

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

116

CWP-3309-2020

Date of decision: 25.02.2020

DR. SANJEEV KAPOOR

...PETITIONER

V/S

STATE OF PUNJAB & OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**Present: Mr. Sahil Khunger, Advocate,
for the petitioner.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 15.03.2019 (Annexure P-14) passed by the Additional Chief Secretary to Govt. of Punjab, Health & Family Welfare Department, Chandigarh-respondent No. 1, whereby the application for voluntary retirement submitted by the petitioner on 10.10.2016 (Annexure P-1), which was prior to he having completed 20 years of qualifying service which is the mandated period for submission of such application by an employee under the Punjab Civil Services (Premature Retirement) Rules, 1975, has been accepted treating it as the 24 hours' notice on 09.01.2017, the date he completes 20 years of service and, therefore, required him to deposit 3 months' salary in lieu of the mandated three months' notice.

It is the contention of the learned counsel for the petitioner that the petitioner, because of his family circumstances, submitted an application for voluntary retirement with three months' notice on 10.10.2016 (Annexure P-1). According to the petitioner, as is apparent from the application dated 10.10.2016 (Annexure P-1), he would have completed 20 years of service on 03.01.2017. Obviously, it was proceeded on the assumption by the petitioner that the request for voluntary retirement would operate w.e.f. 09.01.2017 which would be the expiry period of his three months' notice. The application, at the relevant time when he had submitted i.e. 10.10.2016 (Annexure P-1), was not maintainable as he did not fulfil the requirement of 20 years qualifying service at the time when he submitted the application for retirement and, therefore, was not eligible for consideration of the said application. The application, which has been submitted by the petitioner, therefore, in any case, would be operative w.e.f. 08.01.2017. The three months notice period could be considered only after that date. Petitioner deposited 3 months salary when called upon to do so and was relieved from service. It is thereafter, that the petitioner moved an application for release of this three months salary followed by legal notice which on consideration, as per directions by this Court vide order dated 17.01.2019 (Annexure P-12) in CWP No. 1164 of 2019 titled as Dr. Sanjeev Kapoor vs. State of Punjab and others, the final order, which has been passed by respondent No. 1, is dated 15.03.2019 (Annexure P-14), which, the counsel has asserted, is beyond the period of three months even if the application is treated to have been submitted on 09.01.2017.

This contention of the counsel for the petitioner is not acceptable as on the date of submission of the application i.e. 10.10.2016,

petitioner was not eligible for consideration of his application for voluntary retirement and he would only be eligible and the application could have been considered from that date itself. The application, which has been submitted by the petitioner, being not in accordance with the statutory Rules deserved to be rejected on the above-said score alone. However, respondent No. 1, by taking a lenient view, has proceeded to assume that the petitioner had submitted his voluntary retirement request on 09.01.2017 i.e. after completion of period of his 20 years of service on 03.01.2017. The competent authority has been considerate enough in deciding the claim of the petitioner sympathetically instead of outrightly rejecting the same by treating it as a voluntary retirement request as 24 hours notice. The requirement of the Rules, therefore, was three months' notice or salary in lieu thereof and the competent authority has rightly directed the petitioner to deposit an amount of ₹4,92,276/-, which is the salary for three months' notice. The order, as passed by the Additional Chief Secretary to Govt. of Punjab, Health & Family Welfare Department, Chandigarh-respondent No. 1 dated 15.03.2019 (Annexure P-14), therefore, cannot be said to be illegal in any manner especially when respondent No. 1 has taken a lenient view and exercised his discretion in favour of the petitioner which is in accordance with law.

While praying for an equitable relief, the petitioner is expected to come to the Court with hands which should not be soiled or should not have been affected in any manner which would hamper the process of law and should have fulfilled the mandate of the Statute.

In the present case, the petitioner has approached this Court for the relief which required to be outrightly rejected by the competent

authority but it has, in exercise of its discretionary jurisdiction and that too, in favour of the petitioner, taken a lenient view and granted him the benefit of voluntary retirement as claimed by him but within the mandate of the Statute which appears to be such an act on the part of the petitioner which would not require an equitable relief to be granted to him. The present writ petition, on this score also, deserves to be dismissed.

Ordered accordingly.

February 25, 2020

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No