

(2004) 07 P&H CK 0086
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6825 of 1994

C.S. Sohal, Chief Judicial Magistrate

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 01-07-2004

Acts Referred:

Punjab Civil Services (Premature Retirement) Rules, 1975 — Rule 3(2)

Citation : (2004) 2 ILR (P&H) 558 : (2004) 138 PLR 92

Hon'ble Judges : Swatanter Kumar, J; Amar Dutt, J

Bench : Division Bench

Advocate : R.L. Batta, Geeta Sharma and Shikha Roy, for the Appellant; R.K. Chibar, Senior Advocate and Lalit Thakur, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The challenge in this petition is to the order communicated to the petitioner by the Secretary to the Government of Punjab, Department of Home Affairs and Justice on 14.10.1993. The order accepting the request for voluntary retirement of the petitioner reads as under:-

"No 18/76/93-3 July (1) 1874 Spl.- On the recommendation of the Punjab and Haryana High Court, the Governor of Punjab is pleased to accord sanction to the voluntary retirement of Shri C.S. Sohal, Chief Judicial Magistrate, Rupnagar, with effect from the date he relinquishes the charge of his post, in relaxation of the notice of three months,- vide note under rule 3(2) of the Punjab Civil Services (Premature Retirement) Rules, 1975 subject to the condition that he will not apply for commutation of a part of his pension before the expiry of his notice period of three months (viz. upto 3rd November, 1993)."

2. Petitioner submitted a representation on 2.11.1993 which was endorsed by the Office of the District and Sessions Judge, Rupnagar at No. 7076 dated 2.11.1993. and 7165 dated 6.11.1993 forwarding the request of the petitioner for withdrawal of the notice of voluntary retirement which had been accepted by

the competent authority as aforementioned. The request of the petitioner for withdrawal was rejected and order communicated to the petitioner vide letter dated 21.12.1993 by the Registrar, Punjab and Haryana High Court, Chandigarh. The said order reads as under:-

"The request of Shri C.S. Sohal, PCS, Chief Judicial Magistrate, Rupnagar, for withdrawal of notice of voluntary retirement has been declined by Hon''ble the Chief Justice and Judges after due consideration.

The Officer be informed that he stands retired from service on 16.10.1993, the date on which he received the orders of his retirement, issued by the Punjab Government.

Yours faithfully, Sd/- Assistant Registrar (Vig.) for Registrar.

3. The challenge by the petitioner to the above impugned order is two-fold. Firstly, it is contended that the petitioner had made detailed and reasoned representation for withdrawing his request for voluntary retirement and the order does not deal with correction or otherwise any of the contentions raised therein. The order being non-speaking is liable to be set aside. Secondly, it is contended that the order dated 14.10.1993 had not taken any effect as the request for withdrawal thereof was made within the period for three months i.e. before the effective date. As such the request of the petitioner should have been accepted and the order dated October 14, 1993 ought not to have been given effect to. Of course to aid these principal submissions, the petitioner also raises the plea of arbitrariness on the part of the respondents.

4. Learned counsel appearing for the respondents prays that the writ petition should be dismissed because the request of the petitioner seeking voluntary retirement had been duly accepted, communicated and acted upon between the parties. The effective date was over with the communication of the order itself. He further argued that the question of any arbitrariness on the part of the Government or the High Court does not arise as it was of own accord of the petitioner that he had made a request which was accepted by the competent authority and in accordance with law.

5. In order to answer the principal controversy arising in the present case, we may refer to certain facts which are necessary for such determination. The petitioner was appointed to the P.C.S. (Judicial) Service of the State of Punjab on 8.2.1977. He was promoted as Chief Judicial Magistrate and kept on functioning on that post till 4.8.1993. When the petitioner made an application for seeking voluntary retirement from service, the period of three months in terms of this request would expire on 3.11.1993. The petitioner in furtherance to his intention even applied for earned leave on 4.8.1993 with effect from 23.8.1993 to 30.10.1993. Petitioner is stated to have applied for medical and other leave thereof and allegedly submitted his request for voluntary retirement on 3.1.1994. The request of the petitioner was accepted by the High Court and in turn recommended to the State Government for issuance of appropriate order.

This recommendation of the High Court resulted in the issuance of order dated 14.10.1993. The language of the order shows that the relaxation in terms of Rule 3(2) of the Punjab Civil Services (Premature Retirement) Rules, 1975 (hereinafter referred to as "the Rule") was sanctioned to the petitioner and he was not called upon to deposit three months' salary.

