
(2009) 03 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 9455 of 2008 and C.W.P. 15928 of 2008

Dr. Anil Dewan

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Punjab Civil Services (Premature Retirement) Rules, 1975 — Rule 11, 2, 2(2), 3, 3(1)

Citation : (2011) 1 ILR (P&H) 46

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Permod Kohli, J.—This judgment of mine shall dispose of the aforesaid writ petitions as common questions of fact and law are involved in these cases.

2. While serving as Medical Officer, Civil Hospital, Roopnagar, the petitioner applied for pre-mature retirement,—vide his request, dated 5th July, 2007 (Annexure P-2). The petitioner claimed that he has completed 20 years continuous service on 11th June, 2007 including the service rendered on short term basis with effect from 11th June, 1987 to 1st February, 1991. Three months notice was also given through the aforesaid letter. The Director, Health and Family Welfare,— vide his letter, dated 27th September, 2007 (Annexure P-3) sought information from the Civil Surgeon, Ropar as to how the Civil Surgeon has counted 20 years of completed service of the petitioner by taking into consideration the hierarchy of service rendered by the petitioner. He referred to the Government guidelines,—vide letter No. 1/71/90-I F.P.3/7278 dated 20th October, 1995 and he was advised not to relieve the petitioner. The petitioner on coming to know of the aforesaid position,—vide his letter, dated 8th October, 2007 (Annexure P-4) responded to the Director and stated that his initial appointment on ad hoc/temporary basis was on the basis of selection. He also relied upon Rule 4.23 of the Punjab Civil Service Rules, Vol. II and requested for count of ad hoc service rendered along with regular service for computing 20

years qualifying service. This was followed by another letter dated 17th March, 2008 by the petitioner. The request of the petitioner was, however, declined,--vide the impugned letter, dated 19th March, 2008 (Annexure P-6) and the petitioner was duly communicated that his request for voluntary retirement has been rejected by the Government on consideration. It is under these circumstances that the petitioner has filed the present petition seeking quashment of the aforesaid letter dated 19th March, 2008 (Annexure P-6) with a further direction in the nature of mandamus for a direction to the respondents to treat him as prematurely retired.

3. It is the admitted position that the petitioner was appointed to the post of Medical Officer for short term,--vide appointment letter dated 26th May, 1987. This letter specifically mentions that the petitioner was selected for the post in question. Thereafter, the petitioner was selected by the Punjab Public Service Commission and was appointed on regular basis,--vide letter dated 19th December, 1990 by the Secretary, Health and Family Welfare, Punjab Chandigarh. He was posted,--vide order dated 1st February, 1991 and the petitioner joined his service.

4. In the reply filed by the respondents, two objections have been raised; (i) that short term service of the petitioner is not to be counted as qualifying service for pre-mature retirement and (ii) that due to shortage of doctors, the petitioner's request for pre-mature retirement has been rejected.

5. I have heard the Learned Counsel for the parties at length.

6. The State has framed pre-mature rules, namely, the Punjab Civil Services (Premature Retirement) Rules, 1975 (hereafter referred to as "the Rules"). Rule 3 of the Rules deals with the pre-mature retirement. Rule 3(1)(a) of the Rules empowers the authority to prematurely retire a public servant on completion of 20 years of qualifying service or till he attains 50 years of age after giving three months prior notice in writing. Rule 3(3)(a) entitles an employee who has completed 20 years of qualifying service to seek retirement from service by giving not less than three months notice in writing to the appropriate authority subject to conditions stipulated in rule 3(3)(c) of the rules. Rules 3(3)(a), (b) and (c) of the rules are reproduced as follows :-

3 (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.

7. The qualifying service has also been defined under Rule 2 of the Rules, which

reads :-

2. Definitions: In these rules, unless the context otherwise requires, the following expression have the meanings hereby respectively assigned to them, that is to say :-

(1) X X X

(2) X X X

(3) "Qualifying services" means service qualifying for pension.

8. Even though Rule 3(3)(b) requires the acceptance of the notice of voluntary retirement by the appropriate authority, however, Rule 3 (3)(c) of the rules provides that where the appropriate authority does not refuse to grant permission for retirement before the expiry of notice the retirement shall become effective from the date of expiry of period of notice.

9. The petitioner served a notice for premature retirement to the respondents on 5th July, 2007 and the same has been rejected on 19th March, 2008 i.e. after the expiry of period of notice. From the conjoint reading of Rule 3 (3)(a), (b) and (c) of the rules, the only inference that can be drawn is that where the request for voluntary retirement is not rejected within the period of notice, it is deemed to be accepted. Rejection after expiry of period of notice is of no consequence. There is no prohibition in the rules to seek voluntary retirement except where the employee is under disciplinary proceedings or some enquiry is pending against him. In the present case, admittedly, no disciplinary proceedings or enquiry was pending against the petitioner when he applied for voluntary retirement till the time of expiry of notice. By virtue of Rule 3(3)(c) of the rules, the petitioner is deemed to have retired on expiry of period of notice.

10. For the purpose of premature retirement, "employee" defined under Rule 2(2) of the Rules reads as under :-

2 (2). "employee" means any person appointed to public services and posts in connection with the affairs of the State of Punjab, excluding those listed in rule?

11. Rule 3.17, Chapter-III, Vol. II of the Punjab Civil Services deals with the counting of ad hoc service, which reads as under :-

3.17. If an employee was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of:-

(i) Periods of temporary or officiating service in non pensionable establishment;

(ii) periods of service in work-charged establishment; and

(iii) periods of service paid from contingencies.

Note 1.: In the case of a Central Government employee who is permanently transferred to the Punjab Government and becomes subject to these rules, under rule 1.1(b) of these rules, the term "continuous temporary/officiating service", shall include such service rendered under Central Government.

Note 2.--In case of a purely temporary Central Government employee who is permanently transferred to Punjab Government and becomes subject to these rules, the term "continuous temporary service", includes the temporary service under the Central Government. The pensionary liability in respect of such cases shall be allocated on the length of service.

12. Ad hoc service is to be reckoned for counting the qualifying service. Even ad hoc employee fall within definition of employee as provided under Rule 2(2) he being connected with the affairs of the state. This issue is no more res integra having been considered by a Full Bench of this Court in the case of Kesar Chand versus. State of Punjab; 1988 (2) P.L.R. 223 rule excluding the period of work charge and ad hoc service from the expression "qualifying service", was declared ultra vires. The State has now added Rule 3.17-A, which provides for counting of service rendered on the establishment interrupted or continuous, to count as qualifying service. Similar view has been expressed by a Division Bench of this Court in the case of Dr. Anil Kumar Saluja versus State of Punjab and others. (CWP No. 12179 of 2008) m decided on 1st August, 2008 and in the case of Dr. Sukhjit Singh versus State of Punjab and others, (CWP No. 4150 of 2008), decided on 22nd December, 2008.

13. The plea of the State-respondent that there is shortage of doctors, is also of no impediment in the way of the petitioner for seeking voluntary retirement. Right to voluntary retirement has been conferred by the statute and is not to be controlled by the desire or wish of the respondents, even if the plea of the State-respondent of shortage of doctors in the state is to be accepted. Once the rule permit the employee to seek retirement by complying the provisions of law, he cannot be prevented from leaving the job in accordance with statutory requirements.

14. In view of the above factual and legal position, these petitions are allowed. The petitioners are deemed to have retired from service on voluntary retirement after the expiry of period of notice. Needless to say, the petitioners shall be entitlee to all service/retiral benefit on such retirement. No costs.