

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

**CWP-21390-2014 (O&M)
Date of decision : 01.02.2019**

Prithipal Singh

...Petitioner(s)

Versus

The State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Randhir Singh, Advocate,
for the petitioner.

Mr. TPS Chawla, DAG, Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant petition, *inter alia*, is for issuance of a writ of Certiorari quashing the order dated 30.11.2009 (Annexure P-7), whereby, the prayer for voluntary/premature retirement of the petitioner was declined by respondent No.2; inquiry report dated 15.02.2012 (Annexure P-12) submitted in pursuance of charge-sheet dated 27.01.2010 (Annexure P-10) issued, *inter alia*, on the charges of wilful absence from duty w.e.f. 21.09.2006 to 08.10.2009; order dated 17.07.2012 (Annexure P-14), passed by respondent No.2, whereby, the services of the petitioner were terminated; and order dated 28.12.2012 (Annexure P-15), passed by respondent No.1, whereby, the appeal filed by the petitioner for release of retiral benefits was dismissed.

The petitioner, who initially joined as Junior Engineer with the

Town & Country Planning Department on 12.08.1980 was subsequently shifted to Public Health Department (now Water Supply & Sanitation Department) on 01.10.1985, through proper channel vide order dated 04.07.2005 (Annexure P-2). The pay of the petitioner was also protected by the Public Health Department . The petitioner applied for Ex-India leave for two years from 20.09.2004 to 20.09.2006. The leave was sanctioned vide order dated 11.10.2004 (Annexure P-3). The petitioner proceeded on leave on 12.10.2004. On expiry of the leave, the petitioner applied for extension of leave for three years vide application dated 31.10.2006 (Annexure P-4). He joined back the department on 09.10.2009 (FN) (Annexure P-5). On 03.11.2009, the petitioner applied for voluntary retirement (Annexure P-6). However, the request of the petitioner was rejected vide order dated 30.11.2009 (Annexure P-7). On 15.01.2010, the petitioner submitted departure report. Thereafter, on 27.01.2010, the petitioner was issued chargesheet (Annexure P-10) which was replied to vide letter dated 17.02.2010 (Annexure P-11). As per the case of the petitioner, without taking any notice of the reply, an Enquiry Officer was appointed vide order dated 21.03.2011. The Enquiry Officer submitted his report vide letter dated 15.02.2012 (Annexure P-12). On the basis of the enquiry report, the petitioner was served upon a show-cause notice on 16.04.2012 (Annexure P-12) proposing to terminate his services. The petitioner submitted reply to the show-cause notice on 09.05.2012 (Annexure P-13). Again the respondents did not consider the reply submitted by the petitioner and passed the impugned order of termination dated 17.07.2012 (Annexure P-14). Aggrieved against, the petitioner

preferred an appeal before respondent No.1 which was dismissed vide order dated 28.12.2012 (Annexure P-15) and order of '*termination of service*' passed by respondent No.2 was amended to '*removal from service which shall not be a disqualification for future employment under the Government. Resultantly, he shall not be entitled to retirement benefits including pension*' thereby bringing the punishment within the purview of Rule 5(viii) of the Punjab Civil Service (Punishment and Appeal) Rules, 1970. Hence, the instant petition.

Learned counsel refers to Proviso to Rule 3(2) of the Punjab Civil Service (Premature Retirement) Rules, 1975 to contend that the authorities can only decline a request for premature retirement when the employee in question is under suspension, otherwise, they are bound to accept the request. Further, issuance of charge-sheet on account of absence from duty after notice for premature retirement without their being any suspension order, is not a ground to decline the request. Cites ***Sumitter Singh Gill Vs. State of Punjab, 1997(1) SCT 705***. Further refers to the provision contained in Note 2 below Rule 3 of the Premature Retirement Rules (ibid) to the effect that if any employee retires under the 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 per relevant rules. He further refers to Government Instructions dated 14/15.09.1977 (Annexure P-8), which provides that there is no bar to a government employee retiring voluntarily by giving the requisite notice even if departmental or court proceedings are pending against him unless he

is placed under suspension. Therefore, the petitioner was entitled to premature/voluntary retirement and consequently for grant of pension and other retiral benefits. The petitioner had served the department for a period of more than 26 years and as such, he is entitled to grant of pension and gratuity. The punishment imposed is one among the severest of the punishments provided under the head 'Major Penalties' in Rule 5 of the Punishment and Appeal Rules (ibid) and is disproportionate to the alleged misconduct.

On the other hand, learned State counsel submits that the petitioner was sanctioned Ex-India leave vide order dated 11.10.2004, with a condition that 'if after availing the sanctioned leave, the official does not come and present on duty, then disciplinary action will be taken against him as per rules. On expiry of the leave period, the petitioner did not join and applied for extension without following the proper procedure. The petitioner though was allowed to join the services, but simultaneously, departmental proceedings were initiated against him which culminated into termination of his services.

Heard.

The petitioner applied for Ex-India leave for two years and was sanctioned leave from 20.09.2004 to 20.09.2006. The application for extension of leave was submitted on 30.10.2006, i.e. after about forty days from the expiry of the sanction leave. The petitioner applied for extension of leave from Canada for another three years without assigning any specific reason thereof. He also acquired permanent citizenship of Canada without intimating the department on 30.06.2009 but on return to India, he again

joined the department on 09.10.2009, without disclosing the fact that he had acquired such a status. After joining, the petitioner submitted application for voluntary retirement on 27.11.2009, which was rejected by respondent No.2, as a charge-sheet had already been served upon him for wilful absence from duty. In the meantime, he also served notice for voluntary retirement and without acceptance thereof, he furnished departure report. Subsequently, in the inquiry, the petitioner was held guilty of the charges framed and accordingly, the punishment in question was inflicted upon him.

The act and conduct of the petitioner in applying for extension of leave after expiry of the sanctioned leave; overstaying abroad beyond the sanctioned leave, acquiring the citizenship of Canada without intimation/approval of the competent authority; and submission of departure report without acceptance of request of voluntary retirement; is unbecoming of a government official sans discipline. Due and proper procedure had been followed by the authorities before inflicting the punishment in question upon 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. .

01.02.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No