

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

**Date of Reserve: 20.12.2022
Date of Decision: 22.12.2022**

CWP No.26120 of 2022 (O&M)

Bhupinder Singh

.....Petitioner

Vs

State of Punjab and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Virinder Kumar Shukla, Advocate
for the petitioner.

Ms. Shubreet Kaur, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition under Article 226 of the Constitution of India for the issuance of an appropriate writ, order or direction especially in the nature of certiorari, quashing the impugned order dated 07.10.2022 passed by the respondent No.2, declining the request of the petitioner for withdrawal of notice of voluntary retirement dated 21.09.2022. Request for withdrawal of notice of voluntary retirement was made on 23.09.2022.

[2]. Perusal of the record would show that the petitioner issued a notice of voluntary retirement on 21.09.2022 thereby requesting the respondent No.2 to treat the same as three months' prior notice w.e.f. 21.09.2022. After two days of issuance of notice of voluntary retirement, the petitioner sought to withdraw the same on 23.09.2022.

[3]. The respondent No.2 has declined the request of the petitioner for withdrawal of notice of voluntary retirement in view of Sub Rule (4) of Rule 3 of Punjab Civil Services (Premature Retirement) Rules, 1975 thereby accepting the request for voluntary retirement dated 21.09.2022 and allowing the petitioner to retire voluntarily from the government service w.e.f. 22.12.2022 afternoon vide the impugned order dated 07.10.2022.

[4]. Learned counsel for the petitioner with reference to **J.N. Srivastava vs. Union of India and another, 1999 AIR (SC) 1571**; **Balram Gupta vs. Union of India, 1987 (Supp) SCC 228** and **Shambhu Murari Sinha vs. Project and Development India, 2000 AIR (SC) 2473** submitted that offer of voluntary retirement can be withdrawn before the effective date at any point of time before the same is made effective.

[5]. Perusal of impugned order would indicate that the

same has been passed after relying upon Sub Rule (4) of Rule 3 of Punjab Civil Services (Premature Retirement) Rules, 1975.

For ready reference the same is reproduced hereasunder:-

(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.”

[6]. Perusal of the aforesaid Sub Rule (4) of Rule 3 of the Rules would show that the employee, who has elected to retire under Sub-rule (2) or Sub-rule (3) of the said Rules 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.

[7]. Notice of motion was issued on 16.11.2022. Learned counsel for the respondent No.2 submitted that in view of the aforesaid Punjab Civil Services (Premature Retirement) Rules, 1975, specific approval of the appropriate authority for withdrawal of notice of voluntary retirement is *sine qua non*.

[8]. Learned counsel for the respondent No.2 by placing reliance upon **New India Assurance Company Limited vs. Raghuvir Singh Narang and another, (2010) 5 Supreme Court Cases 335; Air India Express Limited and others vs. Captain Gurdarshan Kaur Sandhu, (2019) 17 Supreme Court Cases 129** and **Civil Appeal No.4611 of 2008 (arising out of SLP(C) No.1551 of 2007)** titled '**Director General ESIC & Anr. vs. Puroshottam Malani**' decided on 22.07.2008 by the Hon'ble Apex Court submitted that the issue has to be appreciated in the light of Scheme for voluntary retirement. Para Nos.17 and 24 of **New India Assurance Company Limited's** case (supra) are reproduced hereasunder:-

17. *The High Court proceeded on an erroneous assumption that the voluntary retirement package was not part of any statutory scheme, but was contractual in nature and therefore the general principles of contract will apply. The reliance placed by the High Court upon the decision of this Court in Swarnakar, to assume that every scheme for voluntary retirement is always contractual and not statutory, is misconceived.*

24. *The special voluntary retirement package is a part of the General Insurance (Rationalization of Pay Scales and Other Conditions of Service of*

Development Staff) Amendment Scheme, 2003, made by the Central Government in exercise of the power under Section 17-A of the General Insurance Business Insurance (Nationalisation) Act, 1972. Section 17-A, as noticed above, authorizes and empowers the Central Government, to frame, by notification published in the official gazette, one or more schemes for regulating the pay scales and other terms and conditions of service of officers and other employees of the Corporation or of any acquiring company (including the appellant). Sub-section (6) of Section 17-A provides that the provision of Section 17 and of any scheme framed under it shall have effect notwithstanding anything to the contrary contained in any other law or any agreement award or other instrument for the time being in force. Therefore the scheme is statutory in character. Consequently, the provisions of the Scheme will prevail over the provisions of Contract Act or any other law or any principle of contract, and having regard to the binding nature of the scheme, the employee upon exercising the option, cannot withdraw from the same.”

