. This Court referred only to the decision of the two Judge Bench in Sayed Mazaffar Mir's case 1995 Supp. (1) SCC 76 and stated that case was to be confined to its own facts. The two Judge Bench of this Court in

Dr.Baljit Singh's case 1997 (1) SCC 754 did not notice that there were two three Judge Bench cases in Dinesh Chandra Sangma and Shelat taking the view under similar rules that a positive order was to be passed within the notice period withholding permission to retire and that the said order was also to be communicated to the employee during the said period. By stating that an order of acceptance of the notice was necessary and that the said acceptance must be communicated to the employee and till that was done the jural relationship continued and there was no automatic snapping thereof on expiry of 3 months period, the Two three Judge Bench cases which were not brought to its notice. In the above circumstances, we follow the two three Judge Bench cases for deciding the case before us."

A bare perusal of the above order would show that the said judgment already stands distinguished by the Hon'ble Supreme Court while deciding the same question of law subsequently and hence, once the Rule 5.32 (B) has already been interpreted by the Hon'ble Supreme Court to mean that where there is no refusal to the request made by an employee for the grant of voluntary retirement within the time frame, the employee will stand retired voluntary on expiry of three months notice as envisaged under Rule 5.32-B reproduced above.

The law has already been settled by the Hon'ble Supreme Court more than once on this aspect as to whether an employee who has submitted an application for voluntary retirement with three months notice, will stand retired on the expiry of the said period automatically or not as the request made by the employee is not declined within the time frame, despite the fact that the disciplinary proceedings might be pending against the said official. In **Union of India Vs. Sayed Muzaffar**

Mir, 1995 Supp (1) SCC 76, Hon'ble Supreme Court held that an employee will automatically stand retired on expiry of the notice period given while making a request for voluntary retirement in case the said request has not been refused by the respondent within the stipulated three months notice period.

The relevant paras are as under:

“4. There are two answers to this submission. The first is that both the provisions relied upon by the learned counsel would require, according to us, passing of appropriate order, when the government servant is under suspension (as was the respondent), either of withholding permission to retire or retaining of the incumbent in service. It is an admitted fact that no such order had been passed in the present case. So, despite the right given to the appropriate/competent authority in this regard, the same is of no avail in the present case as the right had not come to be exercised. We do not know the reason(s) thereof. May be, for some reason the authority concerned thought that it would be better to see off the respondent by allowing him to retire.

5. The second aspect of the matter is that it has been held by a three-Judge Bench of this Court in **Dinesh Chandra Sangma Vs. State of Assam**, which has dealt with a pari materia provision finding place in Rule 56(c) of the Fundamental Rules, that where the government servant seeks premature retirement the same does not require any acceptance and comes into effect on the completion of the notice period. This decision was followed by another three- Judge Bench in **B.J. Shelat Vs. State of Gujarat**, (1978)2 SCC 202.”

In view of the above settled proposition of law, if there is no refusal of the request made by an employee for the grant of voluntary retirement, as per the Rules governing service i.e. Rule

5.32 (B) of the Punjab Civil Services Rules as applicable to Haryana, an employee will be deemed to be retired from service in case of non refusal of request by the competent authority despite the fact that the disciplinary proceedings might be pending against him at the time of making of the said request.

Rule 5.32-B has been interpreted by this Court also on more than one occasions. The Division Bench of this Court while deciding CWP No.4030 of 1999 decided on 13.01.2000, held that though the disciplinary proceedings might be pending against an employee but in case the request made for grant of voluntary retirement is not rejected/refused by the competent authority, then in view of the proviso to Rule 5.32 (B)(2), the employee will be deemed to be retired from service on expiry of period of three months. The relevant portion of the judgment is reproduced as under:

“Upon issuance of notice of motion to the respondents, written statement was filed on behalf of respondents No.1 and 2 by the Registrar, office of Engineer in Chief, Haryana, PWD B&R Branch, wherein a stand was taken in the preliminary submissions that his voluntary retirement notice had not been accepted by the Government. It was further contended that the action against him in the departmental proceedings was still pending and show cause notice had already been issued to the petitioner and as such no further action was needed on the notice for voluntary retirement.

