
(1983) 09 MP CK 0033
In the Madhya Pradesh High Court
Case No : M. P. No. 202 of 1980

Ramchandra Chouthé

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 19-09-1983

Acts Referred:

Citation : (1983) MPLJ 749

Hon'ble Judges : G.L. Oza, J

Bench : Single Bench

Advocate : G.M. Chaphekar with V.S. Kokje, for the Appellant; S.R. Joshi, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, J.

This petition is filed by the petitioner challenging the order passed against him dated 6th June, 1980, removing him from service.

According to the petitioner he was appointed on 1-8-1954 as a Sub-Assistant Surgeon in the erstwhile State of Madhya Bharat. On 3-12-1956 he was promoted to the Post of Assistant Surgeon. He was appointed Resident Anaesthetist, M. Y. Hospital, Indore on 23-11-1959 and after selection by the Public Service Commission he was appointed as Lecturer in Anesthesiology in the Gandhi Medical College, Bhopal, which post he held from 12-2-1964 to 28-1-1966. He was transferred in the same capacity to the M. G. M. Medical College, Indore as Lecturer in Anaesthesiology.

On 7-4-1975 when the petitioner was serving as Lecturer in the M. G. M. Medical College, Indore, he applied for permission to avail two months' vacation with permission to combine it with 74 days' earned leave which was due to his credit for purpose of visiting United Kingdom. On 10-4-1975 the Dean of the M. G. M. Medical College, Indore, "forwarded his application with his recommendation for grant of leave to the Government and permitted the petitioner to avail of the

vacation of two months commencing from 1-5-1975. But about earned leave he was told that the Government's decision shall be awaited. The petitioner, therefore, proceeded on vacation from 1-5-1975 and left India for United Kingdom in the month of May, 1975, in anticipation of sanction of the earned leave.

It is alleged by the petitioner that he did not receive any communication about his leave as to whether it was sanctioned or not. On 24-7-1975 the petitioner further submitted an application for grant of two years' study leave to undergo higher training at his own expenses. This application was sent to the concerned authorities, but as the petitioner did not receive any reply of this application also he submitted an application in the month of October, 1975 opting for voluntary retirement on expiry of three months' period from the date of receipt of this notice and it is alleged that this notice was received by the State Government on 31-10-1975.

It is alleged that the petitioner returned to India in December, 1978 and on his return he made inquiries about his position in service and he also tried to find out whether the Government is treating him as retired or still considering him in service and for ascertaining it he addressed several letters to the Government and according to the petitioner he learnt that while he was in United Kingdom a letter was sent by respondent No. 3 to his address at Indore and when the letter returned unclaimed, it was delivered to the petitioner's son by respondent No. 3. This letter dated 30-9-1975 was received by the petitioner's son on 10-10-1975, but as the petitioner had already decided to seek voluntary retirement, intimation of his letter about rejecting the leave was of no consequence. It is also alleged that in response to the notice of voluntary retirement the respondent No. 2 had inquired from the respondent No. 3 as to whether any disciplinary proceedings were pending against the petitioner. It is alleged that some reply was sent by respondent No. 3, of which the petitioner is not aware. It is also alleged that ultimately on 7-2-1980 he sent a notice to the State Government for settling his pensionary benefits and in reply to this notice he received an order saying that he is removed from service with effect from 1-7-1975 and this order is said to have been passed under Rule 19(2) of the M. P. Civil Services (Classification, Control and Appeal) Rules, 1966 and is dated 6-6-1980.

It is contended by the petitioner that under the New Pension Rules, 1951, clause (2) of sub-Rule 2 provides that a Government servant can give a notice of three months for voluntary retirement if he fulfils the conditions as required under these rules and according to the petitioner he has fulfilled the conditions and that he has completed more than 20 years of qualifying superior service on 29-10-1975 when he gave the notice of voluntary retirement and therefore, this retirement became effective from 1-2-1976, including three months period of notice and it is contended that, therefore, after the retirement became effective no action could be taken against the petitioner under Rule 19(2) of the M. P. Civil Services (Classification, Control and Appeal) Rules, 1966. It is also contended

that when the Government chose to pass the orders under Rule 19(2) the reasons stated for exercising the powers under Rule 19(2) were not in existence as the reasons stated were that as the petitioner was out of India an inquiry was not possible. But in fact when this order was passed the petitioner had returned to India and was very much here and in fact it was after a notice was given by him about the pensionary benefits that this order is alleged to have been passed.

