

Neutral Citation No. -2024:AHC:113094-DB

Judgement reserved:-8.7.2024

Judgement delivered:-16.7.2024

Chief Justice's Court

Case :- WRIT - A No. - 68817 of 2015

Petitioner :- Union Of India And 2 Others

Respondent :- Dr. Shiv Poojan R. Singh And Another

Counsel for Petitioner :- Saurabh Srivastava,Gyanu Shukla,Manoj Kumar Singh,Sunil

Counsel for Respondent :- Ashish Kumar Srivastava,S.C.

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Vikas Budhwar,J.

1. Impugned in the present proceedings at the instance of Union of India through its Secretary/Director General, Department of Posts India, Dak Bhawan Sansad Marg, New Delhi (In short "writ petitioner") is the order dated 4.8.2015 of the Central Administrative Tribunal, Allahabad Bench, Allahabad (In short "Tribunal") whereby the Original Application No.762 of 201 preferred by Dr. Shiv Poojan R. Singh (In short original applicant) was allowed, the orders dated 30.3.2014 and 6.5.2014 of the writ petitioners was set aside with a direction to the writ petitioners herein to treat original applicant to have deemed to be voluntarily retired w.e.f. 30.9.2023 while extending all the consequential benefits arising out of voluntarily retirement in accordance with rules within a period of three months.

2. A joint statement has been made by the counsel for the rival parties that the writ petition be decided at the admission stage as they do not propose to file further affidavits. With the consent of the parties, the Court is proceeding to decide the writ petition at the admission stage.

3. The case projected by the original applicant before the Tribunal was that he was initially inducted in the postal department on 13.1.1981 and thereafter accorded promotion as Superintendent of Post Office, Basti. In terms of Rule 48 CCS (Pension Rules), 1972, (In short Rules, 1972) the original applicant sought voluntarily retirement after satisfactorily completing 30 years of service by virtue of an application dated 26.6.2013 seeking to retire him w.e.f. 30.9.2013 (AN).

4. It is also the case of the original applicant that the said application seeking voluntarily retirement was forwarded by the Assistant Director (Staff) on behalf of Post Master General, Gorakhpur Region, Gorakhpur to Assistant Post Master General in the office of Chief Post Master General, Lucknow.

5. A communication is stated to have been issued by the A.D.P.S. on behalf of the Post Master General, Gorakhpur Region, Gorakhpur to the original applicant on 5.7.2023 acknowledging receipt of the request letter dated 26.6.2023. On 19.7.2023 a communication came to be issued by A.D.P.S. for the Post Master General, Gorakhpur Region, Gorakhpur addressed to A.P.M.G. (Staff) in the office of the Chief Post Master General, U.P. Circle, Lucknow recommending the case for voluntarily retirement in the wake of the fact that the original applicant was neither under suspension nor any disciplinary/criminal proceedings was pending against him, less to say about punishment/penalty.

6. As per the pleadings an order is stated to have been passed on 31.7.2013 on behalf of Post Master General, Gorakhpur Region, Gorakhpur whereby the original applicant, who was posted as Superintendent of Post Office, Basti was transferred as A.D.P.S. Regional Office, Gorakhpur.

7. The original applicant claims to have proceeded on medical leave due to ill health w.e.f. 1.8.2013. Subsequently on 30.9.2013 the original applicant submitted an informal charge report mentioning therein that w.e.f. 30.9.2013 he as per his request for voluntarily retirement stood voluntarily retired. Since the retiral dues were not paid to the original applicant so he claims to have preferred a request letter on 5.10.2013 followed on 21.10.2013 and 7.11.2013. Since the retiral benefits were not extended to the original applicant so he preferred Original Application No.O.A./330/161 of 2014 (Shiv Poojan R. Singh vs. Union of India and others) which came to be disposed of by the Tribunal vide order dated 6.2.2014 requiring the writ petitioners herein to decide the representation of the original applicant dated 7.11.2013 within a period of three months.

8. According to the original applicant an order is stated to have been passed on 31.3.2014 by the Post Master General, Gorakhpur Region, Gorakhpur rejecting the application of the original applicant for voluntarily retirement on the ground that already a decision has been taken on 20.9.2013 by the writ petitioners refusing the request of voluntarily retirement and further a decision has also been taken to hold

disciplinary proceedings against the original applicant. Another order is stated to have been passed on 6.5.2014 by the Assistant Director General (SGP) Government of India Ministry of Communications & IT Department of Posts (Personal Division) in compliance of the order of the Tribunal wherein the similar stand has been taken that the request of the original applicant for voluntarily retirement has been declined and he has been denuded of the post retiral benefits.