It is not disputed that the departmental enquiry was pending against the petitioner which was completed and the disciplinary authority had issued a show cause notice vide which, as contended by the learned counsel for the petitioner himself, the disciplinary authority proposed a Recorded Warning besides recovery of a sum of Rs.4391.67. A copy of the show

cause notice dated 14.7.1998 has also been placed on record as Annexure P-10. Mr. R.K. Malik, learned counsel for the petitioner stated at Bar before us that the petitioner is ready to accept the punishment proposed, mentioned in the show cause notice and is willing to pay the amount sought to be recovered i.e. a sum of Rs.4391.67.

In view of the stand taken by the learned counsel for the petitioner and also keeping in view the fact that the petitioner's notice was under consideration till 15.02.1999, vide Annexure P-5, and also keeping in view proviso 1 to Rule 5.32-B of the Punjab Civil Services Rules, Volume-II, we find merit in the contention of the learned counsel for the petitioner that his notice for voluntary retirement having not been declined within the period specified in the Sub Rule (1) i.e. The period of three months with effect from the date of the notice, the retirement shall become effective from the date of expiry of the said period.

In view of what has been said above and in view of the stand taken by the learned counsel for the petitioner and the respondents, this writ petition is allowed to the extent that the petitioner, in view of proviso 1 to Rule 5.32-B of the Punjab Civil Services Rules, Volume II, shall be treated as retired with effect from the expiry of the period of three months with effect from the date of the notice i.e. 31.12.1998 with all consequential benefits. So far as the other grievances of the petitioner are concerned, the petitioner as per the request made by the learned counsel, is relegated to his remedy of making an appropriate representation on the administrative side before the respondents which shall be considered and disposed

of within four months from the date such a representation is filed by the petitioner.”

Not only this, the same question again arose as to whether there will be a deeming fiction of retirement in case of non refusal of the request of an employee for the grant of voluntary retirement or not. While deciding CWP No.19793 of 2011 decided on 25.10.2017, this Court in similar circumstances, where the disciplinary proceedings were pending and the request made by an employee for voluntary retirement had not been refused within the period of three months of notice period, by relying upon the judgment of the Hon'ble Supreme Court in **Suresh Kumar Gupta's case (supra)**, held that as per the proviso of Rule 5.32-B an employee shall be deemed to be retired from service on expiry of three months notice in case the request of an employee has not been refused within the above mentioned time. The relevant para is reproduced hereunder for the ready reference:

“Coming therefore to the issue on which the petition has been essentially argued on both sides, i.e. the petitioners' application for voluntary retirement having come into effect upon the expiry of the three month notice period, served by him on 14.09.2010 (Annexure P-7), he therefore having voluntarily retired from service w.e.f. 14.12.2010, I am in agreement with what has been argued on behalf of the petitioner.

Other than the fact that in similar circumstances, the Supreme Court in Sayed Muzaffar Mir (supra), and a Division Bench of this Court in Suresh Kumar Gupta's (case), have held that in the absence of refusal of permission to voluntarily retire, a Government servant would be deemed to have retired at the end of the notice period, it is also seen that even the reliance by the respondents on the instructions Annexure R-1, dated 01.08.1980, is wholly and completely

misconceived and in fact misleading.”

Now the second question, which arise in the present case is that whether once the petitioner is deemed to have retired after the expiry of three months period of his submitting the request for voluntary retirement on 02.12.2005 whether the respondent-State had any jurisdiction to pass an order removing him from service by taking an action on the chargesheets, which were pending against the petitioner on the date when he submitted the request for voluntary retirement or issued thereafter.

The order Annexure P-5, removing the petitioner from service has been passed on the basis of the disciplinary proceedings initiated against the petitioner vide chargesheets dated 07.05.2005 and 27.07.2007 and the allegations in both the chargesheets were in respect of absence from duty.

The State has the jurisdiction to take appropriate action even against the retired employee as envisaged under Rule 2.2(b) of the Punjab Civil Services Rules, Volume II, Part-1, as applicable to the State of Haryana. The said Rule is reproduced as under for the ready reference.

“...2.2. Recoveries from pensions: (a) xx xx xx

(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon reemployment after retirement: Provided that:-

(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

(3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.....”

