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

CWP-8279-2020

Date of decision : 20.03.2023

Chandan Kumar

....Petitioners

Versus

State of Punjab and Ors

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.K. Arora, Advocate
for the petitioner.

Ms. Shivani Sharma, D.A.G., Punjab.

Mr. H.K. Aurora, Advocate
for respondent No.3.

PANKAJ JAIN, J. (ORAL)

By way of present petition, petitioner is seeking issuance of a writ in the nature of certiorari/mandamus quashing the impugned order dated 27.12.2019 (Annexure P-11), whereby prayer of the petitioner to consider his alleged 'resignation' submitted after 26 years of regular service as voluntary retirement, has been declined and to quash earlier order dated 17.08.2017 (Annexure P-7) whereby the prayer made by the petitioner for withdrawal of his resignation was rejected.

The petitioner, who was working as Sanitary Supervisor with the respondent-Corporation tendered resignation from his service on 09.11.2006 vide P-1. The same was accepted vide P-2 dated 28.11.2016. The said acceptance was communicated to the petitioner on 12.01.2017 vide P-4. The petitioner on 16.03.2017, sought for withdrawal of the resignation. The petitioner earlier approached this Court by way of

CWP-20069-2019, which was disposed of vide order dated 23.07.2019 after the counsel representing the petitioner prayed for allowing him to withdraw the said petition with liberty to approach the respondents. The liberty so prayed for was granted. The petitioner vide representation dated 29.07.2019, represented again to the respondents for converting the resignation into Voluntary retirement. After the respondent-authorities failed to respond to the same, the petitioner again approached this Court by way of CWP-24406-2019. The same was disposed of vide order 05.09.2019 directing the respondents to dispose of the representation dated 29.07.2019 by passing a speaking order within a period of three months. Pursuant to the said direction, order dated 27.12.2019 has been passed, whereby the representation made by the petitioner stands rejected.

Mr. Arora, appearing for the petitioner submits that the petitioner was not aware of the consequences of resignation and in fact Annexure P-1 which ought to have been titled as 'Prayer for voluntary retirement', has been inadvertently mentioned as 'resignation'. He further relies upon the law laid down in '***Shashikala Devi Vs. Central Bank of India and others reported as 2015(2) RSJ 171***' and further reliance has been placed on law laid down by the Division bench of this Court in '***Om Parkash Vs. State of Punjab reported as 2006(3) SCT, 664***'.

Per contra, Mr. Aurora, submits that once the resignation stood accepted there was no occasion for the petitioner to have sought withdrawal of the same. He relies upon '***Kartar Singh Vs. State of Haryana and others (1998) 119 PLR 448***.'

I have heard learned counsel for the parties and have gone

through the record of the case.

Admittedly, the petitioner resigned from his services to do social work as he was interested in contesting elections. Petitioner was well aware of his doings when he resigned on 09.11.2016. Trite it is that the resignation can always be withdrawn but before acceptance. In the present case, not only resignation stood accepted but such acceptance had already been conveyed and communicated to the petitioner. So far as the law laid down in ***Shashikala Devi's*** case (supra) is concerned, the same related to where an employee was under distress owing to her chronic illness. Keeping in view the continuous suffering and resultant state of mind of the employee, the Apex Court held that the confusion in the mind of the employee can be well inferred to. Whereas in the present case the petitioner opted to resign for an alternate carrier being fascinated by a greener pasture. The situation involved in the present case and the precise issue already stands canvassed by Full Bench of this Court in ***Kartar Singh's case*** (supra) wherein the Full Bench formulated following three questions:-

1. *Whether permitting one set-up of persons to withdraw the resignation submitted by them after losing the election confers a right on the others to withdraw the resignation and State is bound to permit the withdrawal;*
2. *If not whether State's refusal to exercise the discretion amounts to discrimination and would be hit by Articles 14 and 16 of Constitution of India,*
3. *Whether under Rule 7.5 of the Punjab Civil Service Rules a person who has resigned to contest an election and his resignation having been accepted, he cannot be permitted at all to withdraw the resignation.”*

The above stated questions are answered as follows:-

1. *In view of the judgment of the Apex Court in Ram Kumar Mann's case (supra), no legal and enforceable right is conferred on such persons, who have submitted their resignation from service in order to contest an election and the same having been accepted by the State, the State is not bound to permit the withdrawal of resignation.*
2. *The second question is answered in the negative. The State's refusal to exercise the discretion does not amount to discrimination and is, therefore, not violative of Articles 14 and 16 of the Constitution of India.*
3. *The third question is answered in the affirmative.'*

