

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

CWP 10575 of 2017 (O&M)

Date of Decision: December 21, 2021

Babita Gupta

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Govind Goel, Senior Advocate with
Mr. Sourabh Goyal, Advocate for the petitioner.

Mrs. Monica Chhibber Sharma, Sr. DAG, Punjab.

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MAHABIR SINGH SINDHU, J.

“Sunt lacrimae rerum—also crocodilorum.”

“Things have their tears and crocodiles have theirs.”

~ Publius Vergilius Maro

Present writ petition has been filed under Article 226 of the Constitution praying for quashing of the impugned order dated 21.01.2016, whereby petitioner was dismissed from service; order dated 30.03.2016 vide which an appeal against the above order was closed being not maintainable; also to quash the impugned charge-sheet dated 29.10.2014 on the basis of which, aforesaid dismissal order had been passed; further to issue a writ in the nature of mandamus directing the respondents to treat the petitioner voluntarily retired from service in view of her retirement notice

dated 15.10.2013; to grant her all consequential service as well as retiral benefits and/or any other relief as this Court deems fit and proper in view of the facts and circumstances of the present case.

(2) On 01.07.1991, the petitioner was appointed as Medical Officer with the Health Department, known as Punjab Civil Medical Service (for short 'PCMS'). The post is governed by the statutory rules known as the Punjab Civil Medical Service (Class II) Rules, 1982 (*for short 'service rules'*). As per rule 7, all appointments to the service shall be made by the Government. According to Rule 2(c), 'Government' means the Government of State of Punjab in the Department of Health and Family Welfare.

(3) Petitioner completed her 20 years of qualifying service for pension on 30.06.2011. In the year 2012, when petitioner was posted in Civil Hospital, Fatehgarh Sahib, due to serious blood disorder (PNH), she applied for medical leave from 25.01.2012 to 22.02.2012 and extraordinary leave from 07.03.2012 to 10.04.2012. In June 2012, husband of petitioner, who is working with Central Government, was transferred to Chennai; since there was no one in the family to look after her, therefore, she had no option except to proceed to Chennai. After reaching at Chennai, she suffered serious back problem and doctor advised her complete bed rest for a month. Consequently, petitioner applied for further medical leave from 21.06.2012 to 20.07.2012. There was no improvement in her health condition, therefore, doctor extended the bed rest of petitioner for another one month and advised her not to travel. On 23.07.2012, petitioner again intimated the respondents about her health condition and she requested for medical leave from 21.07.2012 to 20.08.2012.

The health condition of petitioner did not improve, therefore, she was not able to resume her duties with the respondents. As she had already completed more than 20 years of service, therefore, in such a scenario, petitioner decided for seeking voluntary retirement by way of her notice dated 15.10.2013. Instead of accepting the notice of petitioner for voluntary retirement, the Director rejected the same vide order dated 11.03.2014 and recommended disciplinary action also. Ultimately, petitioner has been dismissed from service on the charges of unauthorized absence and an appeal thereagainst was closed being not maintainable.

(4) Hence, the present writ petition.

(5) CONTENTIONS:

(A) BY PETITIONER

That in view of Rule 3 of The Punjab Civil Services (Premature Retirement) Rules, 1975 (*for short 'the Rules'*), three months' notice is required for seeking voluntary retirement and on expiry of said period, the petitioner was automatically entitled for voluntary retirement by operation of law; thus, the impugned charge-sheet as well as dismissal order are nullity in the eyes of law. Further contended that throughout her service career, there was no complaint against the petitioner and she always performed her duties upto the entire satisfaction of the authorities. On account of her health problem coupled with family circumstances, petitioner submitted various requests for medical leave followed by notice for voluntary retirement which was never rejected by the competent authority within statutory period; nor any charge-sheet was pending against her till the expiry of notice period; thus, the actions of respondents are wholly

