

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

CWP-14948-2014 (O&M)
Date of decision : 11.01.2019

Kulwinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. S.S. Salar, Advocate,
for the petitioner(s).

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN, J. (Oral)

By way of the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner, *inter alia*, seeks issuance of Certiorari quashing orders dated 10.05.2013 (Annexure P-8), passed by respondent No.2 and dated 16.04.2014 (Annexure P-15), passed by respondent No.1, in pursuance whereof, the resignation tendered by the petitioner has been accepted.

The petitioner, a Vocational Master working on regular basis since 19.02.1997, had applied for Ex-India leave w.e.f. 01.01.2013 to 31.03.2013, vide application dated 29.11.2012 (Annexure P-1). At the time of sanction of the leave, the Department obtained a self-declaration the petitioner in the form of an affidavit dated 29.11.2012 (Annexure P-2) that if he did not report on duty, it will be treated as resignation. Vide order dated 31.12.2012 (Annexure P-3), the leave was sanctioned to the

petitioner. It is further submitted that after about 10 days of the arrival of the petitioner in Canada, he got infected due to extremely cold weather. He also got the required certificate (Annexure P-4) from the hospital. On 28.01.2013, the petitioner applied vide application (Annexure P-5) by submitting the medical certificate, for extension of his leave without pay upto 31.03.2013. The said application reached the Director General, School Education, Punjab through proper channel on 22.03.2013, however, neither the leave was granted nor was it rejected. After recovering from illness, the petitioner returned to India on 01.04.2013 and presented himself before the Principal of the school he had been posted before proceeding on leave, to join his duties vide application (Annexure P-6). The petitioner also produced the medical certificate (Annexure P-7) about his fitness. The grouse of the petitioner is that without giving any opportunity of hearing or considering the fact that the petitioner had already submitted his joining report, he was dismissed from service w.e.f. 01.02.2013, vide order dated 10.05.2013 (Annexure P-8). The appeal preferred against the impugned order (Annexure P-8) was also dismissed vide order dated 16.04.2014 (Annexure P-15) primarily on the ground that the petitioner did not come forward to explain his position in person. Hence, the instant petition.

It is contended that the impugned orders are liable to be set aside as the petitioner had already submitted his joining report on 01.04.2013, much prior to the passing of impugned order (Annexure P-8). It is a case of over-staying for valid reasons. The application for extension of leave submitted by the petitioner has not been rejected till date. It is

further contended that the appeal preferred by the petitioner was also illegally rejected. The petitioner was throughout represented by his counsel who had informed the appellate authority that as the services of the petitioner stood terminated, he has moved to Canada to join his family and in the eventuality of acceptance of his appeal, the petitioner would join his duties within five days therefrom.

On the other hand, learned State counsel submits that the petitioner availed Ex-India leave on four occasions during the period from 2007 to 2013 and on three instances, he over-stayed. He was also proceeded against departmentally on this count. At the time of sanctioning of the leave in question, the petitioner had tendered self-declaration that in case he did not join back his duties on time, it should be treated as resignation from government job from the date of expiry of leave i.e. 01.02.2013.

Heard.

On 20.11.2017, a Coordinate Bench of this Court passed the following order:-

“Petitioner while serving as a Vocational Master (Agro Services) under the Punjab State Education Department, applied for Ex India Leave w.e.f. 1.1.2013 to 31.3.2013. Placed on record at Annexure P-2 is a self declaration letter submitted by the petitioner stating that in case leave is sanctioned up to 31.3.2013 and he does not join duties after expiry of the period in question, he may be treated to have resigned from govt. service. The Director Public Instructions (S.E), Punjab vide order dated 31.12.2012 sanctioned leave only from 1.1.2013 to

31.1.2013 and it was clearly stipulated that if the petitioner fails to resume duties after expiry of leave, disciplinary proceedings would be initiated against him under the relevant rules.

The precise grievance set forth in the petition is that even though, petitioner had applied for extension of leave supported by a medical certificate and thereafter had resumed duties on 1.4.2013, the authorities have acted upon the self declaration letter and accepted his resignation w.e.f. 31.3.2013.

