206 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15618-2021 (O&M)
Date of Decision : 19-12-2024

VIPAN PARMAR ....Petitioner

VERSUS

STATE OF PUNJAB AND ANR ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.S Nalwa, Advocate
for the petitioner.

Mr. Arun Gupta, DAG Punjab.

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<u>HARSIMRAN SINGH SETHI, J. (Oral)</u>

In the present petition, the prayer of the petitioner is for quashing of the order dated 14.07.2020, copy of which has been appended as Annexure P-6, vide which the request of the petitioner for the grant of premature retirement has been rejected, which is contrary to the Rules governing the service as well as for quashing of the chargesheets dated 22.09.2020, 07.10.2020 and 27.11.2020, copies of which have been appended as Annexures P-8, P-10 and P-12.

Further prayer of the petitioner in the present petition is that the petitioner be granted the benefit of premature retirement on completion of three months notice period starting from 01.09.2020 with all consequential benefits.

As per the averments made in the writ petition, the petitioner was appointed as a Labour Inspector Grade-I in the respondent-Department in April, 1990. He was further promoted to the post of Assistant Labour Commissioner. While working on the said post, the petitioner started facing health issues as, he was detected with tumour in the month of February, 2019 and he had to remain on medical leave for the said ailment. After the petitioner was operated for the said ailment, the health of the petitioner though improved, but he was not in a position to discharge the duties of the post in question.

Keeping in view the status of the health of the petitioner, the petitioner gave a notice for premature retirement on 28.05.2020 as envisaged under Rule 3 (2) of the Punjab Civil Services (Premature Retirement) Rules, 1975. On the date when the said notice was given, the petitioner had more than 30 years of qualifying service.

After submission of the request of premature retirement and keeping in view the Rules governing the service, the petitioner considered himself as retired from 01.09.2020. The notice for premature retirement given by the petitioner was rejected by the respondents on 14.07.2020 and thereafter, 3 chargesheets were issued to the petitioner on 22.09.2020, 07.10.2020 and 27.11.2020, copies of which have been appended as Annexures P-8, P-10 and P-12 by treating the petitioner in service. The petitioner has filed the present petition challenging the rejection of his notice for premature retirement vide letter dated 14.07.2020 (Annexure P-6) as well as chargesheets detailed hereinbefore.

Learned counsel for the petitioner argues that the respondents wrongly rejected the claim of the petitioner for premature retirement as, the same never demanded acceptance hence, once, no acceptance of the notice given by the petitioner under Rule 3 (2) of the 1975 Rules was required at the hands of the respondents, hence the respondents did not had any power to reject the said prayer keeping in view the language of Rule 3 (2) of the 1975 Rules under which, the petitioner had given the notice for premature retirement and only a notice given under Rule 3 (3) of the 1975 Rules requires acceptance and the notice given by the petitioner has wrongly been interpreted to be under rule 3 (3) instead of Rule 3(2) of the 1975 Rules.

Learned counsel for the petitioner further argues that any chargesheet issued after the expiry of 3 months of the notice period, is to be treated without jurisdiction as the petitioner is to be treated having retired from 01.09.2020 hence, the chargesheets are liable to be rejected.

Upon notice of motion, the respondents have filed their reply. In the reply, the respondents have stated that the acceptance of the premature retirement notice is must hence, the respondents were within their right to reject the request of the petitioner on 14.07.2020 and as the petitioner was to be treated in service, the chargesheets which have been issued to him are also perfectly valid and have been served under the Punjab Civil Services (Punishment and Appeal) Rules, 1970, which are applicable to an employee, who is serving.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

The first question which arises for consideration is that keeping in view the 1975 Rules governing the service, what is the process with regard to the premature retirement notice served by the petitioner. For better understanding, the Rule 3 of 1975 Rules which deals with premature retirement is reproduced as under:-

> “*"3. Premature Retirement.-(1) (a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty- five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.*
>
> *(b) The period of such notice shall not be less than three months:*
>
> *Provided that where at least three months' notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, at the same rates at which he was drawing them immediately before the date of retirement, for a period of three months, or, as the case may be, for the period by which such notice falls short of three months.*
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> ***(2) Any Government employee may, after giving at least three months' previous notice in writing to the appropriate authority retire from service on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:***
>
> ***Provided that no employee under suspension shall retire from service except with the specific approval of the appropriate authority.***
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> *(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*

Note 1- An employee may make a request, in writing, to the appropriate authority to accept notice of less than three months giving reasons thereafter and such a request for the curtailment of the period of notice shall be considered on merits and if the appropriate authority is satisfied that such curtailment will not cause any administrative inconvenience it may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice period of three months.

Note 2- If an employee retires under sub-rule (2) or (3) above while he is on leave not due, without returning to duty, the retirement shall take effect from the date of commencement of the leave not due and the leave salary paid in respect of such leave shall be recovered as provided in Rule 8.119 (d) of the Punjab Civil Services Rules, Volume I. Part I.

Note 3- In computing the notice period of three months referred to in Rule 3, the date of service of the notice and the date of its expiry shall be excluded."

A bare perusal of the above would show that under Rule 3 (1), the State has power to prematurely retire an employee. Under Rule 3 (2) of the 1975 Rules, an employee who has 25 years of qualifying service or has attained 50 years of age, can seek premature retirement after giving three months notice period. Under Rule 3 (3) of the 1975 Rules, an employee who has 20 years of qualifying service, can seek voluntary retirement. The process to be adopted for such notices have also been depicted in the 1975 Rules itself.