Similar is the ratio of law laid down by the Apex Court in the case of ***'BSES Yamuna Power Ltd. Vs. Ghanshyam Chand Sharma and another in Civil Appeal No.9076 of 2019, SCC online SC 1557,'*** wherein the Apex Court held as under:-

14. *The view in Asger Ibrahim Amin was disapproved and the court held that the provisions providing for voluntary retirement would not apply retrospectively by implication. In this view, where an employee has resigned from service, there arises no question of whether he has in fact „voluntarily retired“ or „resigned“. The decision to resign is materially distinct from a decision to seek voluntary retirement. The decision to resign results in the legal consequences that flow from a resignation under the applicable provisions. These consequences are distinct from the consequences flowing from voluntary retirement and the two may not be substituted for each other based on the length of an employee's tenure.*

15. *In the present case, the first respondent resigned on 7 July 1990 with effect from 10 July 1990. By resigning, the first respondent submitted himself to the legal consequences that flow from a resignation under the provisions applicable to his service. Rule 26 of the Central Civil Service Pension Rules 19725 states that:*

“26. Forfeiture of service on resignation

(1) Resignation from a service or a post, unless it is

allowed to be withdrawn in the public interest by the Appointing Authority, entails a forfeiture of past service...”

16. Rule 26 states that upon resignation, an employee forfeits past service. We have noted above that the approach adopted by the court in *Asger Ibrahim Amin* has been held to be erroneous since it removes the important distinction between resignation and voluntary retirement. Irrespective of whether the first respondent had completed the requisite years of service to apply for voluntary retirement, his was a decision to resign and not a decision to seek voluntary retirement. If this court were to re-classify his resignation as a case of voluntary retirement, this would obfuscate the distinction between the concepts of resignation and CCS Pension Rules voluntary retirement and render the operation of Rule 26 nugatory. Such an approach cannot be adopted. Accordingly, the finding of the Single Judge that the first respondent „voluntarily retired“ is set aside.

17. We now turn to the question of whether the first respondent had completed twenty years in service. During the present proceedings, our attention was drawn to the fact that the first respondent had applied for voluntary retirement on 14 February 1990. By a letter dated 25 May 1990 the appellant denied the first respondent’s application for voluntary retirement on the ground that the first respondent had not completed twenty years of service. It was thus urged that the appellant’s decision to deny the first respondent voluntary retirement was illegal as the first respondent had completed twenty years of service.

18. This argument cannot be accepted. Even if he was denied voluntary retirement on 25 May 1990, the first respondent did not challenge this decision but resigned, on 7 July 1990. The denial of voluntary retirement does not mitigate the legal consequences that flow from resignation. No evidence has been placed on the record to show that the first respondent took issue with the denial

of voluntary retirement between 25 May 1990 and 7 July 1990. To the contrary, in the legal notice dated 1 December 1992 sent by the first respondent to the appellant, the first respondent admitted to having resigned. The first respondent's writ petition was instituted thirteen years after the denial of voluntary retirement and eventual resignation. In the light of these circumstances, the denial of voluntary retirement cannot be invoked before this Court to claim pensionary benefits when the first respondent has admittedly resigned.'

Coming on to the other plea raised by counsel for the petitioner that the petitioner in fact wanted to take voluntary retirement and not to tender resignation, a bare perusal of communication dated 09.11.2006 (Annexure P-2) itself leads to no other inference but to that, it is a resignation. In fact, at that point of time petitioner immediately wanted to get rid of his services for the call of elections, he had no time to wait for acceptance of his request to voluntary retirement. Thus it is not possible to accept plea raised on behalf of the petitioner that Annexure P-1 was in fact request of voluntary retirement and wrongly given nomenclature of resignation. It is held to be a resignation which has come into effect on its acceptance on 28.11.2016 and its communication to petitioner vide P-4.

In view of the aforesaid proposition of law, this Court does not find it to be a fit case to exercise jurisdiction under Articles 226/227 of the Constitution of India and resultantly, the present writ petition stands dismissed.

20.03.2023

ps-I

Whether speaking/reasoned
Whether reportable

(PANKAJ JAIN)

JUDGE

: Yes/No
: Yes/No