(emphasis applied)

A bare perusal of the above reproduction would show that no power exists with the competent authority to remove or dismiss an employee, who has already retired from service. The State Government has power to withhold his pension or impose a cut in pension as the case may be keeping in view the gravity of the charges levelled and proved against the employee.

Therefore, once it had already been held that the petitioner is

deemed to have retired from service on 06.03.2006, the order passed by the respondent-State on 24.04.2012 (Annexure P-5) is beyond the jurisdiction of the respondents. In this regard, support is taken from the following decision rendered on this issue.

Hon'ble Supreme Court in Civil Appeal No.2343-45 of 1994 decided on 23.11.1994 titled as **High Court of Punjab and Haryana Vs. Amrik Singh**, 1995(Supl) SCC 321 held that the authority cannot pass an order of dismissal from service on an date later than the date of retirement of a delinquent. The authority can only take an action under Rule 2.2(b) of the Punjab Civil Services Rules. By interpreting Rule 2.2b of the Punjab Civil Services Rules, the Hon'ble Supreme Court held that an employee who has already retired cannot be dismissed from service. The relevant portion of the judgment is reproduced as under:

“2. Shri D.D. Thakur, learned senior counsel for the appellant has contended that it is settled law that once disciplinary proceedings have been initiated according to the Rules while the employee was in office, either before his attaining superannuation or expiry of the period of re- employment, the logical consequence would be that the departmental proceedings would be continued till the final orders are passed. Final order would be either exoneration of the delinquent of the charges or to pass an appropriate punishment in accordance with Rules. In this case, in view of the proved grave misconduct of the embezzlement of the funds of the High Court, the Chief Justice dismissed the respondent from service with immediate effect from the date of the passing of the order. The Division Bench was not right in holding that the order is void. Consequential to the order of dismissal, appropriate action would be taken under

the Pension Rules either under Section 9 of the Central Rules or under Rule section 2(2) (b) of the Punjab Civil Services Rules, Volume II. Shri Sehgal, learned Senior counsel for the delinquent contended that, though the disciplinary authority has power to continue the proceedings, after the delinquent had attained superannuation, and was allowed to retire, the Chief Justice had no power to pass the order of dismissal. It would be open only to pass appropriate order under the Pension Rules and no other.

3. The respective contentions gives rise to the question whether the orders of dismissal is valid in law or what would be the appropriate orders that could be passed in the circumstances of the case. In. **D.V. Kapoor V. Union of India and others**, [1990] 4 SCC 314, considering Rule 9 of the Central Pension Rules, this Court held that the initiation of the disciplinary proceedings against the delinquent must be deemed to be proceedings under the Pension Rules and shall be continued and concluded by the authority by which the proceedings have been commenced in the same manner as if the Government servant has been continued in service. In that case, since the prior approval of the President was required to be obtained, it was held that the requirement has been complied with. Accordingly, it was held that the proceedings validly initiated against the delinquent officer should be continued till the appropriate orders are passed by the competent authority, though the delinquent had retired, during the pendency of the enquiry and the proceedings were not abated, consequent on the retirement. The same ratio would apply to the

facts of this case. Several options are open to the appointing authority and in case the disciplinary authority also happens to be the appointing authority. Before the delinquent reaches superannuation, the enquiry should be got expedited and appropriate order passed on the basis of the findings reached by the disciplinary authority. In case the delinquent attempts to drag the proceedings or he does not co-operate in the completion of the enquiry, after giving necessary warning in writing, suitable course appropriate to the facts is required to be adopted. In case it is not possible to complete the enquiry or to pass the final order, the suspension should be extended and re-employment ordered or the later extended and to pass appropriate orders during extended period. In case it is found that either of those courses, neither is feasible nor possible and allowed the delinquent to retire from service, it would be open to the disciplinary authority to record in its order that "but for the retirement he would have passed on order of dismissal or removal from service." Since the delinquent had retired the disciplinary authority would record in the order that the delinquent "committed grave misconduct of the proved charge" and suitable order be made.

