

(1995) 02 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2089 of 1993

Bachan Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 24-02-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Punjab Civil Services (Premature Retirement) Rules, 1975 — Rule 4(2)

Citation : (1996) 112 PLR 170

Hon'ble Judges : S.S. Grewal, J

Bench : Single Bench

Advocate : Mandeep Singh Bedi, for the Appellant; Mehtab Singh Gill, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

S.S. Grewal, J.—This Regular Second Appeal is directed against the judgment and decree dated 27th of May, 1993 passed by the Additional District Judge, Gurdaspur, whereby the appeal filed by the plaintiff-appellant against the order of dismissal of his suit by the Senior Sub-Judge, Gurdaspur dated 21st of March, 1991 was dismissed.

2. The plaintiff-appellant had filed suit for declaration to the effect that the impugned order No. 11096-11102/AC-2 dated 16.10.1987 passed by defendant respondent No.2 rejecting the request for withdrawal of notice for voluntary retirement sought by the plaintiff was illegal and liable to be set aside. It was pleaded that vide application dated 31st July, 1987 the plaintiff-appellant, who was posted as Sub-Inspector with Punjab Armed Police had sought voluntary retirement by giving three months notice. However, before the expiry of the period of the said notice, the plaintiff-appellant made a written request to the defendant-respondents for withdrawal of his notice for voluntary retirement. Despite this the plaintiff was served with the impugned order dated 16.10.1987. Thus the plaintiff was illegally retired from service with effect from 31.10.1987

without proper consideration of his request for withdrawal of his notice for voluntary retirement. The order passed by the defendant-respondents was illegal, unlawful, ultravires, unconstitutional, null and void on the following grounds :-

(a) The impugned order dated 16.10.1987 has been passed in utter disregard and gross violation of mandatory provisions of statutory law.

(b) He has not been given reasonable opportunity to explain his conduct, rather he has been condemned unheard.

(c) He had applied for withdrawal of his notice of voluntary retirement before the expiry of stipulated period of three months. He was oft effective duty when he had applied for the said withdrawal. His request was rejected on 26.10.1987 vide impugned order which was prior to the effective date of retirement i.e. 31.10.1987.

(d) He has not been assigned any reason as to why his request for said withdrawal is being rejected.

(e) The impugned order is cryptic and punitive in nature.

(f) The impugned order has been passed with mala-fide intention and ulterior motive on the part of certain officials with a sole view to harm his interest;

(g) The impugned order is non-speaking;

(h) He had earlier submitted a notice for voluntary retirement as certain stipulation and condition with regard to his work and conduct and had asked for an enquiry. The said conditions were never got fulfilled by the defendants. The said notice cannot be treated as operative suo-moto by the defendants without consulting him. The action of the defendants is illegal;

(i) The impugned order is ex-facie defective, dishonest and no order in the eyes of law. It is void ab initio and is liable to be quashed.

3. The defendant-respondents in the written statement pleaded that the impugned order was legal and valid. Preliminary objections were raised that the Civil Court at Gurdaspur has no jurisdiction to try the present suit; that the suit is not maintainable in the present form and that notice u/s 80 of the CPC was invalid and it was prayed that the suit of the plaintiff be dismissed.

4. From the pleadings of the parties the following issues were framed by the learned trial Court:-

1. Whether this court has no territorial jurisdiction to try and decide the suit? O.P.D.

2. Whether the suit is bad for non-service of valid notice u/s 80, C.P.C.? O.P.D.

3. Whether the order of defendant No. 2 passed on 16.10.1987 against the

plaintiff is void, illegal against natural justice and liable to be set aside? O.P.P.

4. Whether the suit is not maintainable in the present form ? O.P.D.

5. Whether the plaintiff is entitled to declaration prayed for ? O.P.P.

6. Whether the plaintiff is entitled to injunction prayed for? O.P.P.

7. Relief.

5. Issue Nos. 1,3,5 and 6 were decided against the plaintiff whereas issued Nos. 2 and 4 were decided against the defendants by the learned trial Court. Additional District Judge, Gurdaspur vide order dated 27th May, 1993 has upheld the judgment and decree passed by the learned trial court.

