

(2013) 07 P&H CK 0909

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11169 of 2013 (O and M)

Sunil Dutt

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2013) 172 PLR 273

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Swarn Sandhir, for the Appellant;

Judgement

Tejinder Singh Dhindsa, J.—Brief facts of the case are that the petitioner had joined services with the Punjab State Education Department as a Teacher on 6.3.1992. In the month of August 2012, the petitioner applied for three months' leave to proceed abroad on the ground that the family of the petitioner had shifted to the United States of America and that his wife was unwell and his children were to be admitted to the schools in foreign land. It is further pleaded that the leave of the petitioner was not sanctioned by the department upto 31.8.2012. Accordingly, the petitioner submitted an application seeking voluntary retirement on 31.8.2012 by serving three months' notice i.e. from 31.8.2012 to 30.11.2012 as was the requirement under the relevant Rules governing the subject of pre-mature retirement. It is further asserted that the petitioner had deposited two months salary pertaining to the months of October and November 2012 and accordingly requested the respondents to relieve him w.e.f. 30.09.2012. On 30.9.2012, the petitioner was relieved from service. Placed on record is order dated 24.10.2012 passed by the Secretary to Government Punjab Department of School Education at Annexure P/5, whereby sanction has been accorded under the Punjab Civil Services (Pre-Mature Retirement) Rules, 1975 as regards voluntary retirement of the petitioner while serving as Lecturer Biology w.e.f. 30.09.2012 (after noon) on account of domestic circumstances. The instant writ petition has been filed praying for the issuance of a writ in the nature

of mandamus for directing the respondents to allow the petitioner to rejoin the duties as Lecturer in Biology and consequently to permit him to serve the department till he reaches normal date of superannuation which is 31.5.2022. Further prayer is for directing the respondents to treat the period from 1.10.2012 till the petitioner is permitted to rejoin, as leave of the kind due.

2. Learned counsel for the petitioner would vehemently argue that the request seeking voluntary retirement had been made by the petitioner under compelling circumstances. Learned counsel would advert to the application dated 31.08.2011 (Annexure P/1) to submit that the petitioner had mentioned therein that his family had shifted abroad and on account of the fact that his wife was feeling unwell and his children were to be admitted in educational institution abroad and coupled with the circumstances that his leave was not being sanctioned, a request for voluntary retirement had been made. Learned counsel would submit that such request would be construed as a conditional request seeking voluntary retirement and as it was open to the petitioner claim reinstatement.

3. Having heard learned counsel for the petitioner at length, I am of the considered view that the claim and the prayer made by the petitioner in the instant writ petition does not merit acceptance.

4. The subject of pre-mature retirement is governed by the Punjab Civil Services (Pre-Mature Retirement) Rules, 1975. Rule 3 of the Rules 1975 would be relevant in so far as the controversy raised in the present petition is concerned, and the same reads in the following terms:--

3. Premature Retirement.--(1)(a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee 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.

(b) The period of such notice shall not be less than three months:

Provided that where at least three months" notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, at the same rates at which he was drawing them immediately before the date of retirement, for a period of three months or, as the case may be, for the period by which such notice falls short of three months.

(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:

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

5. A perusal of the aforesaid provision would make it clear that the competent authority on having formed an opinion that it is in public interest to do so has the absolute right of giving an employee prior notice in writing to retire such employee on the date on which he completes 25 years of qualifying service or attains 50 years of age or on any date thereafter to be specified in the notice.

6. Likewise, even the government employee has been given the right to seek voluntary retirement after giving at least three months previous notice in writing subject to the pre-requisite i.e. on the date on which he completes 25 years qualifying service or attains 50 years of age or on any date thereafter. Still further under the provision itself if the competent authority does not refuse to grant the permission for retirement before the expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of the said period. In the facts of the present case the request made by the petitioner in the light of the 1975 Rules has been duly accepted by the competent authority. Learned counsel has not been able to refer to any provision under the 1975 Rules on the strength of which the prayer/claim for reinstatement is admissible. The request of voluntary retirement having been duly accepted by the appropriate authority no mandamus can be issued directing the respondents to reinstate the petitioners back in service.

No merit.

Dismissed.