

(2015) 01 RAJ CK 0152
In the Rajasthan High Court
Case No : Civil Writ Petition No. 921/2015

Narendra Singh Rajpurohit	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Citation : (2015) 01 RAJ CK 0152

Hon'ble Judges : Nirmaljit Kaur, J.

Bench : Single Bench

Advocate : Jamwant Gurjar and Yashpal Khileree, for the Appellant; Shweta Bora and Anil Bissa, Addl. Govt. Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J.—The prayer in the present writ petition is for a direction to consider the petitioner as voluntary retired from service with effect from 31.12.2014.

2. The facts in short are that the petitioner was initially appointed as Medical Officer vide Order dated 27.05.1998. He served at various places on the said post from time to time and presently, he is serving on the post of Junior Specialist (Medicine) at Government Community Health Center, Shivganj, District Sirohi. The Panchayat Raj Elections were announced somewhere in the last week of November, 2014. The petitioner immediately moved an application dated 18.12.2014 seeking voluntary retirement in order to enable him to contest the said election. However, the respondent - Joint Secretary to the Government, Medical and Health (Group-2) Department, Jaipur vide his communication dated 31.12.2014 informed the C.M.H.O. that his application for voluntary retirement has been rejected by the State Government on account of paucity of doctors. Thereafter, the respondent - C.M.H.O. informed the petitioner about the same on 08.01.2015. Without waiting for any further time, the petitioner challenged rejection of his voluntary retirement by filing the present writ petition on 17.01.2015. The same came up for hearing before this Court on 23.01.2015.

Notices were issued and the Additional Government Counsel appearing for the respondents was directed to accept notice, who prayed for time to file reply. Learned counsel for the petitioner stated that time to file the nomination form has been extended only upto 29.01.2015. Taking into account the urgency, the matter was adjourned for 28.01.2015. Today, learned counsel for the respondents prays for still more time to file reply.

3. The controversy involved in the present case has already been decided by this Court in the case of Dr. Kalpana Singh Vs. The State of Rajasthan and ors. (S.B. Civil Writ Petition No. 4526/2014) decided on 16.12.2014. This Court is, therefore, bound by its own judgment. Thus, the matter being squarely covered by the judgment rendered by this Court in the case of Dr. Kalpana Singh (supra) and also on account of the paucity of time looking to the urgency in the matter, this Court does not deem it necessary to grant any further time to the respondents to file reply.

4. It is evident from the Order dated 31.12.2014 that the application of the petitioner has been rejected only on the ground of paucity of doctors.

5. This Court in the similar set of circumstances in the case of Dr. Kalpana Singh (supra) after taking into consideration the other judgments rendered by this Court, allowed the writ petition by holding as under:-

"In the present case, the petitioner is entitled to voluntary retirement under Rule 50 of the Rajasthan Civil Services (Pension Rules), 1996. The said rules are statutory rules. Moreover, the Rule 50 of the Rules of 1996 contemplates "a notice to retire" and not "a request seeking permission to retire". The request contemplated in Rule 50 of the Rules of 1996 is only in case an employee is seeking waiver of the notice period. The petitioner who is a government servant, is governed by the terms and conditions of service framed by the State Government. They leave no scope with the State to withhold the permission except on the three grounds mentioned therein i.e. in case, the petitioner is under suspension; disciplinary proceedings are pending or contemplated for the imposition of major penalty; or whose prosecution is contemplated or launched in a Court of Law. The Statute must be read in its entirety for the purpose of finding out the intention and object thereof.

Yet again in Grasim Industries Ltd. Vs. Collector of Customs, Bombay, , the Apex Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the means or sententia legis of the legislature. Where the words are clear and there is no

obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or altering the statutory provisions."

