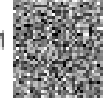


2025.PHHG:170081



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

102

**CWP-20076-2011
DECIDED ON:03.12.2025**

BHUPINDER SINGH

...PETITIONER

VERSUS

**NATIONAL INST. OF PHARMACEUTICAL
EDU. & RESEARCH AND ANR**

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rajesh Punj, Advocate and
Mr. Sahaj Punj, Advocate
for the petitioner(s)

Mr. Sandeep S. Majithia, Advocate for respondent No.1

Mr. Alankrit Bhardwaj, Advocate
for respondent No.2/UOI

SANDEEP MOUDGIL, J

Prayer

1. The petitioner has approached this Court under Article 226 of the Constitution of India praying for issue of direction to the respondents to produce the complete records pertaining to the petitioner's service and retirement to direct respondent-NIPER to release the petitioner's full and correct retiral benefits, including Pension, Gratuity, Leave Encashment, GPF and all other admissible dues, to which the petitioner is entitled upon superannuation from the post of Registrar w.e.f. 24.08.2010 with interest @12% per annum on the delayed payment of the aforesaid retiral benefits from the date the amounts became due till the date of actual payment.

Further for quashing the impugned order dated 04.03.2011 (Annexure P-17) to the extent it wrongly fixes the petitioner's date of retirement as 01.03.2011 instead of 24.08.2010 and designates the petitioner as Deputy Registrar instead of Registrar, and further quashing the order dated 10.05.2011 (Annexure P-21) denying the petitioner part leave encashment.

Brief Facts

2. The petitioner, a resident of Chandigarh, joined CEDTI, Mohali as Junior Accounts Officer on 12.04.1990 and served until 28.03.1996, after which he joined NIPER, an autonomous central institute. He was appointed Deputy Registrar in 19.08.2003 (Annexure P-1) and given officiating charge of Registrar in 02.08.2008 (Annexure P-2). His service is governed by the National Institute of Pharmaceutical Education and Research Act, 1998 (hereinafter referred to as 1988 Act), and pension matters by the CCS (Pension) Rules, 1972 (hereinafter referred to as 1972 Rules).

3. The petitioner submitted a notice for voluntary retirement on 25.05.2010 (Annexure P-4) under Rule 48-A of the 1972 Rules, citing family reasons, with effect from 24.08.2010. He handed over the charge of Registrar to Dr. Harmeet Singh on 02.08.2010 and subsequently availed medical and earned leave till 23.08.2010. Despite complying with all formalities for retirement and pension, NIPER issued a show-cause notice alleging unauthorized absence (Annexure P-12). His voluntary retirement was accepted on 09.02.2011, but the order wrongly fixed the date of retirement as 01.03.2011 and treated him as Deputy Registrar.

4. The GPF and partial leave encashment were released, but pension and gratuity were incorrectly calculated based on the lower post and date of retirement i.e 24.08.2010. Earned leave from CEDTI was partly ignored, and

salary for the period 03.08.2010 to 24.08.2010 was not paid. The petitioner's representation dated 30.05.2011 (Annexure P-23) highlighting these discrepancies was rejected by respondent-NIPER vide letter dated 20.09.2011 (Annexure P-26).

5. Aggrieved by the respondents' arbitrary and illegal actions, the present writ petition has been filed whereby the petitioner seeks correction of the retirement date, proper fixation and release of retiral benefits, payment of interest, and quashing of impugned orders prejudicial to his lawful entitlements.

Contentions

On behalf of Petitioner

6. Learned counsel for the petitioner submits that the petitioner had been appointed as Deputy Registrar of NIPER and was subsequently given the officiating charge of Registrar, drawing the emoluments of that post. The petitioner, having completed over twenty years of qualifying service, submitted a notice for voluntary retirement under Rule 48-A of the 1972 Rules and duly completed the statutory notice period of three months. It was contended that the respondent erroneously fixed the date of retirement as 01.03.2011 instead of 24.08.2010 and considered the petitioner as Deputy Registrar, thereby depriving him of rightful pension, gratuity, leave encashment, and other retiral benefits.

7. Counsel further argued that the pension and gratuity are to be calculated based on the emoluments drawn during the last ten months of service and that the petitioner was entitled to full leave encashment as per rules. It was emphasized that the miscalculation of retiral benefits, including the denial of leave encashment from NIPER, has caused financial loss and

8. Counsel contended that the respondent's actions were arbitrary, illegal, and contrary to the statutory provisions governing retirement benefits and that no other efficacious remedy was available to the petitioner except to approach the Court under Article 226 of the Constitution of India.