6. Vide letter dated 23.9.1993, the High Court had already communicated to the District and Sessions Judge, Rupnagar that the work from the Court of Shri Sohal be withdrawn and be transferred to other Judicial Officer of competent jurisdiction at Rupnagar. No further work was to be allotted to the Officer.

7. Learned counsel appearing for the petitioner while relying upon the judgment of the Hon^{ble} Supreme Court in the case of J.N. Srivastava Vs. Union of India (UOI) and Another, contended that the petitioner could withdraw his request for voluntary retirement before the date of retirement is reached. Mere acceptance or even relinquishment of charge does not stop him from withdrawing the request made by him earlier. With some emphasis, the learned counsel relied upon the following conclusion of the Apex Court:-

"In our view the said reasoning of the Tribunal cannot be sustained on the facts of the case. It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta Vs. Union of India (UOI) and Anr, . In view of the aforesaid decision of this Court it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31.1.1990. It is to be noted that once the request for cancellation of voluntary retirement proposal was rejected by the authority concerned on 26.12.1989 and when the retirement came into effect on 31.1.1990 the appellant had not choice but to give up the charge of the post to avoid unnecessary complications. He, however, approached the Tribunal with the main grievance centering round the rejection of his request for withdrawal of the voluntary retirement proposal. The Tribunal, therefore, following the decision of this Court ought to have granted him the relief. We accordingly, allow, these appeals and set aside the orders of the Tribunal as well as the order of the authorities dated 26.12.1989 and directed the, respondent to treat the appellant to have validly withdrawn his proposal for voluntary retirement with effect from 31.1.1990."

8. According to the learned counsel appearing for the respondents, principle afore enunciated has no application on fact to the present case. In order to meet the contention, learned counsel relied upon the judgments in Sri Suresh Yallappa Patil Vs. The General Manager, K.S.R.T.C. and Another, , State of Haryana and Others Vs. S.K. Singhal, P. Lal v. Union of India and others J.T. 2002(1) S.C. 649, Shambhu Murari Sinha v. Project and Development India and another 2000(4) S.L.R. 577 and North Zone Cultural center and Another Vs. Vedpathi Dinesh Kumar, .

9. In light of the above judgments, now, we proceed to examine the controversy arising in the present case. There is no dispute that the petitioner had submitted his request for voluntary retirement which was accepted by the competent authority and after grant of relaxation, dues of the "petitioner were released to him including his pension and gratuity which was accepted by the petitioner without protest.

10. One of the important features of this case is to determine and arriving at a reasonable conclusion is as to which would be the effective date for termination of service of an employee who is seeking voluntary retirement. One of the basic ingredients of such discretion would be as to when there is termination of employer and employee relationship as intended by the parties. There cannot be any straight jacket formula for adjudication of such a proposition of fact. It would have to be decided on the facts and circumstances of each case.

11. No doubt the petitioner had made a request for voluntary retirement in August, 1993 so as to give him the benefit of retirement with effect from 31.11.1993. During the period of three months, petitioner ought to serve or pay salary to the State Government for not working for that period, in the event, he intended to retire forthwith. None of these is the situation in the present case. The request of the petitioner was accepted and benefit of relaxation which obviously accrued to the advantage of the petitioner, as he was, vide order dated 14.10.1993, relieved from duties without requiring him to pay salary for three months or any period thereof.

12. There is no dispute to the fact that the petitioner had submitted an application dated 4.8.1993 seeking voluntary retirement because of his family circumstances by giving three months notice. The notice period was to expire on 3.11.1993. The above request of the petitioner was placed before the Full Court for its consideration in its "meeting on 22.9.1993 and the High Court accepted the request of the petitioner and recommended to the Govt. to waive the notice period. The extract of the proceedings of the meeting reads as under:-

"The matter regarding the withdrawal of work from Judicial Officers in respect of whom a recommendation is made to Government that their resignation from service be accepted or that their services be terminated or they be retired from service pending acceptance thereof by the Government, was considered along with the notice of the Registrar and it was decided that in all such cases alt work pending in the Court of such officers be immediately withdrawn on such recommendation being made and the Government be intimated accordingly."