Precise argument raised is that the self declaration letter at Annexure P-2 was in the nature of a resignation founded on a contingency that he would be granted Ex India Leave up to 31.1.2013 and which was not sanctioned. Since the leave had been sanctioned only upto 31.1.2013, the respondent department would now be bound by the terms and conditions contained in the order dated 31.12.2012 (Annexure P-3) and as such, there was no occasion for the self declaration letter dated 29.11.2012 (Annexure P-2) to be acted upon.

Prima facie, this Court is of the view that the action of the respondent authorities in having accepted the resignation of the petitioner w.e.f. 31.3.2013, cannot sustain.

However, before proceeding with the matter counsel for the petitioner is directed to complete instructions as regards the petitioner demonstrating his willingness to serve under the respondent department for his entire service tenure i.e. till the date of his superannuation. Counsel has been called upon to complete instructions in view of the information supplied by counsel for the petitioner himself that the petitioner is currently stationed in Canada and which leaves an

impression with this Court that the present litigation is only with the objective to claim retiral benefits and not to serve with the department.

List on 7.3.2018.”

In pursuance of order dated 20.11.2017, affidavit dated 07.03.2018 has been filed in the Court, wherein, the petitioner declares that he wishes to serve the department till his superannuation, as per Rules. However, the Court feels that the petitioner has not approached this Court with clean hands. It has come on record that he availed Ex-India leave on four occasions from 2007 to 2013. In the year 2007, he remained absent from duty after expiry of the leave period from 24.05.2007 to 31.12.2008 and therefore, departmental proceedings were initiated and punishment of stoppage of two increments with cumulative effect was imposed on him vide order dated 28.10.2009 (Annexure R-1). Thereafter, he again proceeded on Ex-India leave from 18.02.2010 to 20.06.2010. Third time, he proceeded on Ex-India leave from 21.02.2012 to 20.05.2012 but joined back only on 02.07.2012 despite the undertaking that he will not repeat the mistake in future.

Similarly, the petitioner went on Ex-India leave for one month from 01.01.2013 to 31.01.2013 but did not join back on expiry of the leave period. At the time of submission of application for grant of leave, the petitioner had also tendered a self-declaration (Annexure R-2) to the following effect:-

*“I Kulwinder Singh S/o Hari Singh Vocational
Master in Govt Sr. Sec. School, Purkhali, Roopnagar*

Village Ghungrali Sikhan, Tehsil Samrala, District Ludhiana declare as under:-

- 1. That I am working as Vocational Master (Agro Service) since 19.02.1997 and my retiring age is 31.10.2027.*
- 2. That I have applied for ex-India leave from 01.01.2013 to 31.03.2013, during which I will reside at 162, Waxford Road, Brampton, Ontario, Canada L6Z 2N1. In case of any change in address I will inform the Government regarding the same.*
- 3. That I will come present on job after completion of leave. If I do not join on said date then the date of completion of leave be treated as my resignation and dues be given to me.*
- 4. That I will neither make any claim after acceptance of resignation nor file any case in court of law.”*

In this case, the petitioner did not join his duties on the designated date after expiry of the leave period on 01.02.2013. Rather he overstayed till 31.03.2013 which clearly suggests that he lacks the commitment to the cause of education and welfare of his students. The intention of the petitioner was to avail ex-India leave till 31.03.2013 from the very beginning and for that reason he cooked up a story of ill health and sent a request letter dated 28.01.2013 (Annexure P-5) from abroad for medical leave for 2 months. Therefore, vide order dated 10.05.2013 (Annexure P-8), his resignation in terms of self-declaration (Annexure P-2) was accepted w.e.f. 01.02.2013. Thus, the petitioner is estopped by his own

act and conduct. Earlier also, he had been inflicted the punishment of stoppage of two increments. It is also to be noticed that despite availing repeated opportunities, the petitioner did not present himself before the Appellate Authority for personal hearing. The stand taken by the petitioner that he wishes to serve the department till his superannuation as per rules governing the service conditions, cannot be accepted as gospel truth. In the considered opinion of this Court, the sole aim of the petitioner is to make out a case for retiral benefits without the necessary contribution and not to serve with the department.

This Court feels that the impugned orders (Annexures P-8 and P-15) are perfectly legal and valid and are therefore, affirmed. The self-declaration letter dated 29.11.2012 (Annexure P-2) has been rightly acted upon w.e.f. 01.02.2013.

Consequently, there is no merit in the instant writ petition and the same is hereby dismissed.

11.01.2019
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(JITENDRA CHAUHAN)
JUDGE

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