In the return filed by the State most of the facts are not in dispute. It is contended that although the petitioner was permitted to avail of the vacations, but the leave was not granted and, therefore, the petitioner could not proceed out of India on an assumption that the leave will be granted. It is contended that as the leave was not granted in October, 1975, a letter was written, which was returned as he was not available in India at his Tndore address, but his son obtained a copy of that letter and it is alleged that it appears that having known about this letter the petitioner sent his notice for seeking voluntary retirement, which was received by the State Government on 31-10-1975. It is contended that the order d dated 18-4-1977 in the record shows that in the year 1977 the Government chose to start disciplinary action against the petitioner in consultation with the Public Service Commission and as the petitioner was not in India it was thought desirable to exercise powers under Rule 19(2). It was, therefore, contended that the State Government's decision to proceed under Rule 19(2) could not be said to be for reasons which were not in existence.

The main contention advanced on behalf of the learned counsel for the petitioner is that as on the date on which the orders were passed against the petitioner he had already retired, in view of the language of New Pension Rule 2 no disciplinary action could be taken against him and in support of his contention the learned counsel placed reliance on decisions reported in *State of Punjab v. Khemi Ram* A I R 1970 F C 214 and *Dineshchandra v. State of Assam and ors.* A I R 1978 S C. 17. It was also contended that the order to which a reference is made in 1977 is just a decision to proceed but in fact an order was passed against the petitioner on 6-6-1980 and, therefore, it could not be said that on 6-6-1980 the petitioner was not available for inquiry and, therefore, the reasons stated for exercise of powers under Rule 19(2) were not in existence. It was also contended that when in 1977 a decision was taken to hold disciplinary proceedings in consultation with the Public Service Commission, it appears that the State Government lost sight of the notice for voluntary retirement, which had already become effective from 1 -2-1976 and once the petitioner had retired from service, the question of any action against him does not arise.

Learned Government Advocate frankly conceded that the order in 1977 April to start proceedings does not mention any notice of retirement and he states that it appears that that was lost sight of. But he contended that when this decision was taken it could not be said that the petitioner was available in India as admittedly in 1977 he was in United Kingdom and the reason for exercise of powers under Rule 19(2) was in existence and, therefore, the State Government was right in

choosing to proceed under the rule and dispense with the departmental enquiry.

As regards the New Pension Rules, Teamed Government Advocate-contended that it is no doubt true that a notice for voluntary retirement was received by the Government on 31-10-1975 and the only requirement of the rule is three months", notice. Therefore, at best it will become effective on 1-2-1976, but in fact no order for retirement was passed. He, therefore, contended that the order passed by the State Government in 1980 could not be assailed.

The New Pension Rule 2. sub-clause (2) reads :

Rule 2 (2)-Government servant may retire from service at any time after completing 20 years of qualifying superior service provided that he shall give in this behalf a notice in writing to the appropriate authority at least three months before the date on which he wishes to retire. Government may also require Government servant to retire at any time after he has completed 30 years qualifying superior service provided that appropriate authority shall give in this behalf, a notice in writing to the Government servant, at least three months before the date on which he is required to retire.

If could not be disputed that if a Government servant has completed 20 years of qualifying service, he could give a notice for retirement and that notice has to be for three months. The language of this rule clearly indicates that on expiration of the period of notice of three months the retirement becomes effective. It is not disputed that the petitioner had completed the qualifying service as contemplated in this rule and it is also not disputed that the notice of retirement was received by the State Government on 31-10-1975. It is, therefore, clear that after the expiry of the period of three months the petitioner's retirement was effective and that is from 1-2-1976. It is, therefore, clear that when in April, 1977, the State Government chose to proceed with the disciplinary action against the petitioner the petitioner had already retired from service and he was no longer in service of the State.

In the case of State of Punjab v. Khemi Ram (supra), it is held :

There can be no doubt that if disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of Suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a "final order is passed therein.

In the case of Dineshchandra (supra), the question of voluntary retirement has been considered and it has been observed that:

While the Government reserves its right to compulsorily retire a Government servant, even against his wish, there is a corresponding right of the Government servant under F. R. 56 (c) to voluntarily retire from service by giving the Government three months" notice in writing. There is no question of acceptance

of the request for voluntary retirement by the Government when the Government servant exercises his right under F. R. 56(c). Mr. Niren De is, therefore, right in conceding this position." It is, therefore, clear that on the date on which the order was passed removing the petitioner from service, the petitioner was no longer in service and had retired and as he was no longer in service no disciplinary proceedings could be started against him. The order passed against the petitioner, therefore, could not be maintained. It is, therefore, quashed.

12A. The petition is, therefore,. allowed. The order passed by the State Government is hereby quashed. In the circumstances of the case the parties are directed to bear their own costs. The outstanding amount of the security deposit shall be refunded to the petitioner.