9. It was prayed that the Court direct the respondent to release the correct and full retiral benefits of the petitioner from the actual date of retirement, i.e., 24.08.2010, along with interest at the rate of 12% per annum, and to quash the impugned orders to the extent they were inconsistent with the statutory entitlement of the petitioner.

On behalf of Respondents

10. Learned counsel for the respondent submitted that the petitioner working as a Deputy Registrar (Finance & Accounts) at NIPER, Mohali, was entrusted with additional charge of the post of Registrar on a temporary basis from 02.08.2008 to 28.07.2010. The petitioner's application for voluntary retirement dated 03.05.2010 was addressed to the Officiating Director of the Institute, whereas the competent authority for accepting such a request was the Board of Governors (BOG). The Officiating Director, acting in public interest, declined to accept the voluntary retirement and directed the petitioner to approach the proper authority. In disregard of this communication, the petitioner proceeded on medical leave, followed by earned leave, and failed to report for duty without submitting a fitness certificate, thereby remaining absent without authorization from 03.08.2010 to 28.02.2011.

11. It was submitted that during the relevant period, the BOG had lapsed, and the matter was referred to the Ministry of Chemicals & Fertilizers for guidance. By letter dated 11.01.2011, the Ministry authorized the Officiating Director to accept the petitioner's request for voluntary retirement

with immediate effect, subject to ratification by the reconstituted BOG. Acting on this authorization, the Officiating Director accepted the petitioner's request, who handed over the charge of Deputy Registrar (F&A) on 01.03.2011 and was relieved from service with effect from 01.03.2011. It was emphasized that the petitioner cannot unilaterally claim voluntary retirement from 24.08.2010, as the initial request was formally declined and the petitioner remained absent without authority.

12. Learned counsel further submitted that all pensionary benefits, including leave encashment, gratuity, and other retiral dues, were calculated in strict accordance with the 1972 Rules, considering the petitioner's substantive post of Deputy Registrar (F&A) at the time of retirement. Any entitlement related to the petitioner's previous employment lies with the former employer and cannot be claimed from the respondent Institute. The counsel argued that the petitioner's claims regarding treatment as Registrar at the time of retirement, payment of salary during unauthorized absence, and recalculation of pension were entirely without merit. Accordingly submits, the impugned action is legal and justified, and the writ petition deserves to be dismissed.

13. Heard.

Analysis

14. The central issue that emerges for consideration before this court is whether the petitioner's notice of voluntary retirement dated 25.05.2010, submitted under Rule 48-A of the 1972, Rules became effective automatically on the expiry of the statutory notice period i.e., on 24.08.2010, and whether the respondents were justified in altering the retirement date to 01.03.2011 and calculating retiral benefits on the basis of the lower post of

15. After examining the factual matrix, it is not in dispute that the petitioner had joined NIPER as Deputy Registrar in 2003 and was subsequently entrusted with the officiating charge of Registrar from 02.08.2008, drawing salary and allowances attached to that post. On 25.05.2010(Annexure-P4), he tendered a notice seeking voluntary retirement, specifically invoking Rule 48-A Of 1972 Rules, and indicated that the retirement be made effective on the completion of three months, i.e., 24.08.2010.

16. The record reveals that the petitioner thereafter handed over charge in accordance with the instructions of the Institute on 02.08.2010 and proceeded on medical leave followed by earned leave till 23.08.2010. There is nothing on record to show that any communication refusing the request for voluntary retirement was issued by the competent authority, namely the Board of Governors, before the expiry of the notice period i.e, 24.08.2010.

17. What is sought to be projected by the respondents is that the Officiating Director had “declined” the request and asked the petitioner to route it through the competent authority. However, the respondents themselves concede that the Board of Governors was not in existence at the relevant time and that the matter was later referred to the Ministry of Chemicals & Fertilizers, which on 11.01.2011 authorised the Officiating Director to accept the request. This sequence of events indicates that no competent authority existed at the time the notice period expired and that the alleged “declination” by the Officiating Director who did not possess statutory competence could not, in law, amount to a refusal within the meaning of Rule

decision indefinitely when the rule itself contemplates automatic retirement on expiry of the notice period in the absence of a timely refusal. Since the said Rule is material and has bearing on the question to be determined, it is extracted below :-

48-A. Retirement on completion of 20 years qualifying service.

(1) At any time after a Government servant 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 :

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

(i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes.

(ii) Posted abroad in foreign based offices of the Ministries/Departments.

