
(2013) 12 P&H CK 0095

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 2066 of 2013 (O&M)

Punjab and Haryana High Court

APPELLANT

Vs

Bidhi Chand

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) 2 SCT 470

Hon'ble Judges : Surya Kant, J; Surinder Gupta, J

Bench : Division Bench

Judgement

Surya Kant, J.—This letters patent appeal impugns the order dated 08.11.2013 passed by learned Single Judge whereby the order rejecting the respondent's request for withdrawal of notice of voluntary retirement, has been quashed and the appellants have been directed to reinstate the respondent in service with all consequential benefits including continuity in service. The facts may be noticed briefly.

2. The respondent joined as a Clerk on 12.05.1981. He was promoted as Senior Assistant on 20.03.1999 and was placed in the Reader Grade-I w.e.f. 20.08.2009. He was serving in that capacity under the District & Sessions Judge, Mansa and was posted as Reader to Additional District & Sessions Judge-I, Mansa.

3. The respondent was transferred to work as a Reader in the Court of Additional Civil Judge (Senior Division) at Sardulgarh in Mansa Sessions Division and was required to assume charge on or before 03.02.2011. He, however, served a three months' notice on 28.02.2011 seeking voluntary retirement from service w.e.f. 31.05.2011. Three months notice period commenced w.e.f. 01.03.2011. Voluntary retirement was sought by the respondent stating that "due to unavoidable circumstances in the family I cannot provide my service to the department".

4. The request made by the respondent was accepted and order dated

03.03.2011 (Annexure P-2) was passed by the District & Sessions Judge, Mansa, ordering that the respondent shall stand retired from service w.e.f. 31.05.2011.

5. A few days before his retirement, the respondent moved an application on 24.05.2011 for withdrawal of notice for pre-mature retirement stating that "now the circumstances in the family are normal. I am able to resume my service".

6. The application of the respondent seeking withdrawal of request for voluntary retirement was declined by the District & Sessions Judge, Mansa vide order dated 31.05.2011 (Annexure P-4). The respondent submitted a detailed representation to the High Court and that too was turned down.

7. The aggrieved respondent approached this Court and the learned Single Judge vide order dated 08.11.2013 has quashed the above-mentioned orders passed by the District & Sessions Judge, Mansa and the High Court. Consequential direction for reinstatement in service with all the service benefits has been issued.

8. We have heard learned counsel for the parties and gone through the records.

9. The short question that arises for consideration is whether the respondent is entitled to, as a matter of right, to withdraw his request for "voluntary retirement"?

10. The learned Single Judge has relied upon two decisions of the Hon'ble Supreme Court in Balram Gupta Vs. Union of India (UOI) and Anr, and J.N. Srivastava Vs. Union of India (UOI) and Another, , to hold that the request seeking pre-mature retirement could be withdrawn by the respondent as a matter of right before his actual retirement w.e.f. 31.05.2011.

11. The right to seek voluntary retirement is regulated by the Punjab Civil Services (Pre-mature Retirement) Rules, 1975 (hereinafter referred to as "1975 Rules"). Sub-rule 3(1) empowers the Appropriate Authority to retire a Government employee in "public interest" and subject to the conditions contained therein. Sub-rule (2) pertains to "voluntary retirement" of an employee who has rendered 25 years of qualifying service or attained 55 years of age. Sub-rule (3) pertains to voluntary retirement that may be sought by an employee on completion of 20 years of qualifying service. Sub-rule (4), which has a direct bearing on the issue involved in the instant case, however, restricts the scope of Sub-rules (2) & (3), referred to above. For appreciation of the controversy, Sub-rules (2), (3) & (4) are reproduced below:-

.....(2) Any Government employee may, after giving at least three months" previous notice in writing to the appropriate authority retire from service on the date on which he completes twenty-five years of qualifying service or attains fifty 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.

(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.

(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.....

(emphasis applied)

12. The precise case of the appellants is that in view of sub-rule (4), the respondent is not entitled to withdraw the notice of voluntary retirement unless specific approval is granted by the appropriate Authority.

13. On the other hand, learned counsel for the respondent construes sub-rule (4) to say that appropriate Authority is obligated to apply its mind and can decline such a request only for valid reasons to be assigned by it. He submits that in the instant case both the orders rejecting the respondent's request for withdrawal of voluntary retirement notice are cryptic and bereft of any reason.

14. Learned counsel for the appellants cites Director General, Employees' State Insurance Corporation and Another Vs. Puroshottam Malani, , to urge that it is for the employee to provide convincing reason and material and persuade the competent Authority to accept his request for withdrawal of voluntary retirement notice.