7. The learned counsel for the plaintiff-appellant submitted that both the Courts below have legally erred in holding that the Civil Court at Gurdaspur had no territorial jurisdiction to try the present suit. Hardev Singh D.W. 1 admitted in his cross-examination that the order of compulsory retirement and regarding rejection of application for withdrawal of notice of voluntary retirement was conveyed to the plaintiff at his residential address in village Bhattian District Gurdaspur. It is also pertinent to note that the present suit had been filed against the State of Punjab through Collector, Gurdaspur and others. It is true that the impugned order might have been passed on behalf of the State of Punjab at Jalandhar by defendant-respondent Nos. 2 and 3. However, in view of the fact that the said orders were passed by defendant Nos. 2 and 3 on behalf of the State of Punjab and were actually conveyed to the plaintiff-appellant in his native village in district Gurdaspur, mere fact that office of defendant Nos. 2 and 3 is situated at Jalandhar alone in my view would not be sufficient to hold that Civil Court at Gurdaspur had no jurisdiction to try the present suit. Finding of the Courts below on issue No. 1 is erroneous and the same is hereby reversed. Issue No. 1 is decided in favour of the plaintiff and against the defendants.

8. The learned counsel for the plaintiff-appellant further submitted that the appellant vide written application dated 20.10.1987 had sought withdrawal of notice for voluntary retirement which was to take effect from 31.10.1987 and that the impugned order of retirement passed by the defendant-respondents was illegal, void and ineffective and the same was liable to be set aside.

9. On the other hand, it was submitted on behalf of the defendant-respondents that the impugned order was rightly passed as the plaintiff was precluded from withdrawing his notice except with the specific approval of the appropriate authority as contemplated under Sub-rule (2) of Rule 4 of the Punjab Civil Services (Premature Retirement) Rules, 1975 as subsequently amended by the Punjab Civil Services (Premature Retirement) Ist Amendment Rules, 1979. It was further submitted on behalf of the defendant-respondents that before receipt of the letter from the plaintiff for withdrawal of his request for voluntary retirement the defendant-respondents had already accepted the earlier notice sent by the plaintiff seeking voluntary retirement vide impugned order dated 16.10.1987 and

the mere fact that the voluntary retirement was to take effect subsequently from 31.10.1987 would be of no consequence.

10. For the sake of convenience the relevant provisions of Sub-rule (2) of Rule 4 are reproduced as under:-

(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 intended date of his retirement.

Note 1. A notice of less than three months may also be accepted by the appropriate authority in deserving cases, with the concurrence of the State Government in the Department of Personnel and Administrative Reforms.

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 Service Rules, Volume I, Rule I."

11. The argument advanced on behalf of the defendant-respondents is not tenable in view of the latest authority of the apex Court in *Balram Gupta Vs. Union of India (UOI)* and *Anr*, wherein the appellant having completed 20 years" service wrote a letter dated 24.12.1980 to the appointing authority seeking voluntary retirement on 31.3.1981. He wrote that the notice period of 3 months be treated from 1.1.1981. By an order dated 20.1.1981 he was allowed to retire voluntarily from service prospectively w.e.f. from afternoon of 31.3.1981. In the meantime on 31.1.1981 the appellant withdrew his notice on ground that on account of persistent and personal requests from the staff members he had changed his mind. The appellant was relieved by order dated 31.3.1981 in which it was also mentioned that his withdrawal application was considered and was found not acceptable.

12. It was held by the apex Court in *Balram Gupta's* case. (*Supra*) that approval is not ipse dixit of the approving authority who has the statutory authority must act reasonably and rationally. What is important in this connection to be borne in mind is not what prompted the desire for withdrawal but what is important is what prompted the Government from withholding the withdrawal.

13. In the instant case, no cogent or plausible explanation has been furnished on behalf of the respondents as to why the plaintiff who had good service record and whose name had been recommended for promotion to the post of Inspector Police was not permitted to withdraw notice seeking voluntary retirement from the service. Both the Courts below have gravely erred in law in upholding the order dated 16.10.1987 whereby the plaintiff was voluntary retired from his

service with effect from 31.10.1987. Finding of the Court below in this regard is erroneous and the same is hereby reversed. Issue Nos. 3, 5 and 6 are accordingly decided in favour of the plaintiff and against the defendant-respondents. The plaintiff would thus be legally entitled to the relief for declaration to the effect that he continues to be in service till the date of his superannuation in due course with all consequential benefits including pay and other emoluments as admissible under the Rules.

14. For the foregoing reasons, the judgment and decree passed by the Courts below are set aside and the suit of the plaintiff-appellant is decreed to the extent indicated above. This appeal is allowed accordingly with no order as to costs. Decree sheet be prepared.