unsustainable in law. Specifically submitted that alleged inquiry report was never supplied to the petitioner before passing the impugned dismissal order as there is sufficient material to indicate that at the relevant point of time, she was residing in Chennai along with her husband, therefore, the remarks of the local postal authorities on envelop as “not claimed” is of no relevance. Also submitted that impugned charge-sheet was issued on account of legal malice at the instance of respondent No.2-Director, who as per rule 3 had no authority to deal with the request of petitioner for seeking voluntary retirement, yet he rejected the same vide order dated 11.03.2014. Concededly, petitioner had completed more than 20 years of qualifying service; thus, when there was no rejection of notice by the competent authority within three months, then she was entitled for voluntary retirement as a matter of right under rule 3(3)(c).

(B) BY STATE

Learned State counsel submitted that petitioner sent her voluntary retirement notice during the period of willful absence from duty and as such the same was not acceptable in the eyes of law. Further submitted that at the time of applying for voluntary retirement, disciplinary proceedings were pending against the petitioner. Again submitted that petitioner applied for voluntary retirement during her absence from duty which is against the jural relationship between the employee and the employer.

The charges levelled against the petitioner were duly proved by the inquiry officer. The copy of inquiry report was duly sent to the petitioner through registered post which was received back with the remarks of postal

authorities as “not claimed”. Therefore, she was rightly awarded the major punishment of dismissal from service by the competent authority, after following the proper procedure of law.

Although, petitioner filed an appeal against the dismissal order; but there is no such provision under the rules for preferring statutory appeal; thus, the same has rightly been consigned to record room by the authorities.

(6) Heard learned counsel for the parties and perused the paper-book along with records.

Points for consideration in the present case would be as under:—

- i) Whether in view of the provisions of Rule 3(3)(b)&(c), the petitioner stood voluntarily retired after expiry of 03 months notice period as a matter of right?*
- ii) Whether in view of the facts and circumstances of the present case, the impugned charge sheet dated 29.10.2014, dismissal order dated 21.01.2016 and closure of appeal on 30.03.2016 deserve to be interfered by this Court while exercising jurisdiction under Article 226 of the Constitution?*

(7) Some important legal precedents by the Hon’ble Supreme Court on voluntary retirement—

- (i) In **Dinesh Chandra Sangma Versus State of Assam and others, (1977) 4 SCC 441** while dealing with a case of voluntary retirement under Rule 56 (c) of the Fundamental Rules, it was held that where a Government servant seeks premature retirement, the*

same does not require any acceptance and comes into effect on completion of the notice period.

(ii) ***in B. J. Shelat v. State of Gujarat and others*** (1978)

2 SCC 202 it was held that:-

“10. It will be useful to refer to the analogous provision in the Fundamental Rules issued by the Government of India applicable to the Central Government servants. Fundamental Rule 56(a) provides that except as otherwise provided in this Rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. Fundamental Rule 56 (j) is similar to Rule 161 (aa) (1) of the Bombay Civil Services Rules conferring an absolute right on the appropriate authority to retire a Government servant by giving not less than three months’ notice. Under Fundamental Rule 56(k) the Government servant is entitled to retire from service after he has attained the age of fifty-five years by giving notice of not less than three months in writing to the appropriate authority on attaining the age specified. But proviso (b) to sub-rule 56(k) states that it is open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause. Thus under the Fundamental Rules issued by the Government of India also the right of the Government servant to retire is not an absolute right but is subject to the proviso whereunder the appropriate authority may

withhold permission to a Government servant under suspension. On a consideration of Rule 161(2) (ii) and the proviso we are satisfied that it is incumbent on the Government to communicate to the Government servant its decision to withhold permission to retire on one of the grounds specified in the proviso.