13. After the recommendation of the case to the Government, vide letter dated 23.9.1993 Judicial work was withdrawn from the petitioner and his Court work was allotted to different officers. The High Court also directed that no judicial work would be allocated to the petitioner. The petitioner accepted this order and made no grievance and in fact received his benefits despite of no working. The recommendation of the High Court was accepted by the Govt. and vide order

dated 14.10.1993 the State of Punjab granted sanction to the voluntary retirement of the petitioner from the date he relinquished the charge of his post. The relaxation of the notice period of three months was also granted to the petitioner in terms of Rule 3(2) of the Punjab Civil Services (Premature Retirement) Rules, 1975.

14. The above order of the Government of State of Punjab was duly notified on 5.10.1993 and communicated to the petitioner by the High Court vide its letter dated 15.10.1993 (Annexure P-4/2) to the writ petition. This letter was received by the petitioner and he submitted his acknowledgement dated 18.10.1993 to the District and Sessions Judge, Rupnagar (Annexure P-4/4) to the writ petition. Vide letter dated 29.10.1993 the petitioner informed the Registrar of the High Court that he wishes to withdraw his notice of voluntary retirement from service as his family circumstances have changed. The request of the petitioner for withdrawal of the notice for voluntary retirement was rejected by the competent authority and vide letter dated 21.12.1993 the petitioner was informed of such rejection.

15. The petitioner despite that submitted his charge assuming report to the District and Sessions Judge, Rupnagar on 3.1.1994 (Annexure P-8) to the writ petition and on the same very date also submitted another charge relinquishing report Annexure P-9 to the writ petition through* the District and Session Judge to the Registrar, Punjab and Haryana High Court, Chandigarh. Vide letter dated 14.2.1994, the petitioner preferred a kind of an appeal to the Secretary to the Government of Punjab for permission to withdraw his notice for voluntary retirement and reiterated his stand as taken in the request dated 19.10.1993. This request of the petitioner was also declined by the High Court and communicated to the State Government vide letter dated 31.5.1994. In this petition the petitioner had termed the order of his voluntary retirement as discriminatory and also illegal. It was also mentioned that the High Court was not competent authority and it was the State Government to take a decision on his request. It is no where stated in the writ petition by the petitioner as to the fate of his appeal.

16. The basic plea raised on behalf of the petitioner is that request for voluntary retirement would become effective only on 3.11.1993 before which date the petitioner had already withdrawn his request for voluntary retirement on 29.10.1993. It is further stated that the acceptance of the order by the petitioner, acceptance of different dues by him would be of no consequence as the petitioner was sick and admitted to Hospital. Fur thermore it is contended that his request for withdrawal could not be rejected by the High Court and such order is illegal, unconstitutional and arbitrary. In support of his submission, the learned counsel for the petitioner relied upon Balram Gupta Vs. Union of India (UOI) and Anr, ; J.N. Srivastava Vs. Union of India (UOI) and Another, and Shambhu Murari Sinha v. Project and Development India and another? 2000(4) S.L.R. 577.

17. On the other hand, the learned counsel appearing for the respondents while relying upon *P. Lal v. Union of India and others* J.T. 2002(1) S.C. 649 and *State of Haryana and Others Vs. S.K. Singhal*, contended that the request of the petitioner for his voluntary retirement from service was duly accepted by the competent authority and even the condition of three months notice was waived in the case of the petitioner. According to the learned counsel appearing for the respondents the petition filed by the petitioner be dismissed.

18. At the very outset we may refer to Rule 3 (2) of the Rules, 1975, which reads as under:-

"3(2) Any Government, employee may, after giving at least three month's previous notice in writing to the appropriate authority retire from service on the date on which he completes 25 years of qualifying service or attain 50 years of age or on any date thereafter to be specified in the notice"

Provided that no employee under suspension shall retire from service except with the specific approval of the appropriate authority.

Note-1. An employee may make a request, in writing to the appropriate authority to accept notice of less than three months giving reasons therefore and such a request for the curtailment of the period of notice shall be considered on merit 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 part of his pension before the expiry of the notice period of three months."

19. In furtherance of the above rules, the Government of the Punjab vide its circular copy whereof has been placed as Annexure R2/11 have clearly stated that the notice for voluntary retirement may be withdrawn subsequently only with the approval of the appropriate authority provided the request for such withdrawal is made before the expiry of the notice. In the same instructions it has also been stated that the person is allowed to retire in furtherance of his notice. He shall not be permitted to withdraw the notice of voluntary retirement once it has become effective.