15. There is no gain saying that in Balram Gupta's and J.N. Srivastava's cases (supra), rule of voluntary retirement did not contain a provision like sub-rule (4) herein-above, which mandates that an employee after giving notice for voluntary retirement is precluded from revoking such notice except with the specific approval of the appropriate Authority. The decisions relied upon by the learned Single Judge are distinguishable and the principles propounded therein may not be attracted to a situation regulated by different set of Rules.

16. In Director General, ESIC's case (supra), Hon''ble Supreme Court considered Rule 48(2) of the Central Civil Services (Pension) Rules, 1972, which reads as follows:-

...Rule 48(2) of the Central Civil Services (Pension) Rules, 1972 reads as under:-

(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the Appointing Authority, shall be precluded from withdrawing his election subsequently except with the specific

approval of such authority:

Provided that the request for withdrawal shall be within the intended date of his retirement.....

(emphasis applied)

17. The above-stated Rule was interpreted to say that:-

....10. The government service is not contractual. It is a service which confers status and a person who opts for voluntary retirement and later on wants to revoke the same before the expiry of the period of notice has to satisfy the authorities why he is seeking to revoke the notice of voluntary retirement. Rule 48(2) of the Central Civil Services (Pension) Rules, 1972 clearly states that the incumbent can seek withdrawal of the notice of voluntary retirement but with the specific approval of the authorities. Therefore, as per sub-Rule (2) of Rule 48 of the C.C.S. (Pension) Rules, 1972 specific approval of the authority is required for withdrawal of the notice of voluntary retirement. If the incumbent does not provide any reason or material for revoking his notice of voluntary retirement then it is always open for the authority to decline the request for withdrawal of notice of voluntary retirement. If such discipline is not read into the Rule then perhaps every employee can send a notice for voluntary retirement and revokes the same at his sweet will. This cannot be permitted. The Rule mandates that there should be a specific approval of the appointing authority. Clearly, the Rule provides that the appointing authority can certainly approve or disapprove a request for withdrawal of notice of voluntary retirement.....

(emphasis applied)

18. On facts also, the instant case is similar to the Director General, ESIC's case (supra). There the employee gave a notice of voluntary retirement on 31.12.1999 and the last date was 31.03.2000. He got all the post-retiral benefits also a few days before revoking the notice on 22.3.2000. He then approached the Central Administrative Tribunal questioning the rejection of his request for withdrawal of voluntary retirement notice. So has been done by the respondent in the instant case. It may be seen that sub-rule (2) of Rule 48 of the C.C.S. (Pension) Rules, 1972 is pari-materia to sub-rule (4) of Rule-3 of 1975 Rules, as applicable in the case of the respondent. The aforesaid Rule has been interpreted by the Hon'ble Supreme Court laying down that the incumbent can seek withdrawal of voluntary retirement notice only with the specific approval of appropriate Authority. The onus has been shifted on the employee to provide reasons revoking the notice, failing which the appropriate Authority can decline his request for withdrawal of notice of voluntary retirement. We are, thus, of the view that the principle propounded in Director General, ESIC's case (supra) is applicable to the facts of the case in hand. The notice seeking voluntary retirement as also the application submitted by the respondent to the District & Sessions Judge, Mansa or to the High Court to permit him to revoke his request for voluntary retirement though are on record, nonetheless we do not express

any views whether the respondent has made out a case duly supported with reasons or material for revocation of his request for voluntary retirement. Such an exercise, as contemplated under the Rules, is required to be undertaken by the District & Sessions Judge, Mansa.

Consequently and for the reasons aforesaid, we allow this appeal; set-aside the order dated 08.11.2013 passed by the learned Single Judge. With a view to offer yet another opportunity to the respondent to make out a case for revocation of his request of voluntary retirement, we also set-aside the order dated 31.05.2011 passed by District & Sessions Judge, Mansa, leaving it open to the respondent to submit a fresh representation-cum-application so as to make out a case within the ambit of sub-rule (4) of Rule-3 of 1975 Rules. If the appropriate Authority is satisfied and convinced with the reasons that may be assigned by the respondent, it shall pass an appropriate order, notwithstanding the rejection of his representation by the High Court. The appropriate Authority shall take the decision within a period of three months from the date of receiving the representation-cum-application from the respondent. If the request of respondent is accepted, in that event, he shall be granted the benefits notionally only though with the benefit of seniority and pay fixation.

Ordered accordingly.