(iii) On a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority :

Provided that where the appointing 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.

xx xx xx xx"

18. The Supreme Court in “**Tek Chand v. Dile Ram (2001 AIR SC 905)**” and reaffirmed in “**State of Arunachal Pradesh v. Tai Nikio 2019 SCC online Gau 1392**” has categorically held that in the absence of a refusal communicated by the competent authority before expiry of the notice period, voluntary retirement becomes operative automatically and subsequent acceptance or modification of the retirement date has no legal effect. The relevant extract of the same reads as under :

30. It is clear from sub-rule (2) of the Rule that the appointing authority is required to accept the notice of voluntary retirement given under sub-rule (1). It is open to the appointing authority to refuse also on whatever grounds available to it but such refusal has to be before the expiry of the period specified in the notice. The proviso to sub-rule (2) is clear and certain in its terms. If the

appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement sought for becomes effective from the date of expiry of the said period. In this case, admittedly, the appointing authority did not refuse to grant the permission to retirement to Nikka Ram before the expiry of the period specified in the notice dated 5.12.1994. The learned senior counsel for the respondent argued that the acceptance of voluntary retirement by appointing authority in all cases is mandatory. In the absence of such express acceptance the Government servant continues to be in service. In support of this submission, he drew our attention to Rule 56(k) of Fundamental Rules. He also submitted that acceptance may be on a later date, that is, even after the expiry of the period specified in the notice and the retirement could be effective from the date specified in the notice. Since the proviso to sub-rule (2) of Rule 48-A is clear in itself and the said Rule 48-A is self-contained, in our opinion, it is unnecessary to look to other provisions, more so in the light of law laid down by this Court. An argument that acceptance can be even long after the date of the expiry of the period specified in the notice and that the voluntary retirement may become effective from the date specified in the notice, will lead to anomalous situation. Take a case, if an application for voluntary retirement is accepted few years later from the date specified in the notice and voluntary retirement becomes operative from the date of expiry of the notice period itself, what would be the position or status of such a Government Servant during the period from the date of expiry of the notice period upto the date of acceptance of the voluntary retirement by the appointing authority ? One either continues in service or does not continue in service. It cannot be both that the voluntary retirement could be effective from the date of expiry of the period mentioned in the notice and still a Government servant could continue in service till the voluntary retirement is accepted. The proviso to sub-rule (2) of Rule 48-A of the Rules does not admit such situation.

19. Applying this legal position to the facts of the present case, it becomes evident that the petitioner's retirement stood crystallised on 24.08.2010 by operation of law, and any action taken thereafter treating him as still in service does not carry legal validity.

20. The further justification offered by the respondents that the petitioner remained "unauthorisedly absent" from 03.08.2010 to 28.02.2011 is at variance with the factual record. The petitioner had duly handed over

was sanctioned or otherwise not disapproved. Once the statutory notice period concluded on 24.08.2010 without any valid refusal, the legal effect was cessation of service, and the characterisation of the petitioner as absent without authority thereafter is unsustainable.

21. The respondents' stand that retiral benefits were calculated on the substantive post of Deputy Registrar also fails to align with the factual situation. The petitioner continued to discharge duties of Registrar on an officiating basis and was paid the pay and allowances of that post during the relevant period. Under the pension 1972 rules, It is the "emoluments actually drawn" as per rule 34 during the last ten months that determine pension and gratuity, and not merely the substantive post held. Thus, fixation of pension on the lower post, despite the petitioner having drawn higher emoluments, appears contrary to the governing statutory scheme. Rule 34 of the 1972 rules reads as under :

Average Emoluments Average emoluments shall be determined with reference to the emoluments drawn by a Government servant during the last 1 [ten months] of his service.

22. The delay in accepting the voluntary retirement request until 09.02.2011, followed by fixing the retirement date as 01.03.2011, was a course of action entirely occasioned by internal administrative circumstances namely the non-existence of the Board of Governors and not attributable to any default on the part of the petitioner.

23. Thus, the factual circumstances, viewed in the light of the settled legal principles, leave little doubt that the respondents' actions in delaying acceptance, altering the retirement date, treating the petitioner as absent

without authority, and calculating retiral benefits on a lower footing were not supported by statute or by the record, warranting judicial interference.

Conclusion

24. For the reasons discussed above, the writ petition is hereby allowed, and the petitioner is held to have stood voluntarily retired with effect from 24.08.2010 by operation of Rule 48-A of the 1972 Rules, consequently, all actions of the respondents fixing the retirement date as 01.03.2011, treating the petitioner as Deputy Registrar for purposes of pensionary benefits, (Annexure P-17 And Annexure P-21) are hereby quashed, and the respondents are directed to recompute and release the petitioner’s all consequential retiral dues on the basis of the emoluments actually drawn by him while holding the officiating charge of Registrar and to disburse the entire arrears so determined along with interest at the rate of 6% per annum, within a period of 4 weeks from the date of receipt of certified copy of this order, as the ends of justice so require.

25. Pending miscellaneous applications if any stands disposed of.

03.12.2025
Sham

(SANDEEP MOUDGIL)
JUDGE

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