4. Rule 2 (2) of the Pension Rules, Clause (b) clearly mentions thus:

"2 (2) (b) The Government further reserves to themselves the right to withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and right

of ordering the recovery from the pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement", (emphasis supplied) A reading thereof clearly indicates that the disciplinary authority, consequent upon the result of the departmental or judicial proceedings, should record a finding whether the delinquent has committed grave misconduct or negligence during the period of his service including the service rendered upon re-employment after retirement. On recording such a positive finding, the competent authority has been empowered to withhold the pension in whole or in part or to recover the pecuniary loss, if any, caused to the Government. These orders are only consequential to the finding of the guilty of grave misconduct or negligence in the discharge of the duty during the period of his service including the service rendered upon re-employment after retirement."

Again the same question came up for consideration before this Court in CWP No.17474 of 2012 titled as **Bahadur Singh Vs. State of Punjab and others**. This Court held that in view of the law laid down by the Hon'ble Supreme Court in **Amrik Singh case(supra)**, an employee cannot be dismissed from service after retirement.

The relevant paras of the said order are as under:

"3. It is the contention of the counsel for the petitioner that the petitioner once having been allowed to retire

from service cannot be dismissed from service with retrospective effect as the maximum punishment which can be imposed upon the petitioner would be imposing those punishments as are permissible under the Punjab Civil Services Rules. He accordingly contends that the dismissal order with retrospective effect cannot be passed by the respondents. In support of this contention, reliance has been placed upon the judgment of the Supreme Court in the case of **High Court of Punjab & Haryana Vs. Amrik Singh 1995 (2) S.C.T. 613**. Reliance has also been placed upon the Division Bench judgment of this Court passed in **LPA No.164 of 2013 titled as The Punjab Scheduled Castes Land Development and Finance Corporation Vs. Tarsem Singh decided on 28.1.2013**. He accordingly contends that the impugned orders cannot sustain. 4. Counsel for the respondents, on the other hand, submits that the petitioner having been convicted in the criminal proceedings initiated against him, which order having attained finality upto the Supreme Court, the respondents have rightly dismissed the petitioner from service as he was not entitled to any service benefit. He contends that provisional pension of the petitioner was stopped by the respondents vide order dated 29.4.2008 (Annexure P-5). His contention is that the petitioner is not entitled to any benefit as has been claimed by him in the present writ petition. However, he could not dispute the fact that during the period when the petitioner was in service, no departmental proceedings were initiated against him.

5. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

6. Facts as have been narrated above are not in dispute and, therefore, are not being referred herein again.

7. In my considered view, the claim of the petitioner as has been asserted by him in the present writ petition is covered in his favour by the ratio of the judgment passed by the Hon'ble Supreme Court in the case of Amrik Singh (supra) wherein it has been held that the competent authority is not entitled to pass an order of dismissal from service with effect from a later date from the date of retirement of the delinquent employee. Such an order would be a superfluous order. However, the competent authority would be entitled to pass appropriate orders as per the statutory rules which could include withholding, forfeiture or recovery of amount of pension etc. if the rules so provide. The issue is also decided in favour of the petitioner by the Division Bench of this Court in Tarsem Singh's case (supra) which also supports his claim.

8. In view of the above, impugned orders dated 25.1.2010 (Annexure P-6) and 18.6.2012 (Annexure P-12) are hereby quashed. Liberty is, however, granted to the respondents to pass appropriate orders in accordance with law as per the statutory rules."

Again, the same question came up for consideration and a coordinate bench of this Court while deciding CWP No.10490 of 2007 decided on 04.08.2016, titled as **Dr. Sohan Lal Arora Vs. State of Punjab** held that after retirement, there is no master and servant relationship, therefore, a retired employee cannot be dismissed

from service. The relevant paras are reproduced as under:

“12. After the retirement, there is no relationship of employer and employee between the department and the retired employee. Therefore, apparently when a person is not in service, he could not be dismissed from service. The option before the Government authority is to proceed under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II, Chapter-II, which is reproduced as under :-

"2.2 (b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental judicial proceedings, the pensioner is found guilty of grave misconduct or negligence, during his service including service rendered on re-employment after retirement."

13. Now, further question would arise that as to when the inquiry is initiated during the service of an employee and he retires before passing of the punishment order, what the competent authority should do ?

