

Before Permod Kohli, J.

HARDIAL MEHTA,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP No. 4441 of 1993

7th January, 2011

Constitution of India, 1950—Art. 226—Punjab Civil Services (Premature Retirement) Rules, 1975—Petitioner serving notice for premature retirement and absenting himself from duty—Disciplinary proceedings initiated against petitioner—Inquiry Officer finding petitioner guilty of charges—Show cause notice—Request of petitioner for premature retirement rejected—Termination of services—Petitioner failing to challenge findings of inquiry report—Acceptance of notice by Competent Authority essential in terms of Rule 3(3) (b)—Deemed acceptance would come into operation only where employee completes three months period of notice—Petition dismissed.

Held, that the petitioner served a three months notice but without waiting for expiry of three months he absented himself from duty from the next day i.e. 8th August, 1984 even without any intimation from the respondents about the acceptance of the request. The petitioner was proceeded against for absence from duty. He has not challenged the findings of the inquiry report. His only contention is that he is deemed to have retired on the date of expiry of the notice. If, the petitioner had served notice, he was required to wait for the expiry of time of notice, however, he absented from duty and did not even wait for expiry of even three months notice period. If the petitioner had to seek voluntary retirement before the expiry of period of notice, in that situation acceptance of notice was essential in terms of Rule 3(3) (b). Deemed acceptance would come into operation only where the employee completes three months period of notice under Clause (c) of sub rule (3) of Rule 3. Admittedly, there was no acceptance of the request of the petitioner for premature retirement on 8th August, 1994 when he absented from duty.

(Para 8)

Baldev Raj Mahajan, Advocate, *for the petitioner.*

K.S. Dadwal, Addl. A.G., Punjab.

PERMOD KOHLI, J. (ORAL)

(1) Petitioner was appointed as a Clerk in V.J. Hospital, Amritsar *vide* appointment letter dated 5th May, 1962 issued by the Director, Research and Medical Education, Punjab. Petitioner joined on 17th May, 1962. He was promoted as Assistant-cum-Accountant and posted in the office of Principal, Medical College, Amritsar with effect from 8th April, 1976. Petitioner's services were terminated *vide* order dated 24th May, 1976 for having contracted a second marriage with one Smt. Nirmal Arora without obtaining prior permission and divorcing his first wife. Order of termination was challenged by the petitioner in CWP No. 2795 of 1976. This petition was allowed *vide* judgement dated 31st March, 1983, whereby the termination of the petitioner was set aside and he was granted all the consequential benefits. In implementation of the judgement, petitioner was reinstated *vide* order dated 10th August, 1983 (Annexure P-2). It is alleged that in compliance with the order of reinstatement, petitioner reported for duty on 30th September, 1983. It is stated that petitioner made an application dated 30th September, 1983 protesting that he has not been allowed to join in terms of the court judgement. It is also alleged that petitioner was neither granted promotion from the date persons junior to him were promoted nor any arrears of salary etc. as per the judgement of the High Court has been paid to him. Petitioner, accordingly, filed a contempt petition being COCP No. 55 of 1984. This contempt petition was decided *vide* order dated 17th May, 1984 with the following directions :—

"The petitioner is accordingly directed to report for duty at his place of posting on May 24, 1984. The authority concerned shall thereafter would consider his claim and grant him the benefit that he is entitled to according to rules, subject to petitioner compliance with terms thereof."

(2) Petitioner, however, reported for duty a day earlier i.e. 23rd May, 1984. It is alleged that he was not permitted to join on the pretext that he should get prior permission from the Director, Health and Family Welfare, Punjab. Petitioner wrote a letter dated 25th May, 1984 to the

Director that he has not been permitted to join. The Director of Health Services informed the Civil Surgeon, Gurdaspur that he is competent to allow the petitioner to join for duty in view of the judgement of the High Court. Civil Surgeon, accordingly, asked the petitioner to join his duty at P.H.U., Gharota. Petitioner, accordingly, submitted his joining report on 26th July, 1984 at P.H.U., Gharota. After joining the duty petitioner served a notice dated 7th August, 1984 seeking premature retirement and also deposited three months salary in lieu of the notice period. It is stated that respondent No. 2 did not pass any order on his application for premature retirement and thus after expiry of three months period, petitioner wrote a letter dated 3rd December, 1984 to the S.M.O., P.H.U., Gharota, Distt. Gurdaspur for release of pension, gratuity and other retrial benefits. Petitioner was served with a charge sheet dated 14th December, 1984 containing a charge that he absented from duty with effect from 16th July, 1979 to 29th September, 1983 and then from 1st October, 1983 to 25th July, 1984 and from 8th August, 1984 till the date of service of the charge sheet. Charge sheet was served upon the petitioner *vide* letter dated 24th December, 1984. Petitioner submitted his reply explaining that alleged absence from duty with effect from 16th July, 1979 to 29th September, 1983 was the period when the writ petition was filed by the petitioner against his termination and which period has been treated as spent on duty *vide* order dated 10th August, 1983 and period from 1st October, 1983 to 25th July, 1984 was the period when the petitioner had asked for the posting. Similarly about the period with effect from 8th August, 1984 till the service of charge sheet, it was communicated that he had served a notice seeking premature retirement during this period. Aggrieved of the charge sheet petitioner filed a civil suit challenging the charge sheet and the departmental proceedings in the Court of Additional Sub Judge, Amritsar on 22nd August, 1988. This suit was dismissed, however, certain observations were made that the petitioner would be afforded reasonable opportunity during the course of inquiry proceedings and inquiry shall be completed within a period of four months. He was also granted liberty to challenge the adverse order, if, any passed. A further observation was made that the claim of the petitioner for premature retirement shall be treated by the competent authority within the reasonable period. Petitioner made another application dated 1st December, 1989 to the respondent No. 2 to accord sanction to the request of the petitioner for premature retirement and payment of his dues. Petitioner was served