11. *In the view we have taken that the appointing authority has no jurisdiction to take disciplinary proceedings against a Government servant who had effectively retired, the question as to whether the High Court was right in holding that the disciplinary authority had sufficient grounds for dismissing the appellant does not arise. The Inquiry Officer held that the charges had not been established as the witnesses who made allegations against the appellant in their affidavits failed to appear before him. The High Court on the administrative side came to a different conclusion on examining the record relating to three criminal cases where the accused pleaded guilty but the appellant did not pronounce his judgment and postponed it to some months thereafter. In one case the accused pleaded guilty on December 16, 1971 but the judgment was pronounced on March 21, 1972. In the second case the accused pleaded guilty on December 23, 1971 and the judgment was pronounced on January 24, 1972 and in the third case the plea of guilty was on June 26, 1972 and the*

judgment was pronounced on August 17, 1972. The High Court observed:

"While exercising our jurisdiction under Article 226, we are not concerned with the adequacy of evidence. All that we have to see is, whether there is evidence on which a reasonable inference could be drawn. In the circumstances of the case, the High Court was of the view that it was not called upon to interfere. As already stated, as we have come to the conclusion that the disciplinary action cannot be taken after the date of his retirement, we refrain from expressing any opinion on the correctness of the decision taken by the appointing authority.."

(iii) ***In Union of India and others Vs. Sayed Muzaffar Mir, 1995 Supp. (1) SCC 76 also Hon'ble Supreme Court held :-***

"4. There are two answers to this submission. The first is that both the provisions relied upon by the learned counsel would require, according to us, passing of appropriate order, when the government servant is under suspension (as was the respondent), either of withholding permission to retire or retaining of the incumbent in service. It is an admitted fact that no such order had been passed in the present case. So, despite the right given to the appropriate/competent authority in this regard, the same is of no avail in the present case as the right had not come to be exercised. We do not know the

reason(s) thereof. May be, for some reason the authority concerned thought that it would be better to see off the respondent by allowing him to retire.

5. *The second aspect of the matter is that it has been held by a three-Judge Bench of this Court in Dinesh Chandra Sangma v. State of Assam, which has dealt with a pari materia provision finding place in Rule 56(c) of the Fundamental Rules, that where the government servant seeks premature retirement the same does not require any acceptance and comes into effect on the completion of the notice period. This decision was followed by another three-Judge Bench in B.J. Shelat v. State of Gujarat.*
6. *The period of notice in the present case having expired on 21-10-1985, and the first order of removal having been passed on 4-11-1985, we hold that the Tribunal had rightly come to the conclusion that the order of removal was non est in the eye of law.”*

(iv) Again in **State of Haryana and others v. S.K. Singhal** (1999) 4 SCC 293 the Hon’ble Supreme Court summarised the legal position as under:-

“13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the

period specified in the notice. If, however, as in B.J. Shelat case and as in Sayed Muzaffar Mir case, the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelat case and in Sayed Muzaffar Mir case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.”

(v) *In **Tek Chand v. Dile Ram** (2001) 3 SCC 290 the Hon’ble Supreme Court held:-*

“35. In our view, this judgment fully supports the contention urged on behalf of the appellant in this regard. In this judgment, it is observed that there are three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into

force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules. In the case decided, the relevant rule required acceptance of notice by appointing authority and the proviso to the Rule further laid down that retirement shall come into force automatically if the appointing authority did not refuse permission during the notice period. Refusal was not communicated to the respondent during the notice period and the Court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntarily retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision..”

(vi) Recently in **Indian Bank and another Versus Mahaveer Khariwal** (2021) 2 SCC 632 the Hon’ble Supreme Court held:-