9. Challenging the orders dated 30.3.2014 and 6.5.2014 of the writ petitioners the Original Application No.762 of 2014 seeking following reliefs:-

“(i) This Hon’ble Tribunal may be pleased to quash the impugned orders dated 30.03.2014 & 06.05.2014 passed by the respondent Nos. 3 and 1, (Annexure Nos. A-1 & A-2 to the original application).

(ii) This Hon’ble Tribunal may be pleased to direct the respondents to deem the applicant retired from service on 30.09.2013 and consequently pay him all retiral dues with admissible interest thereupon.

(iii) This Hon’ble Tribunal may be pleased to direct the respondents to release the salary of the applicant for the month of August & September, 2013.

(iv) Any other relief, which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.

(v) Award the costs of the original application in favour of the applicant.”

10. On being noticed a detailed counter affidavit has been filed on behalf of respondents therein/writ petitioners herein sworn by the then Director Postal Services Gorakhpur dated 3.8.2014.

11. The Original Application came to be allowed by the Tribunal while quashing the orders dated 30.3.2014 and 6.5.2014 holding that the original applicant shall be deemed to have been voluntarily retired w.e.f. 30.9.2013 extending all consequential benefits arising out of voluntarily retirement in accordance with rules.

12. Questioning an order dated 4.8.2015 passed in Original Application No.762 of 2014 (Dr. Shiv Poojan R. Singh vs. Union of India and others), the writ petitioners herein have filed the present writ petition. This Court entertained the writ petition on 22.12.2015 while passing the following orders:-

“Shri Ashish Kumar Srivastava has entered appearance on behalf of applicant-opposite party no.1. He prays for and is granted three

weeks' time to file counter affidavit. The appellants will have one week thereafter to file rejoinder affidavit.

List this matter on 20.1.2016.

On the matter being taken up today, from the side of the appellants it has been sought to be contended that the charge sheet in question has been issued to the claimant-opposite party no.1 and the said charge sheet in question has been subjected to challenge in Original Application No.330/00944/2014 and therein on 11.8.2014 further proceedings pursuant to the charge sheet has been kept in abeyance.

The appellants' submission is that once there were two original applications moved by the opposite party no.1, then both the original applications in question ought to have been heard together as decision in one of the original application is going to affect the outcome of second original application. In the present case, the request of the appellants has not been accepted and straightaway the request of applicant-opposite party no.1 for voluntary retirement has been accepted. Petitioners submit that action taken is unjustifiable.

The matter requires consideration.

In view of this, till the next date of listing, pursuant to the order dated 4.8.2015 passed in Original Application No.762 of 2014 (Dr. Shiv Poojan R. Singh vs. Union of India and ors) no further action be taken."

13. A counter affidavit has been filed by the original applicant to which a rejoinder affidavit has been filed and as per the joint statement made by the parties, the pleadings are complete.

14. Sri Manoj Kumar Singh, learned counsel appearing for the writ petitioners have sought to argue that the order of the Tribunal cannot be sustained for a single moment. Elaborating the said submissions it has been submitted that though Rule 48 of the Rules, 1972 provides for voluntarily retirement, however, the same does not confer any unfettered right to the retiring employee/officer to insist and claim voluntarily retirement. According to him Rule 48 of the Rules, 1972 only stipulates that a retiring employee/officer can only make an application for voluntarily retirement, however, ultimate decision is to be taken by the employer. To put it otherwise, it has been contended that voluntarily retirement is not a matter of right however, the acceptance of the request

is subject to the discretion of the employer that too after consideration of various factors.

15. Submission is that in the present case at hand the original applicant though had requested for voluntarily retirement on 26.6.2013 giving the effective date to be 30.9.2013, however, prior to it on 31.7.2013 an order has been passed by the Appointing Authority being the Post Master General, Gorakhpur Region, Gorakhpur transferring him from the post of Superintendent of Post Office, Basti to A.D.P.S. (Estt.) (Mail) R.O. Gorakhpur, but the original applicant avoided joining in the transferred place and took medical leave for the obvious reasons. It is also submitted that before the effective date i.e. 30.9.2013 a decision has been taken while rejecting the application for voluntarily retirement dated 26.6.2013 on 19.9.2013 and the said order was deliberately not received by the original applicant creating a situation whereby the said order was pasted in the address registered in the office of the writ petitioners by the original applicant.

