
(2004) 10 SHI CK 0022
In the High Court Of Himachal Pradesh

Brij Rani Goel

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-10-2004

Acts Referred:

Central Civil Service (Pension) Rules, 1972 — Rule 42(2)(b)

Citation : (2004) 105 FLR 240 : (2005) 1 ShimLC 213

Hon'ble Judges : A.K. Goel, J

Bench : Single Bench

Judgement

Arun Kumar Goel, J.—Facts giving rise to this writ petition are, that husband of the petitioner, late Shri Ghanshyam Goel was working as a Superintendent in the Cantonment Board, Subathu. He died on. 24.3.1984, Petitioner was appointed on compassionate grounds initially as a clerk. She was promoted as LDC. In the month of July, 1995 she was working as Tax Clerk.

Further case as projected in this writ petition is that she was suffering from hypertension and was undergoing treatment. Vide Annexure PB Senior Medical Officer, Civil Hospital Subathu, District Solan, certified that she should avoid work which creates mental fatigue and mental tension. In view of her physical/mental health, it was advised that she should not pursue any regular job which creates mental fatigue and mental tension. This certificate is Annexure PB and is dated 15.7.1995. On 17th July, 1995, vide Annexure P-C, petitioner submitted her resignation. It was accepted on the same day i.e. 17.7.1995, For ready reference contents of her resignation letter are extracted, hereinbelow:

To

The Cantonment Executive Officer, Subathu. Subject: Resignation Sir,

It is submitted that I was appointed as General Clerk of the Cantonment Board, Subathu and I joined the said service on 1st October, 1984.

2. I do not want to remain in service and I, therefore, want to resign from the

service of the Cantonment Board, Subathu.

3. It is, therefore, requested that my resignation may kindly be accepted with immediate effect.

Thanking you.

Yours faithfully, Sd/- (Brij Rani Goel), Sr. Clerk. Cantt. Board Office, Dated: 17/7/95. Subathu.

2. After having submitted her resignation, she represented for its withdrawal to the authorities, vide Annexure R-1. With a view to get her examined as envisaged under Central Civil Service (Pension) Rules, 1972, petitioner was referred for examination to the Chief Medical Officer, Solan by the executive Officer of the Cantonment Board. After examination by the Board of Doctors in the office of Chief Medical Officer, Solan, vide Annexure R-2, dated 22.4.1996, medical certificate was issued. For ready reference its contents are also extracted hereinbelow:

MEDICAL CERTIFICATE

Signature of the patient Sd/- Brij Rani

Certified that Smt. Brij Rani God (whose signature is given above) was examined by the Medical Board of District Hospital Solan on 13.3.1996 and found that she is suffering from HYPERTENSION. She is advised to avoid mental tension and exertion.

Sd/- Surgical Specialist Distt. Hospital, Solan

Sd/- Medical Officer Distt. Hospital, Solan. Countersigning Sd/- Chief Medical Officer Solan Distt. Solan.

3. Petitioner filed CWP No. 14 of 1997, which came up for consideration before this Court on 20.3.1997. Threefold prayer was made in it. Firstly to quash the acceptance of petitioner's resignation, and the rejection of her representation made later. Second prayer was made for a direction to permit the petitioner to withdraw her resignation and to permit her to discharge the duties of senior clerk in the Board. Last prayer made was seeking a direction to the respondents to grant medical pension to her on the basis of medical certificate issued by the Chief Medical Officer Solan, District Solan.

4. So far first two prayers were concerned, a Division Bench of this Court on 20.2.1997 rejected those in the following terms:

Neither of these prayers can be granted under Article 226 of the Constitution of India. It is not in dispute that the petitioner gave the resignation voluntarily on 17.7.1995 and it was accepted immediately by the authorities. Hence, the petitioner cannot seek a direction to the respondent-Board to permit her to withdraw the resignation. Hence the prayers are rejected." Third prayer was disposed of in the following terms:

4. The petitioner is directed to file a fresh representation setting out all the relevant facts to the third respondent and within four weeks from the receipt of the said representation, the third respondent, shall decide the same and communicate the decision to the petitioner.

