

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

LPA-1208-2019 (O&M)
Date of Decision: January 20, 2020

Gurjit Singh

... Appellant

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

**Present: Mr. Rakesh Sobti, Advocate,
for the appellant.**

Ravi Shanker Jha, Chief Justice (Oral)

This appeal has been filed by the appellant-petitioner being aggrieved by an order dated 17.01.2019 passed in CWP-13291-2012 by which the petition filed by the appellant-petitioner seeking quashing of order dated 02.10.2014 whereby the claim of the appellant-petitioner for voluntary retirement has been rejected and order dated 02.10.2014 whereby charge sheet has been issued against the appellant for absence without leave, has been dismissed.

Apparently, in the instant case, the appellant, who had joined the service as JBT Teacher on 28.07.1992 and subsequently promoted as Social Studies Master w.e.f. 25.10.2001, had applied for special leave under the self-employment scheme notified by the State, which was initially granted for a period of three years w.e.f. 01.01.2009 to 31.12.2011 vide order dated 31.12.2008 and after availing the said leave for three years in the first instance,

the appellant applied for extension of leave for further period of two years, which was rejected by the authorities on 14.03.2012 and the appellant was directed to join duties within 15 days. It is stated that the appellant had joined duty on 16.04.2012 and again filed an application for grant of leave for a period from 01.04.2012 to 15.04.2012. The appellant, thereafter, deposited a sum of Rs. 96,438/- as three months' salary in lieu of three month's notice on 02.05.2012 with a request to the respondents to permit him to prematurely retire from service. Though, the Headmaster initially acceded to the request of the appellant, but, when the matter was brought to the notice of the competent authority during the pendency of the petition, the Director, Education Department passed order dated 02.10.2014 rejecting the prayer of the appellant for voluntary retirement which order was assailed by the appellant by amending the petition.

Learned counsel appearing for the appellant submits that the learned Single Judge has failed to appreciate and interpret the provisions of the Punjab Civil Services (Premature Retirement) Rules, 1975 (for short 'the Rules of 1975'). It is submitted that the learned Single Judge has erred in holding that the appellant has not completed 20 years of service and therefore, his claim for voluntary retirement has not been rightly rejected, totally ignoring the fact that the authorities have right to grant pre-mature retirement even prior to the said period and that the appellant became entitled for pension after completing qualifying service of 10 years. It is submitted that in such circumstances the prayer of the appellant for voluntary retirement could not have been rejected. Learned counsel for the appellant has relied upon decisions of this Court rendered in the case of ***Ganga Bishan v.State of Haryana, CWP No. 9059 of***

1993, decided on 23.02.1994 and *State of Punjab v. Gurkeerat Singh, 2002(4) SLR 294* in support of his contentions.

Learned counsel for the appellant submits that the authorities after permitting the appellant to re-join services on 16.04.2012 accepted the application seeking for pre-mature retirement filed by the appellant on his submitting three months' salary in lieu of notice on 02.05.2012 and permitted him to leave the services. It is submitted that in such circumstances, the appellant has not committed any illegality in not attending the services after his application seeking pre-mature retirement was allowed by the Headmaster on 02.05.2012. It is submitted that once the appellant had been permitted to voluntarily retire from service, which was in accordance with the Rules of 1975, the authorities could not subsequently turn around to quash the order and initiate departmental proceedings against the appellant by treating the period as absent from duty without leave.

We have heard learned counsel for the appellant at length and perused the record and the provisions of Rules, 1975.

From a perusal of the impugned order, it is apparent that the learned Single Judge after taking note of the aforesaid facts and also taking into consideration the fact that circular dated 08.05.2002 providing for self employment under which the appellant had obtained benefit of special leave was subsequently withdrawn by the authorities vide Government instructions dated 28.04.2010 and 26.06.2010 and also taking into consideration the fact that after rejection of the prayer of the appellant, the appellant again absented himself without leave as the leave sought by the appellant was not sanctioned, observed that the appellant has not completed the necessary 20 years of service

for seeking voluntary retirement and therefore, the authorities have not committed any illegality in passing the impugned order or initiating departmental proceedings against the appellant.

