

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

(1) **CWP No. 14075 of 2017 (O&M)**
Date of Decision: April 2, 2022

Gurmit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(2) **CWP No. 5028 of 2018 (O&M)**

Gobind Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Dhiraj Chawla, Advocate
for the petitioners in both the cases.

Mr. Tarun Veer Singh Lehal, Additional Advocate General,
Punjab.

Mr. Harmanjit Singh Jugait, Advocate,
for respondent No.2 in CWP 14075 of 2017.

JAISHREE THAKUR, J.

1. By this common judgment, this court proposes to decide the aforesaid two writ petitions as the same facts and the law point are involved therein. However, for the sake of convenience, facts are being taken from **Civil Writ Petition No. 14075 of 2017 titled Gurmit Singh vs State of**

Punjab.

2. The petitioner herein is aggrieved by the order dated 01.08.2016, whereby his request for grant of pension upon voluntary retirement after having completed 15 years of regular service has been rejected.

3. In brief, the facts are that the petitioner was appointed as constable with effect from 25.8.2000. He applied on the 24.11.2015 seeking voluntary retirement after having completed 15 years of service. While giving notice of three months, it was mentioned that he was seeking voluntary retirement on account of his domestic circumstances. His request for processing his application expeditiously was not exceeded to as a question arose whether voluntary retirement could be sought after 15 years of service. Subsequently, the Commandant of the 4th India Reserve Battalion Jalandhar, by his letter dated 27th of January 2016, also recommended the petitioner's request for voluntary retirement on completion of 15 years of service. Ultimately, the request of the petitioner for premature retirement was accepted with effect from 20.04.2016 and General Provident Fund was ordered to be released to the tune of ₹ 386,169/-. However, the office of the Accountant General by their letter dated 26.5.2016 informed that they are unable to process the pension case of the petitioner because the minimum qualification service for voluntary retirement is 20 years of service, whereas the petitioner has 15 years 4 months and 8 days. Aggrieved against the rejection of request for voluntary retirement the instant petition has been filed.

4. Mr. Dheeraj Chawla, learned counsel appearing on behalf of the petitioner herein, would contend that the impugned order whereby the request of the petitioner for grant of voluntary retirement stands rejected, is unsustainable in view of the fact that the petitioner would be entitled for grant of pension upon voluntary retirement after 15 years of regular service. It is argued that the State Government has already lowered the age of voluntary retirement of 15 years as per notification dated 05.09.2014, which notification was not taken into account at the time when his request for voluntary retirement was being looked into. He would rely on judgments as rendered in **Mewa Singh vs State of Haryana 2015 (3) SCT 239**, **Geeta Devi vs State of Punjab 2014 (13) SCT 770** and **Mehar Singh Vs State of Punjab 2003 (1) SCT 453** to contend that he would be entitled to grant of pension on seeking voluntary retirement after completing 15 years of service.

5. Per Contra, learned counsel for the respondent—State would argue that there is no infirmity with the orders passed.

6. I have heard the counsel for the parties and with their assistance have gone through the pleadings and the case law cited.

7. The claim of the petitioner is for acceptance of his request for voluntary retirement and the release of pension, gratuity, leave encashment and all other retiral benefits to him.

8. The petitioner submitted his request for voluntary retirement on completion of 15 years of service. Notice of three months was given as envisaged in the rules, which request was not acceded to on the ground that

the qualifying service is 20 years. Respondent No.2 while deciding the issue failed to take into account that Rule 3 of the Punjab Civil Services (Premature Retirement Rules) 1975 stood amended as on 5.9.2014. Rule 3 deals with Premature retirement, whereas sub rule (3) (a) deals with voluntary retirement. The same is reproduced as under:

“ (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.”

This rule was amended and in Sub rule (3) at Clause (a) the word ‘**Twenty Five years**’ was substituted to “**fifteen years or twenty years or twenty five years or thirty years or thirty five years, as the case may be**”. Therefore, a bare reading of the rule would show that an employee who has completed fifteen years of qualifying service, he may, by giving notice of not less than three months in writing to the appropriate authority, retire from

service. It is also worthwhile to note that the respondent No. 3 had also recommended the acceptance of voluntary retirement request of the petitioner based on the amended rules, which recommendation ought to have been accepted.

9. In CWP No 5028 of 2018, the petitioner Gobind Singh has taken an additional plea to the effect that he had submitted his request for voluntary retirement by giving a three month notice vide letter dated 27.1.2016 but as there was no response, he continued to work till 25.9.2017 and stopped thereafter. He was served with a show cause notice and departmental proceedings were initiated against him by order dated 21.12.2017. It is argued that if the department failed to respond/refuses to grant permission to retire within three months, the retirement becomes effective from the date of expiry of notice period. It is submitted that any departmental proceedings initiated thereafter are vitiated and unsustainable.

10. The argument raised has merit. A reading of the sub rule itself specifies that “(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.*” Meaning thereby, there would be deemed acceptance by the authorities concerned in case there is no refusal to accept the letter of voluntary resignation. At the time when the request for voluntary retirement was made, there were no departmental proceedings pending against the petitioner. The same were initiated well after the expiry period of three months and therefore, such proceedings can not be sustained. In this regard,

reliance can be place upon a judgment rendered **State of Haryana v. S.K. Singhal 1999(4) SCC 293** where it has been held that :

“13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retirement is conferred in absolute terms as in Dinesh Chandra Sangma's case by the relevant rules and there is no provision in 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's case and as in Sayed Muzaffar Mr's 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, their 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 as stated in B.J. Shelat's case and in Sayed Muzaffar Mir's 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.”

11. Consequently, these writ petitions are allowed and the impugned orders are set aside. It is held that the petitioners will be deemed to have retired voluntarily from three months of their date of notice and will be entitled to their pension, gratuity, leave encashment and all other retrial benefits etc. etc. within a period of two months from the date of receipt of a copy of this order, along with interest at the rate of 7.5% per annum. The

payments be released within aforesaid period, failing which the interest will be @ 12% per annum.

12. The writ petitions stand allowed on the above terms.

April 2, 2022
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No