14. A similar question was raised before the Hon'ble Supreme Court of India in High Court of Punjab and Haryana Versus Amrik Singh, 1995 (2) SCT 613. The extract from the observation of the Apex Court is reproduced as under :-

"3. Several options are open to the appointing authority and in case the disciplinary authority also happens to be appointing authority. Before the delinquent reaches

superannuation, the enquiry should be got expedited and appropriate order passed on the basis of the findings reached by the disciplinary authority. In case the delinquent attempts to drag the proceedings or he does not co-operate in the completion of the enquiry, after giving necessary warning in writing, suitable course appropriate to the facts is required to be adopted. In case it is not possible to complete the enquiry or to pass the final order, the suspension should be extended and re-employment ordered or the later extended and to pass appropriate orders during extended period. In case it is found that either of those courses, neither is feasible nor possible and allowed the delinquent to retire from service, it would be open to the disciplinary authority to record in its order that but for the retirement he would have passed on order of dismissal or removal from service. Since the delinquent had retired the disciplinary authority would record in the order that the delinquent "committed grave misconduct of the proved charge" and suitable order be made.

15. Therefore, the Principal Secretary should have passed the order under Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II, Chapter-II, regarding cut in the pension only and the employee could not be dismissed from service with retrospective effect. It was further observed by the Apex Court that the dismissal order from service could not be passed with effect from a later date than the date of retirement of the delinquent employee. However, in case, the

employee has already retired, the authority is left with no option, but to resort to provisions of Rule 2.2 (b) of the Punjab Civil Services Rules, Volume-II, Chapter-II. As such, the impugned order dated 7/8.10.2007 (Annexure-P-20) is illegal and liable to be quashed.

16. The learned senior counsel for the petitioner has also contended that during the suspension of the petitioner and during the inquiry, even subsistence allowance was not paid to the petitioner. It is further contended that even GPF amount, which was accumulated money of the employee, was also not paid. Even the provisional pension was not paid during the inquiry. Therefore, the punishment is otherwise illegal.”

Recently, the controversy as to whether there will be automatic voluntary retirement on expiry of notice period or not, came up for consideration before the Hon'ble Apex Court in Civil Appeal No.8421 of 2018. The said SLP was decided on 21.08.2018. Hon'ble Apex Court has held that whether the voluntary retirement is automatic or an order is required to be passed, would depend upon the phraseology used in the particular Rule under which the retirement is to be ordered or the voluntary retirement is sought. The factual position of each and every case has to be seen along with Rules applicable. While discussing the various Rules, the Apex Court in para 19 held that according to Rule 5.32-B(2) the retirement becomes effective from the expiry of the said period. The said Rule 19 of the order passed by the Apex Court is as under:

“Rule 5.32(b)(2) of Punjab Rules clearly provide that where the appointing authority does not refuse to grant the permission to retire before

the expiry of the period in sub-rule (1), the retirement shall become effective from the date of the expiry of the said date. There is no such provision of notice becoming effective from the date of the expiry of the period in the Fundamental Rules as applicable to the State of Uttar Pradesh. In the context of the proviso, the notice becomes effective from the date of expiry of the period, in that context this Court has made observations in the aforesaid dictum that Rule 2.2 does not obstruct the voluntary retirement to come into force automatically on the expiry of three months.”

From the above, it is clear that the Hon'ble Apex Court while interpreting the Rule 5.32-B again held that in case there is no rejection by the competent authority before the expiry of notice period, the voluntary retirement will come into effect automatically.

In view of the above position explained and settled law noticed, order Annexure P-5, removing the petitioner from service after retirement, cannot be sustained. The respondent does not have any jurisdiction to remove a retired employee. The order Annexure P-5 is to be treated as an order passed without jurisdiction and the same is hereby set aside.

As the order Annexure P-5 has only been set aside due to the fact that the respondent-State does not have jurisdiction to dismiss a retired employee but in the present case as the petitioner has already been held guilty of the allegations in the chargesheet out of which one was pending before the retirement and another was issued after retirement, the State has power to take appropriate action against the employee as envisaged under Rule 2.2 of the Haryana Civil Services Rules. Let an order be passed in this regard by the respondent. Before passing any order due opportunity of hearing should be given to

the petitioner to present his case.

The present writ petition is allowed in the above terms.

December 21, 2018
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No