[9]. In **New India Assurance Company Limited's** case (supra), special voluntary retirement package was part of the General Insurance (Rationalization of Pay Scales and Other

Conditions of Service of Development Staff) Amendment Scheme, 2003, which was statutory in character. The Scheme framed under the General Insurance Business Insurance (Nationalisation) Act, 1972 shall have the effect notwithstanding to the contrary in any other law or any agreement, award or other instrument for the time being in force. Therefore, the Scheme was taken to be statutory in character and it was held that the provisions of the Scheme will prevail over the provisions of the Contract Act or any other law or any principle of contract and having regard to the binding nature of the Scheme, the employee upon exercising the option cannot withdraw from the same.

[10]. In ***Air India Express Limited and others'*** case (supra), the underlying principle viz-a-viz. the public interest was discussed and it was held in the facts and circumstances of the case that the obligation to find a suitable replacement begins immediately on receipt of letter of resignation and suitable replacement was also found, therefore, the normal principle that an employee can at any time before the resignation become effective withdraw his resignation was negated in view of public interest. The case was treated to be an exception to the ratio of ***Union of India vs. Gopal Chandra Misra, (1978) 2 SCC 301.***

[11]. Learned counsel for the respondent No.2 also

submitted that in the **Director General ESIC & Anr.'s** case (supra) the Central Civil Services (Pension) Rules, 1972 were relied to say that specific approval of the authority was needed for withdrawal of notice of voluntary retirement.

[12]. I have considered the submissions made by learned counsel for the parties.

[13]. In the instant case, the petitioner after issuing notice of voluntary retirement on 21.09.2022 submitted his request for withdrawal of notice of voluntary retirement within two days on 23.09.2022. The competent authority/respondent No.2 vide the impugned order dated 07.10.2022 has rejected the request for withdrawal of notice of voluntary retirement by referring to Sub Rule (4) of Rule 3 of Punjab Civil Services (Premature Retirement) Rules, 1975. The proviso attached to Rule 3 of Sub Rule (4) of the said Rules provides that the request for withdrawal shall be made before the intended date of retirement. The petitioner has complied with the aforesaid requirement while submitting his request for withdrawal of notice of voluntary retirement within two days of its submission of request for voluntary retirement, therefore, the impugned order itself has to be taken to be an order of non-approval which has to be tested at the threshold of observations made by the Hon'ble Apex Court in para No.17 of **Air India Express Limited**

and others' case (supra) which reads as under:-

“17. The stipulation of notice period is, therefore, only to sub-serve public interest and is designed to enable the air transport undertaking or employer to find a suitable replacement or a substitute. By very nature of the job profile a replacement for a pilot does not come so easily and therefore, the period of six months. The CAR acknowledges the fact that it would require considerable expenses and efforts to train the concerned replacement before he could be a worthy substitute. The notice period enables the air transport undertaking or the employer to gear itself up in that direction and obliges it to find a substitute or a replacement. The obligation to find a suitable replacement begins immediately on receipt of letter of resignation. In the present case, steps were taken by the appellant to discharge such obligation and replacement in Captain Jiban Mahapatra was found. The normal principle that an employee can at any time before the resignation becomes effective, withdraw his resignation will therefore be subject to the core principles of the CAR. In our view, the instant matter would, therefore, be within the exception stipulated in paragraphs 41 and 50 of the decision in Gopal Chandra Mishra and para 12 of the decision in Balram Gupta, and the respondent could not have withdrawn the resignation.”

[14]. The respondent No.2 has not found any replacement in place of the petitioner, therefore, the ratio(s) of **J.N. Srivastava**; **Balram Gupta** and **Shambhu Murari Sinha's** cases (supra) would be attracted to the facts and circumstances of the present case.

[15]. For the reasons recorded hereinabove, this petition is allowed. The impugned order dated 07.10.2022 passed by the District & Sessions Judge, Moga is not legally sustainable and the same is hereby quashed. Normal consequences to follow.

December 22, 2022

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No