20. In the light of the judgment afore referred as well as the rules and the instructions, the basic questions which needs to be answered by us before arriving at any final conclusion are that:-

(i) when the notice of voluntary retirement given by the petitioner became effective and the consequence thereof?

(ii) was the relationship of employer and employee between the parties terminated and the acceptance of request acted upon by the parties prior to withdrawal of his request by the petitioner for voluntary retirement?

21. The petitioner/had submitted his request for voluntary retirement on 4.8.1993. This request was accepted by the competent authority upon

recommendation of the High Court and the same was communicated to the petitioner vide letter dated 5.10.1993. Gazette notification was issued on that date and as such the notification dated 5.10.1993 became a public document which by conduct of the parties was accepted and acted upon subsequent thereto. Certainly Rule 3(2) of the Rules 1975 places an obligation upon an employee to make a request to the competent authority after giving atleast three months previous notice in writing, to retire from service on the date on which he completes 25 years of qualifying service or attain 50 years of age or on any date thereafter to be specified in the notice. It appears that in the interest of administration of justice, the High Court had accepted the request of the petitioner for voluntary retirement and the High Court at its own granted the relaxation in favour of the petitioner in terms of the condition stipulated in the proviso to the said Rules 1975. The notification dated 5.10.1993 was duly served upon the petitioner and for which the petitioner had also acknowledged the receipt to the District and Sessions Judge, Rupnagar on 18.10.1993. The acknowledgement was issued with specific reference to the letters and without any protest. Certainly it was open to the petitioner to decline to accept the said condition and require the authority to pay him salary for the remaining period but no such stand was taken by the petitioner and rather he opted to accept the condition of relaxation without any protest. Not only this he accepted upon it received the dues payable to him subsequent thereto and that too without any protest. It has been stated in the reply filed on behalf of the High Court that the various amounts including amount of monthly pension, death-cum-retirement gratuity, other dues were sanctioned in favour of the petitioner after the issuance of the impugned order. A very pertinent document available on the record is the letter of the High Court dated 23.9.1993 vide which the request of the officer concerned for voluntary retirement was considered and it was also decided that no work be allotted to Shri Sohal until further orders. Again no protest was raised by the petitioner in this behalf.

22. The learned counsel appearing for the petitioner placed emphasis on the fact that the petitioner was unwell and therefore, could not carefully attend to the matter and acceptance of the letter by him cannot be taken against him.

23. Once the petitioner's request for voluntary retirement was accepted by the competent authority, notification issued in terms thereof and communicated to the petitioner which was accepted by the petitioner without any protest and demur, the obvious result thereof is that the date of issuance of notification would become effective on the relevant date. The relationship of employer and employee comes to an end on that date as contract of employer stands duly terminated. It cannot be disputed that the employee could withdraw his notice prior to the expiry of the notice period and subject to the relevant rules. This view was also taken by the Supreme Court in of Balram Gupta's case (supra).

24. The petitioner heavily relied upon the judgment of Supreme Court in J.N. Srivastava's case (supra). In this case the Hon'ble Supreme Court held that

even if the notice for voluntary retirement had been accepted by the authorities, the employee had the *locus poenitentiae* to withdraw the proposal for voluntary retirement. However, in the case of S.K. Singhal (*supra*) and *equi Bench* of the Supreme Court took the view that once the request for voluntary retirement is accepted or even relaxation of period of three months is granted then on the expire of the period the employee would be deemed to have retired from service. In the case of P. Lal (*supra*) their Lordships of the Supreme Court further held that once the retirement becomes effective and relationship of master and servant ceased to exist then back door method to get back into service cannot be permitted and the employee cannot withdraw his request for voluntary retirement. Still in another case of North Zone Cultural Centre and another v. Vedpathi Dinesh Kumar J.T. 2003(4) S.C. 153, the Hon"ble Supreme court declared the law that where the employer organisation accepted the resignation on the very date it was submitted and communicated the same 13 days later in that case, the petitioner sending a telegram to withdraw the said resignation, the employee even marking his attendance during the interregnum period, their Lordships of the Supreme court held that 13 days delay in communicating was not unreasonable and the mere fact that he attended the office till 1.12.1998 would not mean that his resignation had not taken effect. In fact the attendance after 18.11.1998 was unlawful and the view of the High Court to the contrary was set aside not permitting the permission in that case to withdraw his resignation.

