

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

**CWP-13291-2012 (O&M)
Date of decision : 17.01.2019**

Gurjit Singh

...Petitioner(s)

Versus

The State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Sharma, Advocate,
for Ms. Maninder, Advocate,
for the petitioner.

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for issuance of a writ of Certiorari quashing the impugned order dated 02.10.2014 (Annexure P-11), whereby, the claim of the petitioner for voluntary retirement was rejected, as well as order dated 02.10.2014 (Annexure P-12), whereby the petitioner was charge-sheeted.

It is the case of the petitioner that he had joined the services as JBT Teacher on 28.07.1992 and was promoted as Social Studies Master w.e.f. 25.10.2001. The State of Punjab vide circular dated 08.05.2002 (Annexure P-1), took a decision that any employee who had eight years of service to his credit could availed five years (three years in the first instance) special leave for the purpose of self employment. It was further

provided that in case, the employee succeeds in getting self employment, he can seek voluntary retirement under the Premature Retirement Rules, 1975.

The petitioner having more than 16 years of service to his credit, applied for special leave for self employment initially a period of three years w.e.f. 01.01.2009 to 31.12.2011, which was duly sanctioned by the competent authority vide order dated 31.12.2008 (Annexure P-2). After availing the said leave for three years in the first instance, the petitioner applied for extension of leave for further period of two years as provided in the circular (Annexure P-1). However, the claim of the petitioner was rejected vide memo dated 14.03.2012 (Annexure P-3) in view of guidelines issued by the State Government on 28.04.2010 and 26.06.2010 and the petitioner was directed to join duties within 15 days. In compliance thereof, the petitioner submitted his joining report (Annexure P-4) on 16.04.2012. He also represented to the respondents that he be granted the leave of the kind due from 01.04.2012 to 15.04.2012 vide application dated 23.04.2012 (Annexure P-5). Thereafter, the petitioner deposited a sum of Rs.96,438/- as three months' salary in lieu of three month's notice on 02.05.2012 (Annexure P-6) with the State Treasury with a request to the respondents to prematurely retire him from service and grant pension along with retiral benefits he was entitled to. The Head Master, Government High School, Khetla, District Sangrur, relieved the petitioner from service on 02.05.2012 (Annexure P-7). In the meantime, vide order dated 15.05.2012 (Annexure P-8), the period from 01.01.2012 to 15.04.2012 was also sanctioned as leave of the kind due. However, vide letter dated 05.06.2012 (Annexure P-10),

the claim of the petitioner for grant of pension and other retiral benefits was rejected on the ground that the petitioner had not attained either the age of 50 years or has completed 20 years of qualifying service. Thereafter, the petitioner filed the instant petition wherein, notice of motion was issued and written statement was also filed. However, realizing that the service conditions of the petitioner are governed by the statutory rules called the Punjab State Education Class III (School Cadre) Service Rules 1978, under which the Director of Public Instructions (Secondary Education)-respondent No.2 is the competent authority and letter dated 05.06.2012 (Annexure P-10) is without jurisdiction, respondent No.2 issued order dated 02.10.2014 (Annexure P-11), thereby cancelling letter dated 05.06.2012 (Annexure P-10) and again rejecting the claim of the petitioner for voluntary retirement. Another order of even date i.e. 02.10.2014 (Annexure P-12) was issued vide which the petitioner was issued charge sheet for absence from duty.

It is contended that as per circular dated 08.05.2002 (Annexure P-1) employee who had completed 8 years of regular service could avail special leave initially for a period of three years, extendable upto five years for the purpose of self-employment. It was further provided that the employee availing such leave could not curtail the same at least before the expiry of first three years. It was also provided that if any employee is successful in getting self-employment, he could seek voluntary retirement and he shall be entitled to all the benefits available under the Premature Retirement Rules, 1975. Thus, the condition of completing 20 years of qualifying service or attaining the age of 50 years as contemplated under the

Punjab Civil Services (Premature Retirement) Rules, 1975, was not attracted to the employees seeking voluntary retirement under the said scheme. It is further submitted that as per Rule 6.16 of the Punjab Civil Services Rules, Volume 2, the petitioner is entitled to proportionate pension and all other pensionary benefits such as gratuity etc., after rendering more than 10 years of service as has also been held by this Court in CWP-9059-1993 decided on 23.02.1994 (Annexure P-14) titled as ***Ganga Bishan Vs. State of Haryana***. It is further submitted that impugned orders passed by the respondents are illegal and arbitrary inasmuch as the petitioner had already deposited three months' salary in lieu of three months' notice, the leave of the period from 01.01.2012 to 15.04.2012 and consequently upon his application for premature retirement, he had already been relieved w.e.f. 02.05.2012.

On the other hand, learned State counsel submits that as the circular (Annexure P-1) had been withdrawn, the petitioner's request for extension of leave was rejected. His request for premature retirement was also rejected as he did not fulfil the requisite conditions regarding the length of service and age of the employee as provided under the premature retirement rules of 1975. . Even after the rejection of his application for pre-mature retirement, the petitioner did not join his duties. Accordingly, he was issued charge-sheet vide order dated 02.10.2014 (Annexure P-12). A charge-sheet was also issued against the Head Master who wrongly relieved the petitioner without having any authority.

Heard.

It is to be noticed that the petitioner sought and was granted special leave for a period of three years in pursuance of circular Annexure P-1. Before the expiry of the leave period, circular (Annexure P-1) was withdrawn. On completion of the leave period, the petitioner applied for extension of leave for another period of two years, which was declined as the circular itself had been withdrawn. When the petitioner's request for extension of leave was not acceded to, he applied for grant of voluntary retirement as provided in the circular Annexure P-1. However, the petitioner did not have 20 years of service to his credit nor had he attained the age of 50 years, therefore, his request for voluntary retirement was also rejected. The argument of the petitioner that once amount equivalent to three months' salary had been deposited and he had been relieved by the Head Master of the School, his request for premature retirement could not be rejected is misconceived. It has come on record that the Head Master was not the competent authority to relieve him. Moreover, even after coming to know that his request had been rejected, the petitioner did not come forward to join his duties. There is also no provision of depositing any amount in lieu of notice period under the premature retirement rules.

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. .

17.01.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No