16. According to the learned counsel for the writ petitioners a decision was taken for holding departmental enquiry against the original applicant and a charge sheet has also been issued dated 10.10.2013. It is thus, contended that the decision taken by the writ petitioners rejecting the request over voluntarily retirement cannot be faulted with, the Tribunal committed manifest error of law in setting aside the said orders as payment of post retiral benefits is always subject to satisfactory service coupled with a decision taken by the employer either to accept or to reject the request for voluntarily retirement. Thus, it is prayed that the order of the Tribunal be set aside.

17. Countering the submission of the learned counsel for the petitioners, Sri Ashish Kumar Srivastava along with Sri Sunil, who appears for the original applicant have submitted that the order of the

Tribunal needs no interference in the present proceedings. According to them the case of the original applicant post completion of 30 years of service stands governed under Rule 48 Rules, 1972 according to which a government servant after completion of 30 years of service has a right to get voluntarily retired. They submit that there is no question of any discretion left at the hands of the employer, however, the application for voluntarily retirement can only be turned down in case the government servant is under suspension.

18. Submission is that neither the original applicant was placed under suspension nor any departmental proceedings was initiated against him as the charge sheet which is alleged to have been served upon the original applicant is dated 10.10.2013 much after the request for voluntarily retirement or the effective date of voluntarily retirement i.e. 30.9.2013.

19. Additionally, it has been submitted that though in the order impugned before the Tribunal shelter has been taken to the provisions contained under Rule 48A of the Rules, 1972 but in view of the specific averments contained in para 28 of the counter affidavit filed before the Tribunal, the writ petitioners have treated the case of the original applicant under Rule 48A of the Rules, 1972, thus post completion of 30 years of service the original applicant became entitled to be voluntary retired irrespective of any order of acceptance.

20. We have considered the submissions made by the learned counsel for the parties and have perused the material available on record.

21. Before delving into the tenability of the arguments of the rival parties, it would be apposite to quote the relevant statutory provisions which are germane to the controversy in question.

CCS (Pension Rules), 1972

48. Retirement on completion of 30 years' qualifying service

(1) At any time after a Government servant has completed thirty years' qualifying service -

(a) he may retire from service, or

(b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension:

Provided that -

(a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and

(b) the appointing authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice:

Provided further that where the Government servant giving notice under clause (a) of the preceding proviso is under suspension, it shall be open to the appointing authority to withhold permission to such Government servant to retire under this rule:

Provided further that the provisions of clause (a) of this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

(i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,

(ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) on a specific contract assignment to a foreign Government,

Unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(1-A)(a) A Government servant referred to in clause (a) of the first proviso to sub-rule (1) may make a request in writing to the appointing authority to accept notice of less than three months giving reasons therefor.

(b) On receipt of a request under clause (a) the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to the effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority:

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

(3) For the purpose of this rule the expression "appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant retire.

48-A. Retirement on completion of 20 years' qualifying service

(1) *At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.*

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

- (i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,*
- (ii) posted abroad in foreign based offices of the Ministries/Departments,*
- (iii) on a specific contract assignment to a foreign Government,*

Unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) *The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:*

Provided that where the appointing 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.

3-A(a) Government servant referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under Clause (a), the appointing authority subject to the provisions sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.]

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

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

(5) The pension and [retirement gratuity] of the Government servant retiring under this rule shall be based on the emoluments as defined under Rules 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(6) This rule shall not apply to a Government servant who,-

(a) retires under Rule 29, or

(b) retires from Government service for being absorbed permanently in

an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

Fundamental Rules

“56(c) Any government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years or has completed 25 years of service, whichever is earlier.”

Indian Railway Establishment Code

“1802. Premature Retirement-Retirement On Attaining Age:-

(a).....

(b) Premature Retirement On Voluntary Retirement:

(1) Any railway servant may by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years if he is in Group-A or Group-B service or post (and had entered Government service before attaining the age of 35 years) and in all other cases after he has attained the age of 55 years:

Provided that it shall be open to the appropriate authority to withhold permission to a railway servant under suspension who seeks to retire under this clause.