5. With the above directions, this writ petition is dismissed.

5. Petitioner approached respondent No. 3 vide representation dated 11.4.1997, (Annexure R-2 attached with Annexure R-4 of the reply of respondent No. 3). Then the matter came up for consideration before respondent No. 3.

6. After the decision in CWP No. 14 of 1997, again a reference was made on 19.4.1997 by the Executive Officer, Cantonment Board, Subathu to C.M.O. Solan. Vide Annexure R-3, after examination of the petitioner, medical certificate in Form No. 23, under Rule 38(3) of the Pension Rules, supra/duly signed by the Medical Specialist; Medical Officer and Medical Superintendent of the said hospital was forwarded to the Executive Officer, Cantonment Board, Subathu by the Chief Medical Officer, Solan. Relevant portion from this certificate is extracted hereinbelow:

Smt. Brij Rani Goel, 53 years FA, is medically fit for service as she is not incapacitated.

7. After taking note of Annexure R-3, as extracted hereinabove, her representation was rejected. Hence the present writ petition.

8. It was urged on behalf of the petitioner, that accepting everything to be against her for the sake of argument, but without conceding, still she had completed 10 years qualifying service, therefore, she is entitled to the grant of pension under Rule 49(2)(b) read with Rule 38 of the aforesaid Pension Rules, 1972. Reliance was also, placed on a number of decisions to which a reference will be made hereinafter.

9. In addition to this was also urged on her behalf, that keeping in view her mental state, she had become incapacitated so as to discharge her duties. Otherwise, no sane person in senses would submit resignation, as in the present case. According to learned Counsel, this by itself is a sufficient ground to allow this writ petition.

10. All these pleas were contested on behalf of the respondents. Mr. Sood submitted that plea of the petitioner having been incapacitated due to mental ailment is not at all made put arid is purely an afterthought. He also placed reliance on the medical certificate filed by the petitioner. And according to him, from its perusal it cannot be spelt out that the petitioner was incapacitated because of her state of health. Per Mr. Sood, she was only advised not to undertake job which would create mental tension or fatigue to her. It was never opined by any doctor that because of her such state of mind, she had been incapacitated.

11. So far invoking of Rule 38 of Pension Rules (supra) is concerned, in my view, it is wholly misconceived. Rule 38(1) clearly speaks of a Government servant retiring from the service on account of any bodily or mental infirmity which permanently incapacitated him from the Service. There is no legally acceptable evidence to suggest that the petitioner suffered from any such infirmity for accepting this plea of her learned Counsel.

12. Further the petitioner had nowhere claimed either while in service or at the time of her tendering resignation, that she may be put on some job in the office of less laborious character than what she had been doing. There is nothing to that effect. Therefore, no benefit of Rule 38 of the Pension Rules, 1972, can be claimed by her. Thus on this ground also this rule is not attracted to the facts of this case.

13. So far grant of pension on completion of 10 years service is concerned, petitioner submitted her resignation of her own. A perusal of resignation letter, Annexure-PC also does not suggest that it was being tendered because of circumstances is explained by her learned Counsel at the time of hearing. Petitioner appears to be an educated lady. Therefore, in case she was genuinely under some mental pressure and/or had been permanently incapacitated, nothing prevented her to have explained such facts in her resignation letter. In addition to this, she could have asked for less laborious work. There is nothing to this effect also in her resignation letter. In this view of the matter, prayer of the petitioner for grant of pension after having rendered qualifying service as referred to hereinabove, cannot be allowed.

14. Another reason to take this view is that a Division Bench in its earlier order dated 20.3.1997, passed in CWP No. 14 of 1997, observed that it was not clear from the certificate issued by the Medical Officer whether the petitioner was permanently incapacitated as required by the rule. It was for this reason that the third respondent-Cantonment Board was directed to consider the case of the petitioner and decide whether she is entitled to pension under the rules or not. After passing of this order as noted hereinabove, a reference was again made by the Cantonment Board to the Chief Medical Officer, who then observed that she was medically fit for service as she was not incapacitated, which is a condition precedent for invoking Rule 38.

