



CM-5470-CWP-2023 in/and :1:
CWP-8497-2016

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105+210

CM-5470-CWP-2023 in/and
CWP-8497-2016

Date of decision : 16.12.2024

TEJINDER KAUR

..... Petitioner

VERSUS

STATE OF PUNJAB & ORS

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- Mr. A.D.S. Jatana, Advocate
for the petitioner.

Mr. Amarpreet Singh Bains, AAG, Punjab.

Harsimran Singh Sethi, J. (Oral)

In the present petition, the grievance being raised by the petitioner is that the petitioner who was working with the respondents had applied for the grant of premature retirement under the The Punjab Civil Services (Premature Retirement) Rules, 1975 (hereinafter referred to as '1975, Rules') and after a period of three months of the submission of the application seeking voluntary retirement, as the same was not rejected, keeping in view Rule 3 (3) (c) of 1975 Rules, the petitioner is deemed to have retired from service and the charge sheet which has been issued to the petitioner on 10.09.2015 by treating her in service, is liable to be set aside.

2. Certain facts may be noted for the correct appreciation of the



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issue in hand. Petitioner was appointed as a teacher after the death of her husband on compassionate ground on 13.12.2001. She continued working with the respondents, when she submitted an application for voluntary retirement on 15.03.2015 (Annexure P-5).

3. As per the 1975 Rules, the voluntarily retirement can be claimed in case an employee has completed 25 years of qualifying service or has attained 50 years of age by giving 3 months notice. As per Rule 3 (3) (c) of 1975 Rules in case the competent authority does not refuse to grant the permission of retirement before the expiry of the period of three months, the retirement will become effective from the date of the expiry of the said period.

4. The respondent, did not reject the claim of the petitioner by 14.06.2015 but ultimately declined the same on 04.09.2015 (Annexure P-11). Thereafter, the petitioner was charge sheeted on 10.09.2015 (Annexure P-14) making an allegation that while submitting her case for premature retirement, the petitioner never disclosed that she has already applied for the immigrant visa so as to migrate to United States of America, which amounts to misconduct which makes out the case of the petitioner for rejection of his claim of voluntarily retirement. In the present petition, Annexure P-11 dated 31.08.2015 having endorsement dated 04.09.2015 rejecting her claim for voluntarily retirement and the charge sheet dated 10.09.2015 having endorsement dated 14.10.2015 (Annexure P-14) have been impugned.

5. Learned counsel for the petitioner argues that once on 15.03.2015, an application was made by the petitioner seeking voluntary



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retirement by giving three months notice, and the same was not rejected within a period of three months of the receipt of the same. On 14.06.2015, the petitioner is treated to be voluntarily retired from service and therefore, the rejection of the claim for voluntarily retirement on 31.08.2015 having endorsement dated 04.09.2015 (Annexure P-11) is contrary to the settled principle of law and the rules governing the service and therefore the said letter is liable to be set aside.

6. Learned counsel for the petitioner further argues that the petitioner had got the immigrant visa in the year 2015 is incorrect, as the petitioner never got immigrant visa up to the date of her premature retirement and therefore, by making false allegations, the petitioner is being involved in a disciplinary proceeding though, by the time the said charge sheet was issued, the petitioner is also to be treated as voluntary retirement.

7. Upon notice of motion, the respondents have filed the reply wherein the respondents have stated that though, the petitioner filed an application on 15.03.2015 (Annexure P-5) seeking voluntary retirement giving three months notice but, as the document to support the said application were only completed in the month of June 2015 such as the submission of surety bond, the period to decide the application was upto September 2015 and before the said date, the rejection was passed qua the claim for voluntary retirement vide Annexure P-11 and therefore, the order Annexure P-11 is in consonance with 1975 Rules. Learned counsel for the respondent further submits that once the petitioner has got the immigrant visa, and that too without taking no objection, the same amounts to



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misconduct and therefore, while rejecting the claim of the petitioner for voluntarily retirement and by treating her in service, the charge sheet has been served though, the proceedings qua the said disciplinary proceedings have been stayed by the Co-ordinate Bench vide order dated 20.05.2016.

8. I have heard learned counsel for the parties and have gone through the case file with their able assistance.

9. Certain facts are not disputed such as submission of an application form for voluntarily retirement by the petitioner 15.03.2015. Once the said fact is not disputed, the respondents are under obligation to decide the said application as per 1975 Rules.