with a show cause notice dated 25th October, 1992 communicating him that the charges against him have been proved as per the report of the Inquiry Officer and he was asked to show cause as to why the penalty of removal from service should not be imposed upon him. Petitioner submitted his reply to the show cause notice on 22nd November, 1990. In the meantime, respondent No. 2 passed an order dated 24th January, 1991 rejecting the request of the petitioner for premature retirement on the ground that he has served only 24 hours notice for premature retirement and also deposited three months salary without prior approval of the competent authority and the notice is not in accordance with the Punjab Civil Services (Premature Retirement) Rules, 1995 and instructions of the State Government dated 3rd August, 1987 (Annexure P-16). another order dated 6th March, 1991 was passed terminating the services of the petitioner with effect from 8th August, 1984 pursuant to the inquiry (Annexure P-17). The order of termination was, however, modified vide order dated 28th January, 1992 and instead of terminating the services from 8th August, 1984, his services were ordered to be terminated with immediate effect and the period of absence from 8th August, 1984 has been treated as 'dies non' (Annexure P-18). Petitioner has challenged the orders Annexures P-16 to P-18 in the present writ petition.

(3) The contention of the petitioner is that he had sought premature retirement by serving notice for premature retirement as he had completed more than 20 years of service. The respondents did not reject the request for premature retirement within three months and thus on the expiry of the period of three months, petitioner is deemed to have retired from service. It is, accordingly, contended that rejection of his request after more than six years is illegal and similarly the charge sheet and consequential order of termination are also illegal as the petitioner has been terminated after the premature retirement.

(4) On behalf of the State, it is contended that petitioner served the notice for premature retirement on 7th August, 1984 and absented himself from next day i.e. 8th August, 1984 even without waiting for three months notice period and his request was never accepted and was subsequently rejected in view of the disciplinary proceedings against him. According to respondents, the petitioner could not have abandoned the duties before expiry of three months period and since he absented himself

from duty, he was charge sheeted and charge having been established, he has been rightly terminated.

(5) I have heard learned counsel for the parties.

(6) The premature retirement is governed by the statutory rules namely the Punjab Civil Services (Premature Retirement) Rules, 1975. The relevant rule 3(3) is reproduced hereunder :—

“(3) *Premature retirement—*(1) xx xx xx

(2) xx xx xx xx

(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.

Note 1.—An employee may make a request in writing to the appropriate authority to accept notice of less than three months giving reasons thereof and such a request for the curtailment of the period of notice shall be considered on merit and if the appropriate authority is satisfied that such curtailment will not cause any administrative inconvenience

it may relax the requirement of notice of three months condition that the employee shall not apply for commutation of a part of his pension before the expiry of notice period of three months.

Note 2.—If an employee retires under sub-rule (2) or (3) above while he is on leave not due, without returning on duty, the retirement shall take effect from the date of commencement of the leave not due and the leave salary paid in respect of such leave shall be recovered as provided in Rule 8, 119 (d) of the Punjab Civil Service Rules, Volume I, Part I.

Note 3.—In computing the notice period of three months referred to in rule, the date of service of notice and the date of its expiry shall be excluded."

(7) Sub rule 9(3) clearly provides a three months notice in writing to the appropriate authority. Clause (b) of sub rule (3) requires notice of voluntary retirement and acceptance by the appropriate authority, whereas, sub rule (c) provides that where the appropriate authority does not refuse to grant the permission for retirement before the expiry of the period specified in the notice, retirement shall become effective from the date of expiry of the period.

(8) In the present case the petitioner served a three months notice but without waiting for expiry of three months he absented himself from duty from the next day i.e. 8th August, 1984 even without any intimation from the respondents about the acceptance of the request. The petitioner was proceeded against for absence from duty. He has not challenged the findings of the inquiry report. His only contention is that he is deemed to have retired on the date of expiry of the notice. If, the petitioner had served notice, he was required to wait for the expiry of time of notice, however, he absented from duty and did not even wait for expiry of even three months notice period. If the petitioner had to seek voluntary retirement before the expiry of period of notice, in that situation acceptance of notice was essential in terms of Rule 3(3) (b). Deemed acceptance would come into operation only where the employee completes three months period of notice under Clause (c) of sub rule (3) of Rule 3. Admittedly, there was no acceptance of the request of the petitioner for premature retirement on 8th August, 1984 when he absented from duty.

(9) Petitioner has relied upon judgement of this Court in cases titled as **Khushi Ram versus Punjab State Electricity Board (1), Dr. Anil Dewan versus State through Principal Secretary, Health and Family Welfare Department Punjab and others (2) and State of Punjab and others versus Dr. Bhushan Lal Malhotra (3)**. In all these judgements, it has been held that where the notice period expires without any order of rejection, the employee is deemed to have retired, however, the facts in these judgements are different. The petitioner did not wait for three months and absented from duty for which major penalty has been imposed upon him after disciplinary proceedings. These judgements are not applicable to the facts of this case.

(10) I find no merit in this petition, which is, accordingly, dismissed.

R.N.R.