“23. Now so far as the submission on behalf of the employer that the acceptance or non-acceptance of the voluntary retirement application is required to be taken before the expiry of the period specified in the notice, i.e., in the present case three months and the

same was taken on the last date of the three months' period and date of receipt of the decision/communication is not material, it is true that in the present case the decision was taken before the expiry of the period specified in the notice, i.e., on or before three months (last day of the third month), however, as observed hereinabove, the rejection of the application for voluntary retirement itself is found to be illegal and bad in law. Therefore, the aforesaid shall not affect the ultimate conclusion reached by the Division Bench of the High Court. As observed hereinabove, communication dated 20.04.2004 rejecting the voluntary retirement application was bad in law and contrary to Regulation 29. Therefore, the employee shall be entitled to all retiral benefits on the basis of his voluntary retirement. Once, it is held that he has voluntarily retired as per his application dated 21-1-2004 and the rejection of the application of voluntary retirement is held to be bad in law, all other subsequent proceedings of departmental enquiry will be null and void and shall be non est, as after the voluntary retirement, there shall not be an employer-employee relationship."

(8) In view of the above legal precedents, broadly, the following propositions can be safely culled out:-

- (i) It all depends upon the relevant rules.*
- (ii) if the right to voluntarily retirement is conferred in absolute terms by the relevant rules and there is*

no provision to withhold permission, the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice.

- (iii) In case, the concerned authority is empowered to withhold permission to retire if certain conditions exist, viz. in case the employee is under suspension or in case a departmental inquiry is pending or is contemplated, the mere pendency of the suspension or departmental inquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on expiry of the period specified. What is further needed is that the concerned authority must pass a positive order withholding permission to retire and must also communicate the same to the employee before the expiry of the notice period, unless the rule says that it can be communicated after notice period also.*
- (iv) there is no requirement of an order of acceptance of the notice to be communicated to the employee; nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.*
- (v) The appointing authority has no jurisdiction to take disciplinary proceedings against a Government servant who had effectively retired from service.*
- (vi) Once, it is held that an employee is voluntary retired; or rejection of the application of voluntary retirement is held to be bad in law, all other subsequent proceedings of departmental enquiry will be null and void and shall be non est.*
- (vii) After the voluntary retirement, there shall not be an employer-employee relationship. Therefore, the*

employee shall be entitled to all retiral benefits on the basis of his voluntary retirement.

(9) Before proceeding further, it is necessary to extract the relevant provisions of the Rules, which read as under:-

*“2. **Definitions:**—In these rules, unless the context otherwise requires the following expressions have the meanings hereby respectively assigned to them, that is to say—*

*(1) “**appropriate authority**” means the authority which has the power to make substantive appointments to the post or service from which the Government employee is required or wants to retire or any other authority to which it is subordinate....*

*(3) “**qualifying service**” means service qualifying for pension.*

3. Premature Retirement.—

(1) (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 fifteen years or twenty years or twenty five years or thirty years or thirty five years, as the case may be, 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 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.*

A perusal of sub-rule 1, rule 3 reveals that it is in public interest, it gives an absolute right to the Appropriate Authority to retire an employee after giving three months' notice when he completes fifteen years or twenty years or twenty five years or thirty years or thirty five years, as the case may be, of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice. The Appropriate Authority has been defined under rule 2(1) and according to which the authority has the power to make substantive appointments to the post or service from which the Government employee is required or wants to retire or any other authority to which it is subordinate. As already discussed in para 2, in the present case, the Government is the appointing authority, but under the rules of business, those powers are exercisable by the Principal Secretary, Health and Family Welfare, Punjab (*hereinafter referred to as the 'Appropriate Authority'*).

Similarly, sub-rule 2, rule 3 gives corresponding right of retirement to a Government employee, after giving at least three months' previous notice in writing to the Appropriate Authority from 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.

However, it is specifically provided under this sub-rule that no employee under suspension shall retire from service except with the specific approval of the Appropriate Authority.

Again sub-rule 3, rule 3 confers right of retirement in favour of an employee who has completed twenty years of qualifying service.

As per clause (a) of sub-rule 3, 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.

According to clause (b) of sub-rule 3, the notice of voluntary retirement given under this sub-rule shall require acceptance by the Appropriate Authority.

At the same time, clause (c) of sub-rule 3, clearly lays down that 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.

