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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12183-2020
Date of decision-19.08.2020

Balwinder Singh **...Petitioner**

Vs.

State of Punjab and others **...Respondents**

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. P.S.Khurana, Advocate for the petitioner.

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MANOJ BAJAJ, J.

Through this writ petition, the petitioner seeks a writ of certiorari for quashing the decision dated 20.02.2020 (Annexure P-11) whereby respondent No.2 accepted his request for pre-mature voluntary retirement w.e.f.12.07.2018, and also the subsequent communications dated 27.05.2020 and 09.07.2020 (Annexures P-9 & P-10) respectively, intimating the petitioner that his application dated 23.03.2020 (Annexure P-4) withdrawing the request for pre-mature retirement cannot be acted upon. Further prayer is for a writ of mandamus to direct the respondents to allow the petitioner to rejoin the post of Revenue Clerk by treating the period w.e.f. 12.07.2018 on leave.

The facts in brief leading to the writ petition are that the petitioner being a handicapped person, joined the Department of Irrigation, Punjab as Canal Patwari on 01.04.2002 through appointment letter dated 20.03.2002 (Annexure P-1) on compassionate grounds. Later on, in the year 2007 he was promoted to the post of Assistant Revenue Clerk, followed by another promotion as Revenue Clerk in the year 2013. The petitioner was posted at Bathinda Canal Division, Bathinda. On 12.07.2018, the petitioner sent a request/notice for pre-mature voluntary retirement (Annexure P-2) to the respondent No.2, on the ground that his domestic condition had turned poor and therefore, he was unable to perform his duties. In the said request, the petitioner also sought for waiver of three months notice period and deposited an amount of Rs.1,53,033/- with the department through Demand Draft No.185649 dated 07.07.2018 (Annexure P-3) towards three months salary. According to the petitioner, no response was received by him and it was getting difficult for him to survive, therefore, he submitted an application dated 23.03.2020 (Annexure P-4) to respondent No.2 for rejoining the services. At the same time, he also sought approval of his leave w.e.f.12.07.2018 to 23.03.2020 and wrote to the Executive Engineer, Bathinda Canal Division, Bathinda (respondent No.3), for accepting his attendance report. Again no reply was received by the petitioner from the respondents, therefore, he sent a reminder in the office of respondent No.3 on 18.05.2020 (Annexure P-6), followed by a legal notice dated 03.06.2020 (Annexure P-7), whereby he reiterated his request for not discharging him from services as he had withdrawn his request for pre-mature voluntary retirement on 23.03.2020.

The petitioner received a communication dated 27.05.2020 from the office of respondent No.3, whereby it was informed that his request for voluntary retirement w.e.f.12.07.2018 stood allowed by way of a decision dated 20.02.2020. Thereafter, he received another communication dated 09.07.2020 by respondent No.2 who also intimated him about the acceptance of his request for voluntary retirement w.e.f. 12.07.2018 and further conveyed that the office is unable to take any action on his request for rejoining the duty as Revenue Clerk. Aggrieved against the decisions i.e.Annexures P-9 to P-11, the petitioner has filed this writ petition.

Learned counsel for the petitioner has argued that the action of the respondent is illegal and arbitrary, therefore, the impugned decisions deserve to be set aside. Mr. Khurana, learned counsel has contended that the request sent by petitioner on 12.07.2018 for pre-mature retirement was never accepted as no intimation was sent to him regarding its acceptance and, therefore, the petitioner had validly withdrawn his request on 23.03.2020. According to him, the subsequent communications dated 27.05.2020 and 09.07.2020 are meaningless and cannot defeat his valuable right. Learned counsel has further argued that the impugned intimation was sent on 27.05.2020 and the same was not possible as in those days, the lockdown was operative in view of the spread of the pandemic, namely, COVID-19. Lastly, he has prayed that the impugned decisions be set aside and a direction be issued to the respondents to allow him to rejoin his services.

After hearing learned counsel for the petitioner, this Court finds that in his request for pre-mature voluntary retirement sent on 12.07.2018, it was clearly mentioned by petitioner that he was on earned leave w.e.f. 08.02.2018 to 12.06.2018 and his further request for earned leave w.e.f. 13.06.2018 to 26.06.2018 was not approved. Alongwith request for pre-mature voluntary retirement, the petitioner also deposited three months salary amounting to Rs.1,53,033/- by way of a demand draft which clearly establishes that he in his eagerness was not desirous to put the department on three months statutory notice as contemplated by Rule 3, Punjab Civil Services (Pre-mature Retirement) Rules, 1975. Thus it is evident that the petitioner was not willing to continue with his services on the post of Revenue Clerk and wanted to get rid of his job immediately. In this background, it can be safely inferred that once the respondent-Department never raised any objection to the request of the petitioner, much less within three months of receiving the request, it undoubtedly amounted to deemed acceptance of his request for pre-mature voluntary retirement alongwith exemption from notice period. Even otherwise, the resignation of the petitioner was accepted before the application for its withdrawal was made by him on 23.03.2020, which brought an end to the relationship of the employer and employee. Merely because the order dated 20.02.2020 was received by the petitioner after the submission of the application for withdrawal, it cannot be said that the petitioner was within his rights to withdraw his request for pre-mature voluntary retirement. Admittedly, the petitioner after submission of his request for pre-mature voluntary retirement never looked back to even know the status of his request or to attend the office, therefore, by his own act and conduct, the petitioner not only completely disengaged himself with the said post, but also relinquished his rights to the post of Revenue Clerk, except to claim the retiral benefits, if any. A perusal of the impugned order dated 20.02.2020 shows that the same has been passed in consonance with the statutory rules and does not suffer from any illegality.

The other argument of the learned counsel that the communication dated 27.05.2020 could not have been sent during the lockdown period is not worth acceptance as the Government Offices were not completely shut down as a result of the restriction, but were functioning with minimum staff. This Court is cognizant of the fact that the global pandemic COVID-19 broke out in India in the end of February 2020 and Government of India had imposed nationwide lockdown/curfew w.e.f.24.03.2020 in order to prevent its spread, therefore, the request sent by the petitioner on 23.03.2020 seemingly was a clever attempt on his part to retrieve the post held by him, which was not founded on any genuine ground.

In view of the above, this Court does not find any merit in this writ petition and the same is dismissed.

(MANOJ BAJAJ)
JUDGE

19.08.2020
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No