

(2016) 08 MP CK 0001

MADHYA PRADESH HIGH COURT

Case No: Writ Petition No. 3808 of 2016

Dr. Sant Kumar Khare

APPELLANT

Vs

State of Madhya
Pradesh

RESPONDENT

Date of Decision: Aug. 1, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Madhya Pradesh Civil Services (Pension) Rules, 1976 - Rule 42

Citation: (2016) 4 MPLJ 606

Hon'ble Judges: Sujoy Paul J.

Bench: Single Bench

Advocate: Shri Praveen Kumar Verma, Counsel, for the Petitioner; Ms. Janvi Pandit, Dy. GA, for the Respondent/State

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Sujoy Paul, J. - In this petition filed under Article 226 of the Constitution, petitioner has challenged the order dated 3.2.2016 (Annexure P/9) whereby the respondents have retired the petitioner on attaining the normal age of superannuation.

2. The petitioner after completion of 33 years of service, preferred an application for voluntary retirement in prescribed form on 27.09.2012 (Annexure P/2). The said application was forwarded on 4.10.2012 by respondent No. 2 to respondent No. 1. In this document, it is certified that no rejection order or disciplinary proceeding is pending against the petitioner. The petitioner made a request in October, 2014 to treat him as voluntary retired and prayed for release of pension and retiral dues.

By communication dated 30.10.2012, the petitioner informed the respondents that he has not received any rejection order of his application for voluntary retirement and, therefore, he is treating himself as voluntary retired w.e.f 01.11.2012.

3. Shri Praveen Kumar Verma, contends that petitioner even preferred a petition W.P. No. 14837/14 which was disposed of by directing the respondents to take a decision but no decision was taken and ultimately order dated 3.2.2016 was passed whereby petitioner is retired on attaining the normal age of superannuation. By placing reliance on Pension Rules and the order of this Court in W.P. No. 1410/2014 (Dr. Kishorilal Prajapati v. State of M.P. and others), it is urged that petitioner should be deemed to be retired in view of the said rules and the law laid down.

4. Learned counsel for the State opposed the relief by relying on the return. It is canvassed in the return that petitioner has already completed 65 years of age and, therefore, retired by order dated 31.3.2016. It is stated that no case is made out by the petitioner because in due course of time he has already retired on attaining the age of superannuation.

5. No other point is pressed by learned counsel for the parties.

6. I have heard the parties at length and perused the record.

7. Rule 42 of the Pension Rules, makes it clear that an employee is required to give a notice in prescribed form and submit it before the appointing authority at least one month before the date on which he wishes to retire. The proviso makes it clear that if appointing authority has not taken any decision under clause (ii) of the second proviso, within six months from the date of notice given by the employee, it shall be deemed that the appointing authority has allowed such Government servant to retire from service. In the present case, the petitioner was neither placed under suspension nor facing any disciplinary action. Thus, condition No.(i) and (ii) of Rule 42 are not applicable. The respondents have not passed any express order rejecting the prayer for voluntary retirement. Thus, it can be safely concluded that petitioner has received deemed permission from the respondents.

This view is consistently taken by this court in catena of judgments. In Dr. Kishorilal Prajapati v. State of M.P. and others, the Indore Bench has taken this view. The Gwalior Bench in **W.P. No. 952/2014 (Dr. Harendra Jaseja v. State of M.P. decided on 15.5.2014 - I.L.R (2016) M.P.-384)** has held as under :-

"(8) Before dealing with the rival contentions, it is apt to quote Rule 42 of the Rules, which reads as under :-

"42. Retirement on completion of (20/25 years) qualifying service- (1) (a) Government servant may retire at any time after completing 20 years qualifying service, by giving a notice in form 28 to the appointing authority at least one month before the date on which

he wishes to retire or on payment by him of pay and allowances for the period of one month or for the period by which the notice actually given by him falls short of one month:

Provided that this sub-rule shall not apply to the Government servants mentioned in brackets against each of the following Departments, until they have not completed 25 years qualifying service:- (a) Public Health & Family Welfare Department (Medial, Paramedical & Technical Staff);

(b) Medical Education Department (Teaching Staff, Paramedical & Technical staff):

Provided further that such Government Servant shall not be allowed to retire from service without prior permission in writing of the appointing authority under the following circumstances:-

(i) Where the Government servant is under suspension;

(ii) Where it is under consideration of the appointing authority to institute disciplinary action against the Government Servant:

Provided also that if the appointing authority has not taken the decision under clause (ii) of the second proviso, within six months from the date of notice given by the Government Servant with regard such disciplinary action it shall be deemed that the appointing authority has allowed to such Government Servant to retire from service on the date after expiry of the period of six months.

(b) The appointing authority may in the public interest require a Government Servant to retire from service at any time after he has completed 20 years qualifying service or he attains the age of 50 years whichever is earlier with the approval of the State Government by giving him three months notice in Form 29:

Provided that such Government servant may be retired forthwith and on such retirement forthwith and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rate at which he was drawing immediately before his retirement of, for the period by which such notice falls short of three months, as the case may be."