Lastly, sub-rule 4, rule 3 puts an embargo from withdrawal of the retirement notice by an employee when he has elected to retire under sub-rule (2) or sub-rule (3) and has given the necessary notice to that effect except with the specific approval of the Appropriate Authority:

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

Thus, in view of sub-rule 4, once the notice for voluntary retirement is served by an employee, it can be withdrawn only with the permission of the Appropriate Authority and there is a rider to the effect that request for withdrawal should be made prior to the intended date of retirement. Meaning thereby, after expiry of the period, there is no option left for an employee to withdraw the notice of retirement.

(10) It is quite evident from the records that petitioner submitted her request dated 15.10.2013 seeking voluntary retirement and for reference, the same reads as under:-

"Dated : 15.10.2013

From

*Dr. Babita Gupta
Sr No 5635 (PCMS)
Type VI GPRA Quarter No 3
Block 'B', 2nd Floor,
Haddows Road, Chennai 600 006*

To

*The Principal Secretary
Department of Health and Family Welfare
Government of Punjab Chandigarh*

Madam,

*Subject: Voluntary Retirement Scheme (VRS)-
application of Dr.Babita Gupta- Reg.*

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I am posted as Medical Officer in Civil Hospital Fatehgarh Sahib. I had joined the PCMS (Punjab Civil Medical Service) on 01.07.1991 as Medical Officer and have completed 20 years of Punjab Government Service on 30.06.2011.

My family has shifted to Chennai as my husband who is in Central Government Service is now posted in Chennai. Thus, I am no longer able to do service in Punjab.

As my family circumstances do not allow me to continue my service in Punjab, I request you to allow me Voluntary Retirement under VRS of Punjab Government along with consequential benefits to me.

Thanking you

*Yours faithfully
Sd/-Dr.Babita Gupta;MO
Sr. No. 5635 (PCMS)"*

The above application was duly received in the office of the
Appropriate Authority vide endst. No.PS-PSH&FWIWDMS No.480246
dated 29.10.13.

(11) There is no dispute that before seeking voluntary retirement, the petitioner had completed qualifying service of 20 years to her credit.

As discussed above, in terms of clause (a), sub-rule 3, rule 3; 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.

According to clause (b) of sub-rule 3, the notice of voluntary retirement shall require acceptance by the Appropriate Authority.

At the same time, clause (c) of sub-rule 3 clearly lays down that 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.

(12) In present case, the Appropriate Authority, instead of proceeding in terms of clause (b) of sub rule 3 (*ibid*), forwarded the notice to the Director vide letter dated 13.11.2013 for obtaining his recommendations for voluntary retirement of petitioner. No response was received from the Director within stipulated period, therefore, the Appropriate Authority sent him a reminder on 17.12.2013 to do needful within next two days. Still, there was no response from the Director, therefore, the Appropriate Authority issued him second reminder dated 17.01.2014 to do the needful within two days through special messenger; but no such recommendations were received in the matter.

Here, it is relevant to mention that in terms of Note 3, appended under Rule 3 (*ibid*), after excluding two days i.e. 29.10.2013 & 30.01.2014,

the notice period of three months had expired on 31.01.2014 and uptill that date, the Appropriate Authority did not accept or reject the retirement notice of petitioner.

(13) It is also noteworthy that under sub-rule 3, the Director is neither the competent authority; nor the Appropriate Authority under obligation to seek his recommendations for deciding the notice of voluntary retirement. Rather, under sub-rule 3(b), it was only the Appropriate Authority, who could have passed the order of acceptance of voluntary retirement of petitioner. Sadly, the precious time of three months was wasted by the Appropriate Authority while sending repeated communications to the Director without realizing that his recommendations were not required under sub-rule 3(b). Thus, the only impression this Court has gathered is that either the Appropriate Authority did not advert to the rule book or the Authority was not able to understand the simple language of sub-rule 3 and consequently, left everything at the mercy of the Director despite the fact that he was not the competent authority to deal with the issue in hand. The Director also, remained oblivious of the fact that he had no powers under sub-rule 3 to deal with the issue and ultimately, he rejected the request of petitioner for voluntary retirement vide order dated 11.03.2014, which reads as under:-