(2) A railway servant, referred to in sub-rule (1) may make a request in writing to the appointing authority to accept a notice of less than three months, giving reasons therefore. On receipt of a request under this sub-rule, the appointing authority may consider such request for curtailment of the period of notice of three months on merits and, if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months, on the condition that the railway servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.”

22. It is not disputed that the original applicant was posted as Superintendent of Post Office, at Basti. It is also not in dispute that on 26.6.2013, the original applicant preferred an application seeking voluntarily retirement w.e.f. 30.9.2013 before the competent authority. Parties are in agreement that a communication was issued by the A.D.P.S. for Post Master General, Gorakhpur Region, Gorakhpur addressed to Assistant Post Master General (Staff) in the office of Chief Post Master

General, Lucknow on 19.7.2023 mentioning therein that the original applicant was neither placed under suspension nor any disciplinary/criminal case was pending against him or any punishment/penalty is in currency against the original applicant.

23. The dispute arose when a transfer order came to be passed by the writ petitioners transferring the original applicant from Basti to Gorakhpur. The original applicant proceeded on medical leave and did not join the transferred post. Record reveals that the original applicant submitted an informal charge report on 30.9.2023 treating the said date to be the date of voluntarily retirement. Since the original applicant was not extended the post retiral benefits so he instituted O.A. No. 330/00161/2014, Dr. Shiv Poojan R. Singh vs. UOI & others which was disposed of on 6.2.2014 requiring the writ petitioners to address the claim of the original applicant while passing orders on the representation. Thereafter two orders are stated to have been passed, firstly on 31.3.2014 and secondly on 6.5.2014 by the writ petitioners reciting therein that the request of the original applicant for voluntarily retirement has been turned down, he is not entitled to be paid post retiral benefits and further on account of misconduct a decision has been taken to hold departmental enquiry against the original applicant. The said orders came to be challenged in O.A. No.762 of 2014 which came to be allowed on 4.8.2015 setting aside the said orders.

24. The bone of contention between the parties is whether the statutory Rules give a legal and absolute right to the government servant to seek voluntarily retirement post completion of the satisfactory qualifying period or not. There are two provisions with respect to voluntarily retirement under Chapter VII under the headings of "Regulations of Amounts of Pension".

25. Rule 48 of the Rules, 1972 talks about retirement on completion of 30 years of qualifying service, whereas Rule 48A of the Rules, 1972 provides for retirement on completion of 20 years qualifying service. Though, in the order impugned before the Tribunal, the writ petitioners had invoked Rule 48A of the Rules, 1972 but in para 28 of the counter affidavit filed by the writ petitioners before the Tribunal the following stand was taken.

“The Rule 48-A has inadvertently (been) mentioned in Director General (Posts) New Delhi letter dated 19.9.2015 instead of correct rule 48 of the CCS (Pension Rules)”.

26. Rule 48 of the Rules, 1972 stipulates that it is open for the government servant post completion of 30 years of qualifying service to retire from service. Even otherwise the appointing authority is also empowered to retire in public interest a government servant after completion of 30 years of qualifying service. The Rule further provides that the government servant shall be entitled to a retiring pension. A three months notice in writing is required for exercising the said right for voluntarily retirement. However, there is a caveat also that the right of a Government Servant for voluntarily retirement can be stalled in case the Government Servant is under suspension. As per the said Rule the period of three months notice can be curtailed by the appointing authority.

27. In contrast rule 48A of the Rules, 1972 deals with retirement on completion of 20 years of qualifying service. Sub-Rule (2) of the Rule 48A of the Rules, 1972 further provides that the notice of voluntarily retirement shall require acceptance by the appointing authority.

28. A conjoint reading of the Rules 48 and 48A of the Rules, 1972 would reveal that Rule 48 of the Rules, 1972 first of all deals with completion of 30 years of qualifying service whereas Rule 48A of the Rules, 1972 deals with retirement on completion of 20 years of qualifying service. There is a conspicuous marked difference between both the

provisions in the context that though the provision contained in Rule 48A(2) of the Rules, 1972 postulates requirement of acceptance of voluntarily retirement by appointing authority, however, the same is lacking in Rule 48. The said broad difference clinches the issue.

29. Notably, to put it otherwise Rule 48 of the Rules, 1972 gives a right to the retiring employee to claim voluntarily retirement subject to two conditions firstly, satisfactory completion of 30 years of qualifying service, secondly, the retiring employee is not under suspension. Evidently, the Rule making authority was conscious about the different categories of retiring employees and that is why two separate provisions have been engrafted.

