

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-11669-2020 (O&M)
Reserved on: 08.02.2024
Pronounced on: 12.02.2024

Kirandeep Singh Preet
... Petitioner

Versus

State of Punjab and others
... Respondents

CORAM: HON’BLE MR.JUSTICE AMAN CHAUDHARY

Present: Mr.HC Arora, Advocate for the petitioner

Mr. Charanpreet Singh, AAG, Punjab

AMAN CHAUDHARY, J.

1. The present writ petition under Article 226 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for quashing of the charge sheet dated 04.09.2019, Annexure P-6, and the consequential proceedings arising therefrom including order dated 28.07.2020, Annexure P-9, rejecting the request of the petitioner for voluntary retirement and dismissing him from service.
2. Learned counsel would emphatically contend that the petitioner, after having rendered regular service of 20 years as SS Master in the respondent-School, submitted a request for voluntary retirement alongwith a demand draft of Rs.2,04,200/-, it being 3 months salary for the notice period, from 05.04.2019 to 04.07.2019. No order rejecting the request was received after the expiry of the said period, thus as per rules it was deemed to have been approved. The disciplinary proceedings conducted after the said period for him

being absent from duty, wherein he was dismissed from service and rejecting the request for voluntary retirement were illegal and arbitrary. The draft was also encashed on 22.07.2019. A reference by the learned counsel was made to the Note 1 of Rule 3(3)/(4) of Punjab Civil Services (Premature Retirement), Rules, 1975 (for short ‘1975 Rules’), mentioning that the notice period could be curtailed or requirement of three months be relaxed 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. He relied on **State of Haryana vs. S.K. Singhal**, (1999) 4 SCC 293.

3. Per contra, learned State counsel submitted that there was no provision of deposit of salary in lieu of notice period. The petitioner submitted his application for voluntary retirement without enclosing the copy of the passport of PR and remained absent without information from 06.04.2019 onwards and he was charge-sheeted. He was aware about the enquiry proceedings, but chose not to participate. The charges having been found proved, punishment of dismissal from service was rightly imposed upon him.

4. Heard learned counsel on either side.

5. It is apposite to refer to the relevant portion of the Rule 3 of 1975 Rules, which reads thus:

“3. Premature Retirement.

- xx
- xx
- xx
- (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 the notice of less than three months giving reasons therefor and such a request 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.”

6. A bare reading of the Rule, *expressis verbis* reveals that there was a requirement of serving three months’ notice but there was no provision of depositing the salary *in lieu* thereof. Meaning thereby that the concerned employee was to perform his duties during the said period, which though, could be curtailed or relaxed.

7. Pertinently, the submission of an application giving notice for premature retirement by the petitioner-a teacher in the school, was sure enough to cause administrative inconvenience by disruption of the studies of the students, the competent authority, thus, rightly did not find it to be a case fit enough to curtail / relax the period of three months. As if this was not enough, he even absented from duty and virtually left the school in the lurch, without waiting for the period to be completed. Thereafter, being in the knowledge of

the ensuing regular enquiry initiated against him, he did not care a wee bit to join it.

8. Evaluating the matter, the deposit of an amount equal to salary of three months, not envisaged by the rules, was in no manner suffice to allow the request, it being imperative for the petitioner to have served the Department for the duration of the notice period. As such, it cannot be construed to be a valid notice. As an obvious corollary, the disciplinary proceedings resorted to against him for the alleged misconduct were justified and the imposition of punishment inevitable.

9. Having said that, this Court cannot lose sight of the fact that the petitioner had rendered 20 long years of service, he should not be deprived of the benefit thereof and that too when indisputably it was satisfactory, there being nothing contrary urged or produced on record. Notably, the proceedings of misconduct did not relate to any allegations of any fraud or embezzlement. The Department, however, had no right to get credited the draft in their account.

10. In **S.K. Singhal** (supra), it was observed that, if the acceptance of notice or request for voluntary retirement was not pre-requisite under the Rules, the employee will be deemed to have automatically retired on expiry of notice period but given the peculiarity of facts and circumstances involved herein, the same does not come to the aid the petitioner, the notice itself being defective, as has been held above.

11. A conspectus and as fall out of the above, the punishment appears to be disproportionate to the alleged misconduct, it being harsh, shocks the conscience of the Court.

12. On the aforesaid anvil, impugned order dated 28.07.2020 is set aside only to the extent of punishment imposed and thus the Competent

Authority to revisit the quantum thereof and so as to balance equities, the amount of Rs.2,04,200/- though utilised by the Department since 2019, be refunded, without interest, but forthwith.

13. The present petition stands disposed of accordingly.

12.02.2024
ashok/gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No