Thus, the rule in the present case is absolute except for the three exceptions mentioned above. There was nothing to stop the government from including the clause "public interest or "any other reason", in case, they had any intention or object behind refusing the voluntary retirement either in the interest of the public or otherwise. Thus, the petitioner was not suffering from any of the disqualification incorporated in the Rule 50 of the Rules of 1996 making her ineligible from seeking voluntary retirement. No such provision or exception in the Rules has been brought to the notice of this Court, which may enable this Court to come to the conclusion that the State could reject the application on any other reasons except as mentioned in the rules. In the absence of any such provision permitting the State to refuse voluntary retirement on the ground of public interest or any other valid reason, the Government is equally bound by the rules and other terms and condition of the service binding the parties.

In this view of the matter, the present petition is allowed. The petitioner shall be deemed to have retired from service w.e.f. 3.7.2014 i.e. after the expiry of 3 months from the last notice sent by her on 2.4.2014."

6. This Court is bound by its" own judgment.

7. Thus, the only issue which survives in the present petition is with respect to the requirement of three months" notice although it is not the ground for rejecting the application. The Rule 50(1) and (2) of the Rajasthan Civil Service (Pension) Rules, 1996 read as under:-

"50. Retirement on completion of 15 years" qualifying Service:

(1) At any time after a Government servant has completed fifteen years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

(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 automatically become effective from the date of expiry of the said period."

GOVERNMENT OF RAJASTHAN"S DECISION

Guidelines for acceptance of notice. - A notice of voluntary retirement given after completion of "fifteen years" qualifying service will require acceptance by the appointing authority. Such acceptance may be generally given in all cases except that the Appointing Authority shall withhold permission to retire a Government servant:

(i) who is under suspension;

(ii) in whose case the disciplinary proceedings are pending or contemplated for the imposition of a major penalty and the disciplinary authority having regard to the circumstances of the case, is of the view that such disciplinary proceedings might result in imposition of the penalty of removal or dismissal from service;

(iii) in whose case prosecution is contemplated or may have been launched in a court of law.

In such cases, if it is proposed to accept the notice of voluntary retirement approval of the Government should be obtained. Even where the notice of voluntary retirement given by the Government servant requires acceptance by the appointing authority, the Government servant giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of notice.

(3) (a) A Government servant referred to in sub rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons thereof;

(b) On receipt of a request under clause (a), the appointing authority subject to the provisions of sub rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months."

GOVERNMENT OF RAJASTHAN'S DECISION

In case a Government servant seeks voluntary retirement under rule 50(1) of Rajasthan Civil Services (Pension) Rules, 1996, with a view to contest any election to Parliament/State Assembly/Municipalities/Panchayati Raj Institutions, he may be retired by the competent authority under rule 50 of RCS (Pension) Rules immediately without prejudice to the right of Government going into the genuineness of the reasons and verification of the qualifying service rendered, and the period of notice prescribed under rule 50(1) of Rajasthan Civil Service (Pension) Rules shall in such cases be deemed to have been waived as a matter of course.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority;

Provided that the request for withdrawal shall be made before the intended date of his retirement."

8. On perusal of the above, it shows that as per the Government decision, the

requirement of three months" notice is not mandatory in case, a government servant seeks voluntary retirement for contesting election any election to Parliament, State Assembly, Municipalities, Panchayati Raj Institutions. A perusal of the application of the petitioner shows that he specifically sought his voluntary retirement for contesting the Panchayati Raj Election for which the last date for filing the nomination form stands extended to 29.01.2015 only. Moreover, his application has not been rejected on the said ground of three months" notice. No such objection has been raised by the respondents in their impugned order.

9. In view of the above, this Court finds that the matter is squarely covered by the judgment already rendered by this Court in the case of Dr. Kalpana Singh (supra). The respondents could not have rejected the application except in case, where disciplinary proceedings or a suspension order or a criminal case was pending against him. The impugned order shows that his case has not been rejected on either of the three reasons mentioned above but on the ground of paucity of doctors only.

10. Accordingly, the present writ petition is allowed. The Order dated 31.12.2014 (Annx. 5) is quashed. The petitioner shall be deemed to have retired from service with immediate effect.