

(2019) 07 RAJ CK 0058
In the Rajasthan High Court
Case No : Civil Writ Petition No. 879 Of 2019

Sudhir Kashyap

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 18-07-2019

Acts Referred:

Rajasthan Civil Services (Pension) Rules, 1996 — Rule 50, 50(1), 50(2)

Citation : (2019) 07 RAJ CK 0058

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Rishabh Tayal, Vandana Bhansali

Final Decision : Allowed

Judgement

1. By way of this writ petition, the petitioner has questioned the legality of order dated 26.11.2018 passed by the Deputy Secretary, Medical and

Health (Group-2) Department, Government of Rajasthan, whereby the prayer of the petitioner seeking voluntarily retirement from service w.e.f.

01.12.2018 stands rejected.

2. The facts relevant are that the petitioner entered the service of the department of the Medical and Health, Government of Rajasthan, on being

appointed as Medical Officer on 01.02.1987. On completion of 15 years of services, the petitioner submitted an application to the competent authority

on 14.08.2018 under Rule 50 (1) of the Rajasthan Civil Services (Pension) Rules, 1996 (for short 'the Rules'). The application preferred by the

petitioner seeking voluntary retirement has been rejected by the order impugned. Hence this petition.

3. Learned counsel appearing for the petitioner contended that as per decision of the Government of Rajasthan, permission to retire a Government

servant may be refused only to such Government servant: (1) who is under suspension; (2) 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; and (iii) in whose case prosecution is

contemplated or may have been launched in a court of law. Learned counsel submitted that none of the situations specified wherein permission to

retire a Government servant could be withheld by the appointing authority exists in the petitioner's case and thus, by virtue of proviso to sub-rule

(2) of Rule 50, the petitioner deserves to be treated as retired from Government service w.e.f. 01.12.2018. In support of the contention, learned

counsel has relied upon a decision of this court in the matter of Dr. Kalpana Singh vs. The State of Rajasthan & Ors., (S.B.C. Writ Petition

No.4526/14, decided on 16.12.14).

4. On the other hand, learned Additional Government Counsel submitted that as per sub-rule (2) of Rule 50, the notice of voluntary retirement given

under sub-rule (1) shall require acceptance by the appointing authority and thus, in absence of the acceptance of the notice by the appointing authority,

the petitioner cannot claim to treat him as retired from service from the date of expiry of the period of notice. It is submitted that the application of the

petitioner seeking voluntary retirement has rightly been rejected by the State Government keeping in view the larger public interest. However, it is not

disputed by the learned Additional Government Counsel that the controversy involved in this case is covered by the decision of this Court in Dr.

Kalpana Singh's case (supra).

5. Admittedly, none of the situations noticed above, whereunder the permission sought by the petitioner for retirement could have been refused by the

appointing authority exists in the instant case and thus, the permission sought by the petitioner for voluntary retirement could not have been withheld by

the appointing authority.

6. In Dr. Kalpana Singh's case (supra), this Court while considering identical issue held;

However, there is merit in the second argument of learned counsel for the petitioner that the application for voluntary retirement could be rejected

only on limited grounds as spelled out in Rule 50 of the Rules of 1996. There was no hindrance in accepting the petitioner's application for voluntary

retirement. The application of the petitioner was rejected on the ground of shortage of doctors. The State has placed on reliance on the judgment

rendered by this Court in the case of Dr. Mahaveer Prasad Sharma Vs. State of Rajasthan & Ors. (supra) to contend that the same was a valid

ground for rejection of the VRS application. On the other hand, learned counsel for the petitioner has relied on the judgment rendered by the learned

Single Judge of this Court in the case of Dr. Duresh Narayan Mathur Vs. State of Rajasthan & Ors. (S.B.Civil Writ Petition No.4121/2012), decided

on 11.09.2012, wherein, in similar circumstance, the petitioner who was a lady, was allowed to be voluntary retire in spite of the similar objection of

the non-availability of Medical Officers. Normally, this Court may have referred the matter to a Division Bench but it appears that the first judgment

dated 11.09.2012 passed in S.B.Civil Writ Petition No.4121/2012 (Dr.Duresh Narayan Mathur Vs State of Rajasthan & Ors.) was not brought to the

notice of the learned Single Judge dealing with the case of Dr. Mahaveer Prasad Sharma (supra). The case of Dr. Duresh narayan Mathur was given

at a prior point of time.â??

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â??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 â??a notice to retireâ?? and not â??a request seeking permission to

retireâ?. 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.â??

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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.

7. In the result, the petition succeeds. It is hereby allowed in the light of the decision of this Court in Dr. Kalpana Singh's case (supra). The order impugned dated 26.11.2018 is quashed. Since on account of the refusal of the prayer for voluntarily retirement, the petitioner is continuing in employment, on the facts and in the circumstances of the case, it is directed that the petitioner shall be treated to be voluntarily retired from service w.e.f. 31.08.2019. No order as to costs.