*“DIRECTORATE, HEALTH AND FAMILY WELFARE,
PUNJAB
(E-2 BRANCH)*

To,

*Chief Secretary, Punjab Government,
Health and Family Welfare Department,
(Health-2 Branch), Chandigarh.*

*No.5635E-2(2) Pb.:14/ 1677
Dated, Chandigarh 11.03.14*

*Subject: Notice for seeking voluntary retirement-
Dr.Babita Gupta Medical Officer, Service
No.5635, Civil Hospital, Fatehgarh
Sahib.*

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Sir,

On the above said subject in reference to Government Memo No.17/84/13-2H2/149101/1 dated 17.01.2014, it is requested that an application for seeking leave on medical ground from 25.01.2012 to 22.02.2012 and 07.03.2012 to 10.04.2012 of Dr.Babita Gupta, Service No.5635, Civil Hospital, Fatehgarh Sahib was received through Civil Surgeon, Fatehgarh Sahib. For sanctioning the leave to doctor, this application was sent to the Government vide this office memo No.5635E2(3) Pb:12/2352, dated 05.06.2012. As per information provided by Civil Surgeon, Fatehgarh Sahib, this doctor has not come present on duty since June 2012 without getting the leave sanctioned on medical ground.

Government while sending memo No.17/84/13-2C2/4197 dated 13.11.2013 along with copy of the application dated 15.11.2013 seeking voluntary retirement, this office has been ordered to send clear recommendations regarding the same.

In this regard, it is requested to the government that doctor had sent the application for voluntary retirement from service during her absence period from duty; whereas as per Rule 3 of Voluntary Retirement Rules, 1975, amended from time to time, the three month advance notice is necessary for seeking voluntary retirement from service.

As per the above, no case is made out for grant of voluntary retirement to the doctor; rather disciplinary action is required to be initiated against her.

*Sd/-Superintendent, E-2,
for Director Health and Family Welfare, Punjab*

*Endst. No.5635E2(2)Pb:14/1678 dated, Chandigarh
11.03.2014*

*Copy to Civil Surgeon, Fatehgarh Sahib in
reference to this office memo No.5635E2(2) Pb:14/545
dated 28.01.2014 for taking necessary action.*

*Sd/-Superintendent, E-2,
for Director Health and Family Welfare, Punjab”*

The Appropriate Authority vide memo dated 27.03.2014 agreed with the order of the Director and decided to charge-sheet the petitioner under rule 8 of 1970 rules on the allegations of unauthorized absence. Although, it was argued and specifically averred by the respondents in para 23 (iii) & (iv) of the affidavit dated 03.04.2018 that “petitioner applied for voluntary retirement during her absence from duty, when disciplinary proceedings were pending against her”, but the records do not support their stand. This Court has minutely examined the official records, but it is nowhere discernable that either at the time of seeking voluntary retirement (15.10.2013) or till the expiry of notice period i.e. 31.01.2014, any such proceedings were pending against the petitioner. Thus, there is no hesitation to observe that the averments in para no.23 (iii) & (iv) of the affidavit extracted hereinabove are not based on records; rather projected on falsehood just to deprive the petitioner from her lawful claim and such a recourse is strongly disapproved. Again, the respondents have taken the plea that petitioner was willfully absent at the time of submitting application for seeking voluntary retirement and on that ground, her request was rejected, but that is also not acceptable for the following reasons:-

- (i) The notice for seeking voluntary retirement was rejected by the Director on 11.03.2014; but he had

no such powers under sub-rule 3; thus, rejection order is without jurisdiction.