15. So far the plea of petitioner for grant of pension on account of her having rendered 10 years qualifying service is concerned, there is nothing on record to state whether it was taken or not in the earlier writ petition. In case it had been taken, there being no mention of it in the order dated 20.3.1997, passed in CWP No. 14 of 1997, supra, this plea shall be deemed to have been given up and in case it was not taken, then the petitioner is precluded from raising the same because of the fact that her grievance only subsists qua the direction issued by the Division Bench of this Court in CWP No. 14 of 1997, as extracted hereinabove.

16. To be fair to learned Counsel for the petitioner, reference needs to be made

to the decisions cited at the Bar. First Decision relied upon was J.K. Cotton Spinning and Wvg. Mills Co. Ltd. v. State of U.P. and Ors. 1990 (61) FLR 329 (SC). Question directly involved in this case was that when an employee voluntarily tenders resignation and it is accepted by the employer, it does not amount to retrenchment under the U.P. Industrial Disputes Act. It was in this background that the Supreme Court held it not to be a case of retrenchment. In this case while allowing the appeal of management, the Supreme Court observed that the High Court was not right in observing that because of employer having accepted the resignation offer voluntarily made by the employee, he terminated the service of the employee and such termination fell within the expression "retrenchment", rendering him liable to compensate the employee u/s 6-N of the U.P. Industrial Disputes Act. Supreme Court further observed that it was of the view that it was a case of voluntary retirement within the meaning of Section 2(s) and, therefore, question for grant of pension u/s 6-N does not arise. Consequently, order of the High Court was set aside.

17. So far reference on behalf of the petitioner in this writ to the resignation being a case of retirement is concerned, it cannot be read out of context in view of the observations of the Supreme Court above. Therefore, this decision does not in any manner advance the case of the petitioner.

18. Reliance was also placed on two other decisions of the Supreme Court in P.P. Chug v. United Commercial Bank 1998 (2) SLR 600 and Lochan Vishal v. State of Rajasthan and Ors. 1998 (2) SLR 646. Both these decisions again in my view for the reasons to be recorded hereinafter, also do not advance the case of the petitioner.

19. In case of P.P. Chugh, supra, application seeking voluntary retirement v as filed with the condition that he should be given all retiral benefits like pension etc. And the petitioner had not at any time given up relinquished his claim for such retiral benefits etc., and nothing to the contrary having been brought to the notice of the Court, stand of respondent-bank that petitioner is not entitled for grant of retiral benefits or that he had forfeited the benefits of service, was held not sustainable and writ petition was allowed.

20. So far decision in the case of Lochan Vishal supra is concerned, on the facts of this case while allowing the writ petition it was observed that if the resignation of the public servant is due to age, it cannot be considered as resignation requiring forfeiture of service. In this case it was also observed that resignation was due to age and other domestic difficulties and it would not entail forfeiture of past service. Again at the risk of repetition when a reference is made to Annexure PC, the letter of resignation, there is nothing on record to suggest any such thing.

21. Reliance was also placed on the decisions of the Supreme Court in Union of India v. Syad Sarwar Ali and Ors. 1999 (81) FLR 17(SC) and Union of India and Ors. v. Lt. Col. P.S. Bhargava 1997 (1) SLR 542. These decisions also do not

advance the case of the petitioner in any manner whatsoever.

22. Faced with the above situation, learned Counsel for the petitioner submitted that the appointment of the petitioner was on compassionate ground. She is getting meagre family pension. She has a large family to support. In the face of voluntary resignation submitted by her, as also the medical certificate issued by the Board of Doctors from the office of Chief Medical Officer, Solan after decision of CWP No 14 of 1997, no relief can be given, to the petitioner in this writ petition. This Court can only exercise its jurisdiction within the frame work of law and not beyond that.

23. No other point is urged.

24. In view of the aforesaid discussion, there is no merit in this writ petition which is accordingly dismissed leaving the parties to bear their own costs.