25. The petitioner in the present case could take some advantage from the case of J.N. Srivastava (*supra*) but there are certain apparent distinguishing features between the facts of that case and the case in hand. In the present case the High Court while recommending to the State to accept the voluntary retirement of the petitioner deliberated on the issue and being fully aware of the fact that the period of three months under the Rules was intended to place an obligation upon an employee and the right is upon the employer so that the employer could make appropriate alternative arrangements to avoid dislocation of work or any other/disadvantage is not suffered by the department. Keeping in view the facts that the petitioner was discharging judicial functions and it may not be appropriate to permit him to continue discharging his judicial functions for any further period when his request was being accepted. Furthermore it had been duly recorded in the minutes that there is policy of the High Court that in such cases it will be more appropriate that Govt. is advised to exercise his discretion and waive the notice period. This recommendation of the High Court was duly accepted and rightly so by the Govt. and notification dated 5.10.1993 was issued granting exemption /relaxation in terms of note of Rule 3(2) of the Rules *ibid*. In terms of this notification the petitioner would stand retired from the date he relinquishes the charge of his post. These communications were duly received by the petitioner on 14.10.1993 and without any protest. The, parties acted upon this and understood that the services of the petitioner came to an end and he stood retired with effect from 14.10.1993. The letter dated 16.10.1993 issued in

furthermore of the letters of the Govt. was accepted by the petitioner in hospital at Chandigarh. The factum of his relinquishment was confirmed by the petitioner in his own report submitted even on 3.1.1994 which reads as under:-

"Certified that I, C.S.Sohal, PCS, (Judicial) Chief Judicial Magistrate, Rupnagar have the 3rd day of January, 1994, relinquished the charge of the post of Chief Judicial Magistrate, Rupnagar in the afternoon consequent upon the letter No. 25583-Gaz.II(3) dated Chandigarh the 18th October, 1993 from the Registrar, Punjab and Haryana High Court, Chandigarh to the District & Sessions Judge, Rupnagar conveyed to me in the General Hospital, Room No.522 Pvt. (VIP) Ward, Sector 16, Chandigarh where I stood hospitalised due to road accident by the District & Sessions Judge, Rupnagar vide his office memo No.6740 dated Rupnagar the 16th October, 1993.

Dated, Chandigarh the Sd/- C.S.Sohal, 3rd January, 1994 Chief Judicial Magistrate Rupnagar.

26. From the record produced before us by the High Court, it is also clear that the application of the petitioner for grant of leave from 26.8.1993 to 23.10.1993 further with the request to combine winter holidays falling from 25.12.1993 to 2.1.1994, was rejected by the competent authority and was communicated vide letter dated 17.3.1994 to the petitioner as well. The basic ground given for rejection was that the question of grant of leave from 16.10.1993 does not arise as the officer has voluntarily retired with effect from 6.10.1993. There is ample correspondence between the Govt., District & Sessions Judge and the High Court on record to establish this fact and copies of most of such correspondence was sent to the petitioner. The cumulative effect of the pleadings of the parties when seen in the light of record produced before us, we are of the considered view that the petitioner had lost his locus poenitentiae to withdraw his notice for voluntary retirement.

27. It is obvious from the above narrated facts and the record produced before us that the effective date of voluntary retirement of the petitioner in the facts and circumstances of the case would be 16/18.10.1993 when the notification was accepted and acknowledged by the petitioner without any protest. This is the date on which the relationship of employer and employee apparently does not subsists between the parties. Further more the petitioner has accepted the benefits accruing therefrom from time to time after the date and on the basis of his voluntary retirement. The petitioner filed this writ petition on 23.5.1994 after a considerable delay of the issuance of the notification dated 5.10.1993. Even in terms of the circular issued by the State of Punjab, the employee cannot be granted the relief to withdraw the request for voluntary retirement once it has become effective and relieved from duties. Since the petitioner had accepted the order and taken the benefits flowing therefrom including the waiver of notice period as well as withdrawing of various amounts in furtherance of his retirement, it will be very difficult for the Court now to ignore the conduct of the petitioner himself and grant him the relief which may tantamount to permitting a

back door entry into service.

28. For the reasons aforesaid we find no merit in this petition and the same is dismissed. However, leaving the parties to bear their own costs. Sd/- Amar Dutt, J.