- (ii) The so called rejection order was passed by the Director after expiry of three months period; thus the same is of no consequence and cannot deprive the petitioner from her legitimate right flowing from rule 3(3)(c).
- (iii) Above all, the Appropriate Authority did not refuse to grant permission to the petitioner in terms of clause (b) of sub-rule 3 for seeking voluntary retirement before expiry of three months notice period, thus, in such an eventuality, clause (c) of sub-rule 3 will come into play.

Since at the time of submitting the application for voluntary retirement, petitioner was working as member of PCMS and had completed the qualifying service of more than 20 years and as such, she was very well within her right to claim voluntary retirement.

(14) In view of the above discussion, the irresistible conclusion would be as under:-

1. *In terms of Rule 3(3)(a), an employee who has completed twenty years of qualifying service, may, at any time by giving notice of not less than three months in writing to the appropriate authority, retire from service.*
2. *According to sub-rule 3(b), the notice of voluntary retirement shall require acceptance by the appropriate authority.*
3. *As per sub rule 3(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. In the present case, petitioner submitted her request dated 15.10.2013 for seeking voluntary retirement, which was received in the office of appropriate authority on 29.10.2013 and three months notice period expired on 31.01.2014.*
- 5. It is nowhere discernable either from records or otherwise that in terms of sub rule (3)(b), the request of petitioner was accepted or rejected by the appropriate authority within a period of three months.*
- 6. There is no material to substantiate that before expiry of notice period of three months, petitioner was put under suspension or any disciplinary proceedings were initiated against her during that period.*
- 7. The appropriate authority did not refuse to grant permission for retirement before the expiry of three months period, therefore in terms of sub rule 3(c), the retirement of petitioner became effective from the date of expiry of the said period.*

In view of the above, there remains no doubt that petitioner stood voluntarily retired from service with effect from 31.01.2014 and as such, her relationship with the respondents as 'employee - employer' came to an end on that date.

(15) It is necessary to observe here that the Appropriate Authority did not follow the provisions of rule 3(3)(b) and as such, miserably failed to perform its duties in accordance with law. The Director also without any lawful authority rejected the voluntary retirement of petitioner causing

unnecessary harassment and added to her agony. The officer who filed the affidavit to deny the claim of petitioner also did not lag behind, rather she made averments in para no.23 thereof contrary to the official records for the reason(s) best known to her.

Thus, there is no hesitation to observe that the actions of all three officers being indefensible can be termed as negation of the rule of law.

(16) Point no. 2.

In view of the conclusion drawn under point no.1, the petitioner stood voluntarily retired w.e.f. 31.01.2014 and her relationship with the respondents as their employee came to an end by that date. Thus, the issuance of impugned charge-sheet dated 29.10.2014, consequent dismissal order dated 21.01.2016 as well as consigning of the appeal on 30.03.2016 are found to be *non est* in law.

(17) Consequently, the present writ petition is allowed with costs of Rs.50,000/- (Rupees Fifty Thousand Only) to be paid by the respondents. The impugned charge-sheet dated 29.10.2014, order of dismissal dated 21.01.2016 as well as order dated 30.03.2016 passed in appeal are set aside being null and void.

Resultantly, respondents are directed to treat the petitioner as voluntarily retired w.e.f. 31.01.2014 and release her all service as well as retiral benefits in accordance with law.

It is made clear that period of absence of the petitioner, if any, be treated as leave of kind due as per law.

If need be, the respondents are at liberty to invoke the provisions of **Note 2** appended under rule 3, which reads as under :—

“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.”

Also clarified that at first instance, the costs shall be deposited by respondent No.1 in favour of The Director, PGIMER, Chandigarh, for utilization towards Poor Patients Welfare Fund, within three months from the date of receipt of certified copy of this order and the State of Punjab shall be at liberty to recover the same from the erring officer(s).

December 21, 2021
sanjay

(MAHABIR SINGH SINDHU)
JUDGE

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