To appreciate the contention of the appellant, it is necessary to examine the relevant rule. Rule 3 of the Rules, 1975 is in the following terms:-

“3. (1) Premature Retirement. -

(a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

(b) The period of such notice shall not be less than three months :

Provided that where at least three months' notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, at the same rates at which he was drawing them immediately before the date of retirement, for a period of three months or, as the case may be, for the period by which such notice falls short of three months.

(2) Any Government employee may, after giving at least three months' previous notice in writing to the appropriate authority retire from service on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no employee under suspension shall retire from service except with the specific approval of the appropriate authority.

(3) (a) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of

not less than three months in writing to the appropriate authority, retire from service.

(b) The notice of voluntary retirement given under this sub-rule shall require acceptance by the appropriate authority.

(c) Where the appropriate authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(4) The employee, who has elected to retire under sub-rule (2) or sub-rule(3) and has given the necessary notice to that effect to the appropriate authority, shall be precluded from withdrawing his notice except with the specific approval of the appropriate authority :

Provided that the request for withdrawal shall be made before the intended date of his retirement.

Note 1 – An employee may make a request, in writing, to the appropriate authority to accept notice of less than three months giving reasons therefore and such a request for the curtailment of the period of notice shall be considered on merit and if the appropriate authority is satisfied that such curtailment will not cause any administrative inconvenience it may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice period of three months.

Note 2 - If an employee retires under 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 provided in rule 8.119 (d) of the Punjab Civil Services Rules, Volume I, Part I.

Note 3 - In computing the notice period of three months referred to in rule 3, the date of service of the notice and the date of its expiry shall be excluded."

From a perusal of the Rules, it is apparent that Rule 3(1) deals with compulsory retirement and sub-rule (2) (3) and (4) of Rule 3 of Rules of 1975 deal with voluntary retirement. Facts in the case indicate that the present case is not of compulsory retirement or pre-mature retirement, but is of voluntary retirement claimed by the appellant. From a perusal of sub-rule 3 of Rule 3 of Rules, 1975, it is apparent that for a voluntary retirement, the necessary condition mentioned therein is completion of 20 years of qualifying service. In the instant case, the appellant has admittedly not completed 20 years of service. In the circumstances, the appellant is not entitled for claiming voluntary retirement under the Rules as the appellant has not completed 20 years of qualifying service. The contention that the qualifying service is ten years and not twenty years based on the self employment scheme is patently untenable in view of the clear and specific provision of the rule and is therefore rejected.

Quite apart from the above, it is also an undisputed fact that the competent authority to accept the application for voluntary retirement is not the Headmaster or the District Education Officer but is in fact the Director, Education Department. Apparently, the initial order accepting the application for voluntary retirement filed by the appellant was not accepted or filed before the Director, Education Department and it is only subsequently when the Director came to know about the initial orders passed by an incompetent authority after filing of the petition, that the Director took up the matter and passed the order dated 02.10.2014 rejecting the prayer of the appellant seeking

voluntary retirement and as the appellant's prayer for voluntary retirement had been rejected and as the necessary sanction or permission for leave etc. was not sanctioned by the authorities, they have issued a charge sheet to the appellant.

In such circumstances, we do not find any illegality or perversity in the orders passed by the authorities rejecting the application for voluntary retirement filed by the appellant. We are also of the considered opinion that the decisions of this Court relied upon by the appellant does not help the appellant's case as both the said decisions do not relate to interpreting the necessary eligibility service rules seeking voluntary retirement but deal with the issue of grant of pension, gratuity etc. for period for which the employee has served after completing the qualifying service.

In such circumstances, we do not find any illegality or perversity in the impugned order passed by the learned Single Judge warranting interference in it. We make it clear that this Court has not expressed any opinion on the merit of the charges leveled against the appellant in the charge sheet. The appellant shall be at liberty to file his reply to the same and participate in the departmental proceedings in accordance with law.

Accordingly, the present appeal is dismissed.

(Ravi Shanker Jha)
Chief Justice

January 20, 2020
vkd

(Arun Palli)
Judge

Whether reasoned / speaking : Yes / No
Whether reportable : Yes / No