8. It is not the case of the respondents that the petitioner is either facing any disciplinary proceeding or criminal case or any such action is contemplated against him. In the text and context of the Rule 42, in my opinion, prior permission of the competent authority is required only in following circumstances:-

(i) Where the Government servant is under suspension.

(ii) where it is under consideration of the appointing authority to institute disciplinary action against the Government servant.

Even in the contingency (ii) aforesaid, the deemed permission can be presumed if within six months no action is taken."

Rule 42 otherwise nowhere prescribes that express permission is required. In other words, prior permission is not required in cases where contingencies (i) and (ii) aforesaid are not applicable. In fact, the point involved in this case is no more res integra.

9. This Court after considering judgment of Indra Prakash Bhatnagar (supra), in the case of **S.S. Nafde v. State of M.P. And others [2013 (1) MPLJ 396]**, opined as under:

"5. Once a notice is prescribed proforma is given, there is a specific bar under sub-rule (2) of Rule 42 of the Rules that the same will not be withdrawn by the Government servant without the approval of the competent authority. This is indicative of the fact that the acceptance of a notice of voluntary retirement is not required or contemplated for full operation of the said notice of voluntary retirement. If no orders are communicated in this respect or if the notice of voluntary retirement is not withdrawn before the date indicated in the said notice of voluntary retirement, it will become automatically operative from the date indicated in the notice of voluntary retirement and the Government servant would retire voluntarily from the date of his choice indicated in the aforesaid notice. For better appreciation, the findings given by this court in paragraphs 27, 28 and 29 of the report are reproduced hereunder:

"27. It is, therefore, such a statutory right, indefeasible and absolute in nature that is enshrined in clause (a) of sub-rule (i) of Rule 42 of the Civil Services (Pension) Rules, 1976.

28. The next factor is the choice of the Government servant of the date of his retirement. Now the first part of clause (a) of sub-rule (i) of Rule 42 says that a Government servant may retire at any time which falls after completing the period of 20 years qualifying service. The second part of clause (a) of sub-rule (i) of Rule 42 gives the Government servant a wide choice. He may choose to retire on the date of his notice. He may also choose to retire on the date of expiry of a period of three months, the beginning of which period is reckonable in accordance with note 2 below sub-rule (i) of Rule 42, or any date within the aforementioned period of 3 months or any date following after a period of 3 months from the date of the giving of the notice under clause (a) but in such a case understandably before the date of his superannuation.

29. Now where a Government servant chooses to retire on the date of sending of the notice under clause (a) or on a date which falls after the date of sending or on a date which falls before expiry of a period of three months, he has to make payment of pay and allowances respectively for a period of three months or for the period by which the notice period falls short of a period of three months in both cases reckoning of the beginning of the period of three months will be done in accordance with note 2, which is the second of the four Notes set out after the end of clause (b) of sub-rule (i) of Rule 42. However, even

in these two cases it is the Government servant's choice of the date of his retirement which determines the date of his retirement under clause (a)."

6. Thus, the allegation made by the petitioner that the notice of voluntary retirement was required to be accepted and then only it would become operative, cannot be accepted."

(Emphasis supplied)

10. In view of the aforesaid legal position and considering the Rule in hand, it is clear that once a notice of voluntary retirement is given indicating the particular period of time, the same will become operative from the date on completion of notice period. Admittedly, in the present case the notice was given for thirty days. In absence of any rejection within thirty days, it became effective on completion of 30th day. Thus, the petitioner shall be treated to be retired automatically from the said date.

11. The Apex Court in Tek Chand (supra) opined as under:

"There are three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category, voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules."

12. The petitioner's case is covered as per first two categories mentioned above by Supreme Court.

Third category is of those cases where permission is required under relevant rules. It is apt to mention here that in Tek Chand (supra), the Apex Court considered Rule 48A of the Rules. As per sub-rule (A) of the said Rule, the notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority. [Page 309]. Thus, it depends upon the nature of Rule whether permission is required, deemed permission can be assumed or expressed permission is a condition precedent. In the context of present Rules, it can be safely concluded that no such prior permission or acceptance is required for the reasons stated above.

13. The said judgment in Dr. Harendra Jaseja's case (supra) was unsuccessfully challenged by the State Government by filing writ appeal no.272/2014 which was dismissed on 7.10.2014. S.L.P.(c) NO. 13732/2015 of Govt. was also dismissed by the Apex Court on 13.4.2015. I am bound by the said judgment. As held in the said case, it is clear that within the stipulated time, the petitioner's application for voluntary retirement was not rejected. If it was not rejected, voluntary retirement became operative on completion of 30 days. Thus, the petitioner shall be treated to be voluntarily retired from the said date.

14. For the reasons stated above, the petition deserves to be allowed. Accordingly, it is directed that the respondents shall treat the petitioner as voluntarily retired as per his application dated 27.09.2012 and grant him all consequential benefits/ retrial dues within sixty days from the date of communication of this order.

15. Petition is allowed. No cost.