In the present case, the petitioner has more than 30 years of qualifying service to his credit hence, the notice which was given by the petitioner for premature retirement was under Rule 3 (2) of 1975 Rules.

As per the procedure envisaged under Rule 3 (2) of the 1975 Rules, it is only in case an employee is under suspension, the benefit sought can be declined otherwise not. Hence, when a notice of premature retirement is given under Rule 3 (2) of 1975 Rules, no acceptance is needed of the authorities concerned so as to retire from service.

Further, an employee who has less than 25 years of qualifying service but intends to voluntary retire, can apply under Rule 3 (3) of the 1975 Rules. In such cases, the acceptance of the request is mandatory at the hands of the employer provided that in case, the said request is not declined within the notice period, the same will be deemed to have been accepted.

A reading of the Rule 3 of 1975 Rules clearly shows that in the case of the petitioner, who had more than 30 years of qualifying service, the notice of premature retirement is to be treated under Rule 3 (2) of the 1975 Rules, which does not require acceptance at the hands of the respondents however, in case an employee is under suspension, then a specific approval of the appropriate authority is required.

In the present case, there was no disciplinary proceedings pending against the petitioner on the day when the petitioner gave the notice for three months for premature retirement on 28.05.2020. and he was not under suspension. That being so, the respondents were under obligation to relieve the petitioner on completion of three months of the said notice and the petitioner was deemed to be retired from 01.09.2020 onwards. Even no disciplinary proceedings were initiated within the three months notice period, which had been given by the petitioner. Hence, the rejection of the request of the petitioner for premature retirement vide order dated 14.07.2020 was beyond the jurisdiction of the respondents as per Rule 3 (2) of the 1975 Rules hence, the said order dated 14.07.2020 is accordingly set aside.

Once, as per Rule 3 (2) of the 1975 Rules, it is obligatory on the part of the respondents to prematurely retire the petitioner, the petitioner is deemed to be retired from 01.09.2020 keeping in view the service rendered by the petitioner coupled with the request for voluntary retirement dated 28.05.2020.

Further, with regard to the chargesheets dated 22.09.2020, 07.10.2020 and 27.11.2020, copies of which have been appended as Annexures P-8, P-10 and P-12 which have been issued to the petitioner by treating him in service, it may be noticed that once, the petitioner is deemed to be retired on 01.09.2020, no chargesheet could have been served upon the petitioner under the 1970 Rules by treating him in service.

Further, it is a conceded case that the chargesheets dated 22.09.2020 and (Annexure P-8) and 27.11.2020 (Annexure P-12) have already been dropped by respondents themselves. In the proceedings with regard to the chargesheet dated 07.10.2020 (Annexure P-10), allegations against the petitioner is that he remained absent starting from 01.09.2020 onwards.

Keeping in view the fact that in the earlier part of the judgment, the petitioner has been deemed to be retired starting from 01.09.2020 onward, the charge that he remained absent from 01.09.2020 onwards is not made out. Any punishment imposed on the basis of the said chargesheet, will be contrary to the facts and circumstances of the present case as, the petitioner was not required to attend the duties after 01.09.2020 as, he is deemed to have been retired keeping in view the Rules 3 (2) of the 1975 Rules hence, the chargesheet dated 07.10.2020 (Annexure P-10) cannot be sustained in the facts and circumstances of the present case keeping in view the allegations alleged therein and the said chargesheet is also set aside. Any order of punishment passed on the basis of the said chargesheet be also deemed to have been set aside.

At this stage, learned counsel for the respondent-State submits that apart from the above three chargesheets, there was another chargesheet served upon the petitioner on 21.01.2021 and the action taken has already been taken qua the said chargesheet.

As the said chargesheet is not under challenge in the present petition, hence, no order can be passed qua the said chargesheet and the petitioner, in case aggrieved, can avail appropriate remedy.

Keeping in view the above, the present writ petition is allowed.

The petitioner is deemed to have retired starting from 01.09.2020 onwards along with all consequential benefits. The petitioner is also entitled for all the pensionary benefits starting from 01.09.2020 onwards.

In case, any cut has been imposed in pension on the basis of the chargesheet dated 07.10.2020, copy of which has been appended as Annexure P-10, the same will not be enforced and will be treated having been set aside.

As, in the facts and circumstances of the present case, the pensionary benefits could not have been withheld as, there was no chargesheet against the petitioner as on 01.09.2020, withholding of the pensionary benefits was also beyond the jurisdiction of the respondents.

Applying the judgment of the Full Bench of this Court in **A.S. Randhawa Vs. State of Punjab and others, 1997(3) SCT 468,** it has been held that the pensionary benefits are to be released within a period of two months of the retirement failing which, the employee is entitled for interest. The relevant paragraph of said judgment is as under:-

> *"Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retirer in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months front the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement."*

Apart from this, a Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355*****,** had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

> *"The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."*

Keeping in view of above, the petitioner is also held entitled for interest on the delayed release of the pensionary benefits @ 6% per annum from 01.09.2020 onwards till actual payment of the same.

Let the interest on the delayed release of the pensionary benefits under this order be calculated and released to the petitioner within a period of 8 weeks from the receipt of copy of this order.

Present petition is allowed in above terms.

Pending application, if any, stands disposed of.

19-12-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO