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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-13962-2016 (O&M)

Date of decision: November 23, 2022

Madhu Mittal

....Petitioner

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing order dated 04/08.07.2016 (Annexure P-4) whereby request of the petitioner dated 30.06.2016 (Annexure P-3) seeking to withdraw her request for voluntary retirement, has been rejected and petitioner has been retired from services on 08.07.2016.

2. Pledged case is that petitioner was appointed as Steno-Typist on *ad hoc* basis in the Health Services Department, Haryana. She was selected on regular basis as Steno-Typist and joined as such on 04.09.1979 in the respondent-Department. Further, she was promoted in due course to the post of Junior Scale Stenographer, Assistant and Deputy Superintendent. She was promoted as Superintendent on 29.12.2010. Vide letter dated 16.02.2016 (Annexure P-1), petitioner made a request seeking voluntary retirement w.e.f. 03.07.2016. Another request dated 01.04.2016 (Annexure P-2) was made to the same effect. But vide letter dated 30.06.2016 (Annexure P-3), petitioner

requested to withdraw her request for voluntary retirement. Said request of the petitioner was declined and she was ordered to be retired vide impugned order dated 04/08.07.2016 (Annexure P-4).

3. I have heard rival contentions of learned counsel for the parties and gone through the record.

4. Having perused the rival pleadings, I am of the view that controversy involved herein need not to be laboured all over again, the same being no longer *res integra* in light of the judgment rendered by this Court in **CWP-13906-1991** titled **Satbir Singh (Died) rep. by his widow versus State of Haryana**¹, wherein speaking for this Court, Jawahar Lal Gupta, J. (as he then was in this Court) held as under:

“6. As for the plea that the petitioner could not have withdrawn his request for voluntary retirement, it may be mentioned that reference to note 3 below rule 5.32 appears to be mistaken. It appears that this rule was deleted from the Statute book many years back. However, a provision is contained in clause (4) of Rule 5.32-B which provides as under:

“(4) A Government employee, who has elected to retire unde this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority. Provided that the request for withdrawal shall be made before the intended date of his retirement.”

A perusal of the above provision shows that an employee cannot withdraw his request for retirement "except with the specific approval of such authority". The proviso further shows that the request for withdrawal has to be made before "the intended date of his retirement." In this case, the request had been admittedly made before the intended date of retirement. As for the approval by the competent authority, it deserves mention that no reason whatsoever has been disclosed in the written statement to show as to why the request made by the official was declined. In accordance with the rule enunciated by their Lordships of the Supreme Court in Balram's case (AIR 1987 SC 2354). The action of the authority in declining the request without assigning any reason, cannot be sustained.

7. *There is another aspect of the matter. Constable Satbir Singh had admittedly expired on May 23, 1992. His widow deserves some relief. Mr. R.K. Malik, learned counsel for the petitioner states that even the family pension etc. which is due to the widow has not been released till today. According to the learned counsel, no retiral benefits have been released in spite of the fact that the official had been retired w.e.f. April 30, 1991. Mr. Jaswant Singh states that retiral benefits were probably not released on account of the pendency of this petition. In my view, this is hardly any reason. There was no order of stay passed by this Court.”*

5. In fact, above view has its genesis arising from a judgment rendered by Supreme Court way back in **Balram Gupta v. Union of India**² and subsequently, re-affirmed in **J.N. Srivastava versus Union of India and another**³, in the following terms:

“3. xx xxxx. It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta v. Union of India, reported in 1987 (Supp) SCC 228. In view of the aforesaid decision of this Court it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31-1-1990. It is to be noted that once the request for cancellation of voluntary retirement proposal was rejected by the authority concerned on 26-12-1989 and when the retirement came into effect on 31-1-1990 the appellant had no choice but to give up the charge of the post to avoid unnecessary complications.”

6. I see no reason as to why petitioner be also not accorded the aforesaid benefit.

7. Writ petition is allowed in terms of **Satbir Singh’s case (supra)**. Consequential benefits be accorded upto the age of retirement of the petitioner.

²1987 (Supp) SCC 228

MAHAVIR SINGH
2022.12.05 16:30
I attest to the accuracy and
authenticity of this order/ judgment

³1999 AIR (Supreme Court) 1571

- 8. Necessary exercise be carried out within a period of 3 months from today.
- 9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

November 23, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No