

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

**CWP No.6140 of 2018 (O&M)
Date of Decision.08.07.2019**

Vinod Madan

...Petitioner

Vs

State of Haryana and others

...Respondents

Present: Mr. Naveen S. Bhardwaj, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The short point involved in this case is whether the petitioner can seek withdrawal of voluntary retirement notice in contravention of rules i.e. Haryana Civil Services (Punishment and Appeal) Rules, 2016.

Mr. Naveen S. Bhardwaj, learned counsel appearing on behalf of petitioner submitted that the impugned order dated 23.02.2018 (Annexure P-5) passed by respondents to retire petitioner voluntarily without accepting his request for withdrawal of voluntary retirement notice is totally preposterous and fallacious as during entire service career, performance of petitioner had been graded as outstanding and very good nor there have been any complaints. Petitioner, however, under the misconception submitted his application dated 16.10.2017 (Annexure P-1) conveying voluntary retirement by serving three months notice, which was to expire on 16.01.2018. On 19.01.2018, petitioner was given additional responsibility which included work of establishment branch and

enquiries. Officials in respondent department conveyed to petitioner that his voluntary retirement would not be accepted, thus, petitioner continued office. Petitioner submitted application for withdrawal of voluntary retirement notice on 5.2.2018 (Annexure P-4) but same has been rejected and impugned order dated 23.02.2018 (Annexure P-5) passed whereby application for voluntary retirement of petitioner has been accepted w.e.f. 15.01.2018.

Respondents while passing impugned order have not interpreted rules in correct perspective. In support of contention, relies upon judgment of Hon'ble Supreme Court rendered in **J.N. Srivastava vs. Union of India and another AIR 1999 (SC) 1571** to contend that in case of withdrawal of voluntary retirement after acceptance of notice before actual date of retirement, employee has locus standi to withdraw the proposal before actual date of retirement is reached.

Per contra, Mr. Harish Nain, AAG, Haryana submitted that application for voluntary retirement was accepted w.e.f. 15.01.2018 as per provisions of Rule 146 of Haryana Civil Services (General) Rules, 2016 read with Rule 12 of Haryana Civil Services (Pension) Rules, 2016. On receipt of request of petitioner for voluntary retirement, administrative branch reported on file that there was a complaint against petitioner. In fact, he was appointed as Clerk on 1.10.1981 on the basis of incorrect facts, which came to notice of Department on 15.11.2016 when a complaint of even date was received from Jai Parkash Gupta, Ex. MLA, Karnal through CM's window portal. A vigilance enquiry in this matter is being

conducted. On 12.12.2017, Director-cum-Special Secretary, Social Justice and Empowerment, Haryana raised a specific query on file with regard to acceptance of voluntary retirement in case of pending vigilance enquiry and on 15.12.2017, administrative branch referred to relevant Rules. Application submitted by petitioner was after expiry of three months and therefore, rightly so, has been rejected.

I have heard learned counsel for parties, appraised paper book and of view that there is no force and merit in submissions of Mr. Bhardwaj. It would be apt to reproduce Rules 146, 148 (1) and 149 of Haryana Civil Services (General) Rules, 2016.

146. Voluntary retirement on attaining the prescribed age or qualifying service.— (1) A Government employee of any group may, by giving a notice of not less than three months in writing to the appointing authority, seek voluntary retirement from service on completion of minimum twenty years' qualifying service irrespective of his age or on attaining the prescribed age irrespective of his length of service, subject to acceptance of notice by the appointing authority and also subject to Rule 10 of the Haryana Civil Services (Pension) Rules, 2016. The minimum age prescribed for the purpose is:-

- (i) 50 years for the Government employees who are working on a post of Group 'A' or 'B' and joined service on any post before attaining the age of thirty five years;*
- (ii) 55 years for the Government employees who are working on a post of Group 'A' or 'B' and joined service on any post after attaining the age of thirty five years; and*
- (iii) 55 years for all other Government employees:*

Provided that in the case of Judicial Officer, he shall have the option to retire on or after attaining the age of fifty-eight years, which should be exercised by him in writing before he attains the age of fifty-seven years. A Judicial

Officer who does not exercise such option before he attains the age of fifty-seven years, would be deemed to have opted for continuing in service till the age of superannuation.

(2) The retirement shall become effective from the date of expiry of the notice period, where the appointing authority does not refuse to grant the permission for voluntary retirement before the expiry of the said period;

(3) A Government employee who gives notice of voluntary retirement, shall satisfy himself by means of a reference to the appropriate authority that he has, in fact, completed twenty years' or more qualifying service.

Note 1.— In computing the notice period of three months the date of service of the notice and the date of its expiry shall be included.

Note 2.— Heads of Departments shall report to Government in each quarter, the action taken under this rule.

148. Refusal of notice of voluntary retirement.—*(1) The request made under this rule may be refused if the Government employee, who seeks voluntary retirement, is under suspension or judicial proceedings or departmental proceedings under rule 7 of Haryana Civil Services (Punishment and Appeal) Rules, 2016 are contemplated or pending against him and penalty of removal or dismissal from service is likely to be imposed in his case:*

Provided that where the appointing authority does not refuse the request of voluntary retirement before the expiry of notice period, the retirement shall become effective from the date of expiry of the said period.

(2) The notice of voluntary retirement shall not be accepted by the appointing authority if the Government employee does not fulfill the condition of attaining the minimum age or completion of qualifying service prescribed for the purpose.

149. Withdrawal of notice of voluntary retirement.—

Notice of voluntary retirement shall not be withdrawn without specific approval of the appointing authority. The request in this regard made before the date of intended retirement may be considered by the competent authority irrespective of the fact that orders of voluntary retirement have been made or not.”

As per Rule 149, notice of voluntary retirement cannot be withdrawn without specific approval of appointing authority. A perusal of Rule 148(1) reveals that if appointing authority does not refuse request of voluntary retirement before expiry of notice period, retirement shall become effective from date of expiry of said period. In fact, on 5.2.2018, Director, Social Justice and Empowerment, Haryana while bringing to notice of respondent No.2 that vigilance enquiry was pending, respondent No.2 recommended to accept request for voluntary retirement by referring matter to Minister, Social Justice and Empowerment, which was accepted on 5.2.2018.

In such circumstances, impugned order cannot be said to be falling within realm of judicial review to form a different opinion than the one already arrived at. No ground for interference is made out.

Dismissed.

(AMIT RAWAL)
JUDGE

July 08, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No