

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

**CWP No.26488 of 2018 (O&M)
Date of Decision: 02.05.2023**

Jyoti Prasad

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Ms. Neha Jain, Advocate for
Mr. K.S. Dadwal, Advocate
for the petitioner.

Ms. Tanushree Gupta, DAG, Haryana.

HARNESH SINGH GILL, J.(ORAL)

1. Challenge in the present petition to the order dated 30.07.2018 (Annexure P-4) passed by respondent No.3, vide which the petitioner had been relieved from the duties without taking into consideration his application dated 18.07.2018 (Annexure P-2) to revoke the notice for voluntary retirement.

2. Learned counsel for the petitioner contends that initially, the petitioner was appointed as an Instructor in February, 1984 and thereafter, was promoted to the post of Vice-Principal in 2001. She further contends that on 25.04.2018, the petitioner, vide application dated 25.04.2018 (Annexure P-1), requested for voluntary retirement w.e.f. 31.07.2018 for the reason that he had undergone heart-surgery from Fortis Hospital, Mohali, and was not in a position to cope up with the duties. However,

during the intervening period, the petitioner became recuperated and had submitted an application 18.07.2018 (Annexure P-2) seeking withdrawal of voluntary retirement notice and expressed his willingness to serve the institution for the remaining period upto the date of his superannuation. She further contends that the petitioner had moved the application dated 18.07.2018 i.e. prior to the intended date of his voluntary retirement. She further contends that without considering the application (Annexure P-2) of the petitioner, the impugned order (Annexure P-4) was passed by respondent No.3, whereby he had been relieved off the service w.e.f. 31.07.2018. In support of her contentions, learned counsel relies upon the judgment rendered by the Division Bench of this Court in 'Union of India and others Vs. Central Administrative Tribunal, Chandigarh and others', 2019(1) S.C.T. 675.

3. On the other hand, learned State counsel, while rebutting the arguments raised by the learned counsel for the petitioner, submits that the request of the petitioner for voluntary retirement was accepted by the competent authority, vide impugned order dated 30.07.2018 (Annexure P-4), while taking into consideration that he was not in a good health. She further submits that the petitioner had withdrawn the retiral benefits and is now getting the pension. In support of her contentions, learned State counsel relies upon the judgment rendered by the Hon'ble Supreme Court in 'Director General, E.S.I.C. Vs. Puroshottam Malani', 2008(3) KLT 613, wherein it was held that if the incumbent does not provide any reason or material for revoking his notice of voluntary retirement, then it is always

open to the authority to decline the request for withdrawal of notice of voluntary retirement.

4. I have heard learned counsel for the parties.

5. It is not disputed that vide application dated 25.04.2018, the petitioner had requested for voluntary retirement on account of the fact that he was not keeping good health and had undergone heart surgery from the Fortis Hospital, Mohali. However, the petitioner moved an application dated 18.07.2018 (Annexure P-2) to revoke his application/notice for voluntary retirement on the ground that he had recuperated from illness and was in a position to cope up with his job profile. The aforesaid material change in circumstances had not been considered by the competent authority while passing the impugned order.

6. It is worth mentioning here that the stipulated date for accepting the request of the petitioner for voluntary retirement was 31.07.2018. However vide order dated 30.07.2018 (Annexure P-4), the concerned authority without considering the application dated 18.07.2018 (Annexure P-2) moved by the petitioner for revoking the application/notice for voluntary retirement, had relieved the petitioner of the service w.e.f. 31.07.2018.

7. In the considered opinion of this Court, the competent authority could not have refused to accept the withdrawal of resignation of the petitioner as it was sent before the relationship of employee and employer, came to an end. A certain amount of flexibility is required in such cases and as a model employer, the Government must conduct itself

with high probity. This Court is conscious of the fact that after having been relieved from the service, the petitioner had withdrawn the retiral benefits and is also now getting the pension. However, it is not the case of the respondents-State that the petitioner had withdrawn the retiral benefits before making the application dated 18.07.2018 (Annexure P-2) seeking withdrawal of his request for voluntary retirement.

8. So far as the judgment of the Hon'ble Supreme Court in Director General, E.S.I.C. (supra), is concerned, the same is not applicable to the present case having distinguishable facts for the reason that in the said case, no explanation whatsoever had been furnished by the employee therein for revoking the notice of voluntary retirement and moreover, before submitting his request for voluntary retirement, he had withdrawn all the pensionary benefits including Leave Encashment, Gratuity etc.

9. The Hon'ble Supreme Court in Shambu Murari Singh Versus Project and Development India Ltd. 2002(3) SCC 437, has held as under:

“We, therefore, hold that the respondent could not have re-fused to accept the withdrawal of resignation of the appellant as it was sent before, the jural relationship of employee and employer, came to an end. Consequently, the impugned judgment is liable to be set aside, which we hereby do. The appellant shall be entitled to rejoin his duty and he shall be paid all his salaries and other benefits during the period he was out from the service. The learned counsel for the respondent has stated that by this time, the appellant might have retired from service on attaining the age of superannuation, if that be so, he shall be paid full salary and allowances for the entire period for which, he was out of

service, till the date of his retirement and there-after, he shall be entitled to get all retiral benefits counting the above period as if he was in service.”

10. The Division Bench of this Court in Union of India and others (supra), has held as under:

“11. Such is not the case here. In the present case, respondent No.2 has given adequate reasons for withdrawal of his request for voluntary retirement which had been submitted without any delay and before the effective date of resignation. It is also not the case of the petitioners that he had withdrawn the retiral benefits before making such request. No reasons have been given by the petitioners for rejecting his request. His case is thus fully covered by the ratio of the judgment of Hon'ble Supreme Court in Balram Gupta's case where the order of the authorities rejecting the application for withdrawal of voluntary resignation was set aside by observing as under:

12. In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set-up or

arrangement was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this the respondent is to blame and not the appellant.

13. We hold, therefore, that there was no valid reason for withholding the permission by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize the Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the Government must conduct itself with high probity and candour with its employees."

12. Accordingly, there is no merit in this writ petition.

13. Respondent No.2 had sought voluntary retirement through his application dated 7.11.1984. He had completed 20 years of service by then. In normal course, he would have retired long ago on attaining the age of superannuation (DOB 13.06.1942). He is also stated to have died and his widow Smt.Imarti Devi has been brought on record as his legal representative. In these circumstances, even though the order dated 28.2.1985 has been quashed, he cannot be granted the benefits of actual emoluments as he had not worked during the period. So, he would only be entitled to the notional benefits of pay-fixation towards pensionary benefits only.

14. The writ petition is disposed of in the above terms."

11. In the present case, it is a conceded fact that by this time, the petitioner might have retired from service on attaining the age of superannuation, had he been in service.

12. In the light of the law laid down by the Hon’ble Supreme Court in Shambu Murari Sinha (supra), and by the Division Bench of this Court in Union of India and others’ (supra), the impugned order dated 30.07.2018 (Annexure P-4) is set-aside and it is ordered the petitioner shall be paid full salary and allowances for the entire period for which, he was out of service, till the date of his retirement and there-after, he shall be entitled to get all retiral benefits counting the above period as if he was in service. Needful be done within a period of four months from the date of receipt of copy of this order.

13. The present petition is, accordingly, allowed.

May 02, 2023
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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