
(2005) 02 RAJ CK 0049

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5413 of 2002

Santosh Kumar Jain

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 50, 86(1)

Citation : (2005) 3 RLW 1859 : (2005) 2 WLC 435

Hon'ble Judges : Asok Parihar, J

Bench : Single Bench

Advocate : Vijay Singh, for the Appellant; H.V. Nandwana, Dy. G.A., for the Respondent

Final Decision : Allowed

Judgement

Ashok Parihar, J.—Application for substitution is allowed. Amended cause title be tagged at proper place.

2. Petitioner having suffered from a major mental illness, i.e., Chronic Schizophrenia, the present writ petition has been filed through his natural guardian the mother Smt. Premwati Jain. Subsequently the mother of the petitioner Smt. Premwati Jain also died and now she has been substituted by another natural guardian the elder brother Gajendra Singh Jain.

3. The petitioner entered into the services of the Forest Department as a Forest Guard on 24.9.1970. Having suffered from a major mental ailment, the petitioner submitted an application on 27.6.2000 seeking voluntary retirement w.e.f. 1.10.2000 on the ground of illness. Since no reply was received from the Department to the above application, the petitioner again submitted a representation on 14.12.2000 requesting the concerning authorities to grant him voluntary retirement w.e.f. 1.4.2001. It appears that without considering the request of the petitioner earlier made on 27.6.2000, then again on 14.12.2000, the respondents, treating the petitioner as absent from duty without sanction of

leave, have forfeited the services prior to 15.12.2000 vide order dated 17.9.2002. The above order has been passed under Rule 86(1) of the Rajasthan Service Rules (RSR) on the ground that the petitioner is absent from duty since 15.12.2000. In the present writ petition the petitioner has prayed for acceptance of his application seeking voluntary retirement and consequential payment of all retiral benefits due in his favour. Petitioner has also prayed for quashing the order dated 17.9.2002.

4. A bare reading of the reply filed on behalf of respondents would show that the Department has been considering the case of the petitioner in a very casual bureaucratic manner unmindful of the conditions of the petitioner. Application for seeking voluntary retirement submitted on 27.6.2000 has not been disputed so far. The second application dated 14.12.2000 has also not been disputed. There is nothing on record to show that any departmental inquiry was pending or even contemplated on 27.6.2000 or even on 14.12.2000. A medical certificate dated 17.12.2001 as submitted by the petitioner, clearly shows that the petitioner has been suffering from Chronic Schizophrenia (a major mental illness) for the last 2-3 years. Doctor has further opined that the petitioner is not able to perform his duties normally. It appears that the order dated 17.9.2002 forfeiting the past services prior to 15.12.2000 has been passed only after filing of the present writ petition on 13.8.2002. There is nothing on record to show as to whether respondents are treating the petitioner still in service or have treated as abandonment of services since no chargesheet for absence from duty has been issued so far.

5. Having considered the entire facts and circumstances, in my opinion, there is no justification, whatsoever, for not accepting the application seeking voluntary retirement submitted on 17.6.2000 w.e.f. 1.10.2000, moreso, When the petitioner has given reasons for seeking voluntary retirement and the same having been justified on the ground of medical certificate submitted by him. There is also no dispute that the petitioner has completed the qualifying service for seeking voluntary retirement under Rule 50 of the RSR. There is also a deeming clause that if no reply is given to the employee concerned accepting or rejecting the application for seeking voluntary retirement, the concerned employee shall be deemed to have retired from service from the date mentioned in such application.

6. Accordingly, the writ petition is allowed. The impugned order dated 17.9.2002 is set aside. The petitioner is deemed to have retired from service w.e.f. 1.10.2000. Respondents may now pay all retiral benefits to the petitioner treating him to have retired w.e.f. 1.10.2000. If any pay fixation for the period prior to 1.10.2000 is still to be made, necessary pay fixation be done accordingly. So far as absence from duty prior to 1.10.2000 is concerned, the same may also be granted, if any leave is so due, and if no leave is due, extraordinary leave may be granted without salary. Entire retiral benefits, if any, be paid to the petitioner within 60 days from the date of receipt of certified copy of this order.