10. The relevant provisions of 1975 Rules, which is relevant for the purpose of the present proceedings is as under:-

“(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:



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Provided that the request for withdrawal shall be made before the intended date of his retirement.”

11. A bare perusal of the above reproduction would show that an employee has to give a three month's notice for voluntarily retirement, who has 25 years qualifying service to his/her credit or, has attained the age of 50 years.

12. In the present case, it is not disputed that the petitioner was eligible to apply for voluntary retirement. The question is whether, the order Annexure P-11 is passed within a period of three months of the application form of the petitioner for grant of voluntary retirement so as to reject the said claim or not. A bare perusal of the pleadings would show that the application was submitted by the petitioner on 15.03.2015 that being so, the respondents were to decide the said application by 14.06.2015. It may be noticed that the order Annexure P-11 has been passed on 31.08.2015 which is much after the expiry of three months. That being so, it cannot be said that the order Annexure P-11 has been passed in consonance with the 1975 Rules so as to reject the claim of the petitioner. The claim of the petitioner has not been rejected within a period of three months of the receipt of the application form.

13. The argument which has been raised by learned counsel for the respondents to bring the order Annexure P-11 within a period of three months is that the petitioner was required to submit a surety bond along with the application seeking premature retirement which was only submitted by the petitioner in June 2015 and therefore June 2015 is to be treated as the



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date of application qua the rejection of her claim for voluntary retirement vide Annexure P-11.

14. On being asked to point out any provisions of 1975 Act that while applying for voluntary retirement, an employee also has to give a surety, learned counsel for the respondents fairly concedes that there is no such provision but, the same was followed as a matter of practice. The practice cannot be given an overriding effect over the rules governing the service. Once, no such prescription of a surety bond to be provided along with the application form exists under 1975 Rules, declining the claim or asking the petitioner to provide a surety bond, will not defeat the claim of the petitioner so as to override 1975 Rules. It is a conceded position that order Annexure P-11 rejecting the claim of the petitioner for voluntary retirement is passed after expiry of a period of 03 months of submission of the application form by the petitioner seeking voluntary retirement on 15.03.2015.

15. That being so, reliance can be placed upon the judgment of the co-ordinate Bench in **CWP 9455 of 2008 decided on 26.03.2009 titled “Dr. Anil Dewan Vs. State through Principal Secretary, health and Family Welfare Department Punjab, and others”**.

16. The second prayer of the petitioner is for quashing of the charge sheet.

17. It may be noticed that the said charge sheet has been served after rejecting the claim of the petitioner for the grant of voluntary retirement. The charge sheet has been served to the petitioner in the Month



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of September 2015 (Annexure P-14). By the said date, the petitioner has already retired. The only allegation in the charge sheet is that the petitioner did not inform the authorities about gaining of the immigrant visa. The petitioner is on record to say that she was never granted immigrant visa prior to the date of her voluntary retirement and it is only thereafter, she left the country after getting the immigrant visa. That being so, coupled with the fact that the petitioner is already deemed to be retired, the continuation of charge sheet especially when the petitioner is residing in America as of now, will not be in the interest of justice.

18. Keeping in view the facts and circumstances of the present case coupled with the fact that the allegations are not grave of any embezzlement or a misconduct and only with regard to non-providing of the information for seeking immigrant visa, coupled with the fact that the petitioner has already sought voluntarily retirement, which benefit has been allowed in the present order, no useful purpose will be achieved in proceeding against the petitioner in the facts and circumstances of the present case.

19. Keeping in view the above, the order dated 04.09.2015 (Annexure P-11) rejecting the petitioner's case for voluntarily retirement and the charge sheet (Annexure P-14) are set aside. Consequently, the petition is allowed and the petitioner be treated as having voluntary retired from service after a three months i.e. 14.06.2015 onwards.

20. Keeping in view the fact that the petitioner is to be treated voluntarily retired, benefit which are to be extended to the petitioner to a retired employee be also extended to her along with the monthly pension



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starting from 15.06.2015 onwards along with arrears.

- 21. No other argument raised even qua the grant of interest.
- 22. Pending applications, if any, also stand disposed of accordingly.
- 23. Let the order be complied with within a period of 08 weeks from the receipt of copy of this order.

**(HARSIMRAN SINGH SETHI)
JUDGE**

16.12.2024
Rimpal

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