

239

2023:PHHC:166557

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26773-2018 (O&M)
DECIDED ON: 19.07.2023

INDERJIT SINGH

....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

CORAM: HON'BLR MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Madan Pal, Advocate
for the petitioner.

Mr. R.S. Longia, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing of the impugned letter dated 24.07.2018 (Annexure P-8) for non considering the claim of the petitioner for voluntary retirement with further prayer for issuance of a writ in the nature of *Certiorari* to quash the impugned charge sheet dated 03.04.2018 (Annexure P-9). A further prayer has also been made to direct the respondents to take a decision on application dated 25.06.2018 (Annexure P-6) and to treat the petitioner as a retired employee after three months of the notice (i.e. on 25.09.2018) and also directing the respondents to voluntary retire the petitioner and thereafter to

release all the retiral benefits alongwith 18 % interest.

2. Learned counsel for the petitioner contends that due to domestic reasons the petitioner had applied for the voluntary retirement on 25.06.2018 after he rendered more than 37 years of service. He further contends that vide impugned order dated 24.07.2018 (Annexure P-8) while declining the claim of the petitioner for voluntary retirement following observation has been made by the competent authority:-

“No further action can be taken on the application of VRS as well as charge sheet, till the decision of criminal case, charges of which are placed in file.”

3. Learned counsel for the respondents submits that a criminal case bearing FIR No. 394, dated 16.09.2014, under Sections 420, 408, 379 and 201 IPC, has been registered against the petitioner and four other officers/official of the respondent-Nigam, which is still pending. The assertion is that in case the punishment is inflicted upon the petitioner in the said criminal case then he may not be held entitled for the “retirement dues”. Thus, the petitioner very cleverly under a “clever legal advice” sought “voluntary retirement”, so that he may get his retirement dues before the decision of the criminal case. Accordingly, he prays for dismissal of the present petition.

4. Heard learned counsel for the parties.

5. It is an admitted fact that the petitioner had submitted an application on 25.06.2018 for voluntary retirement w.e.f. 30.09.2018 on the ground that due to some domestic compelling reasons, he would not be able to serve till his retirement i.e. 31.08.2019 and the notice period would be expiring on 25.09.2018, the enquiry initiated against the petitioner was not

concluded. Thus the petitioner presumed that he deemed to be retired in view of Rule 5.32 (B) of the Punjab Civil Service Rules Volume II (as applicable to Haryana), which reads as under:-

“5.32 (B) (1) At any time a Government employee has completed twenty years, qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reason therefor. On receipt of a request, the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) The notice of voluntary retirement given under sub rule (1) shall require acceptance by the appointing authority subject to rule 2.2 of Pb. C.S.R. Vol. II.

*Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub rule (1) supra, **the retirement shall become effective from the date of expiry of the said period.**”*

6. In view of the aforesaid proviso to Rule 5.32 (B) (1) and (2), the petitioner is deemed to be retired w.e.f. 25.09.2018 i.e. after expiry of notice period of three months. Therefore, the petitioner would get the benefit of proviso to Rule 5.32 (B) (1) and (2), by which the petitioner is deemed to have retired from service on 25.09.2018.

7. In fact Rule 5.32 (B) (1) and (2) of Punjab Civil Services Rules,

Volume II (as applicable to Haryana), have been interpreted and held that employee is deemed to have retired from service as soon as notice period is expired, if the disciplinary proceedings do not conclude within the notice period of voluntary retirement. A reliance can be placed upon the judgment of this Court rendered in the case of **“State of Haryana and others vs. S.K. Singhal”; 1999 (2) RSJ 532**. The relevant paragraphs No.18 and 20 of the said judgment are reproduced below:-

“18. In the case before us sub-clause (1) of Rule 5.32B contemplates a 'notice to retire' and not a request seeking permission to retire. The further "request" contemplated by the sub-section is only for seeking exemption from the 3 months period. The proviso to sub-clause (2) makes a positive provision that "where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the said period. The case before us stands on a stronger footing than Dinesh Chandra Sangma's case so far as the employee is concerned. As already stated Rule 2.2 of Punjab Civil Service Rules Vol.II only deals with a situation of withholding or withdrawing pension to a person who has already retired.

XXX

XXX

XXX

20. So far as the plea of the State in regard to absence from duty during the notice period is concerned, the High Court has shown that it is unsupportable on facts. In any event, in view of the express provision in the proviso to sub-rule (2) of Rule 5.32B referred to above requiring communication of rejection within the notice period, the said allegations of absence even if true, cannot help the State.”

8. The above-said judgment is aptly applicable to the present case to the extent that the petitioner is deemed to have retired from service w.e.f.

25.09.2018, the date on which notice period for voluntary retirement expired.

9. In view of the discussions made hereinabove, the present petition is allowed and impugned letter dated 24.07.2018 (Annexure P-8) as well as charge-sheet dated 03.04.2018 (Annexure P-9) are hereby, set aside.

10. Pending civil misc. application if any, stands disposed off accordingly.

(SANDEEP MOUDGIL)
JUDGE

19.07.2023
sham

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>