30. Fundamental Rules 56 is also on the same line wherein post completion of the qualifying period, the Government Servant has a right to claim voluntarily appointment and there is no provision of acceptance of the request for the voluntarily retirement.

31. The three Judges Bench of the Hon'ble Apex Court in the case of **Dinesh Chandra Sangma vs. State of Assam and others (1977) 4 SCC 441** had the occasion to consider the said issue and held as under:-

“8. As is well known Government servants hold office during the pleasure of the President or the Governor, as the case may be, under Article 310 of the Constitution. However, the pleasure doctrine under Article 310 is limited by Article 311 (2). It is clear that the services of a permanent Government servant cannot be terminated except in accordance with the rules made under Article 309 subject to Article 311 (2) of the Constitution and the Fundamental Rights. It is also well-settled that even a temporary Government servant or a probationer cannot be dismissed or removed or reduced in rank except in accordance with Article 311 (2). The above doctrine of pleasure is invoked by the government in the public interest after a government servant attains the age of 50 years or has completed 25 years of service. This is constitutionally permissible as compulsory termination of service under Fundamental Right 56(b) does not amount to removal or dismissal by way of punishment. While the Government reserves its right to compulsorily retire a Government servant, even against his wish, there is a corresponding right of the Government servant under Fundamental Right 56(c) to voluntarily retire from service by

giving the Government three months' notice in writing. There is no question of acceptance of the request for voluntary retirement by the Government when the Government servant exercises his right under Fundament Right 56(c). Mr. Niren De is therefore right in conceding this position.

13. F.R 56 is one of the statutory rules which binds the Government as well as the Government servant. The condition of service which is envisaged in Rule 56(c) giving an option in absolute terms to a Government servant to voluntarily retire with three months' previous notice, after he reaches 50 years of age or has completed 25 years of service, cannot therefore be equated with a contract of employment as envisaged in Explanation 2 to Rule 119."

32. The aforesaid decision was followed in the case of **State of Haryana and others vs. S.K. Singhal (1999) 4 SCC 293** while observing:-

9. The employment of government servants is governed by rules. These rules provide a particular age as the age of superannuation. Nonetheless, the rules confer a right on the Government to compulsorily retire an employee before the age of superannuation provided the employee has reached a particular age or has completed a particular number of years of qualifying service in case it is found that his service has not been found to be satisfactory. The rules also provide that an employee who has completed the said number of years in his age or who has completed the prescribed number of years of qualifying service could give notice of, say, three months that he would voluntarily retire on the expiry of the said period of three months. Some rules are couched in language which results in an automatic retirement of the employee upon the expiry of the period specified in the employee's notice. On the other hand, certain rules in some other departments are couched in language which makes it clear that even upon expiry of the period specified in the notice, the retirement is not automatic and an express order granting permission is required and has to be communicated. The relationship of master and servant in the latter type of rules continues after the period specified in the notice till such acceptance is communicated; refusal of permission could also be communicated after 3 months and the employee continues to be in service. Cases like *Dinesh Chandra Sangma v. State of Assam*, *B.J. Shelat v. State of Gujarat* and *Union of India v. Sayed Muzaffar Mir* belong to the former category where it is held that upon the expiry of the period, the voluntary retirement takes effect automatically as no order of refusal is passed within the notice period. On the other hand *H.P. Horticultural Produce Marketing & Processing Corpn. Ltd. v. Suman Behari Sharma* belongs to the second category where the bye-laws were interpreted as not giving

an option "to retire" but only provided a limited right to "seek" retirement thereby implying the need for a consent of the employer even if the period of the notice has elapsed. We shall refer to these two categories in some detail.

13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in *Dinesh Chandra Sangma* case by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice.....

33. Reiterating the said legal position the Hon'ble Apex Court in the case of **Tek Chand vs. Dile Ram (2001) 3 SCC 290** held as under:-

"35. In our view, this judgment fully supports the contention urged on behalf of the appellant in this regard. In this judgment, it is observed that 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. In the case decided, the relevant Rule required acceptance of notice by appointing authority and the proviso to the Rule further laid down that retirement shall come into force automatically if the appointing authority did not refuse permission during the notice period. Refusal was not communicated to the respondent during the notice period and the Court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntarily retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision."

34. The *pari materia* provisions akin to Rule 48 of the Rules, 1972 being Rule 1802 (b) of Indian Railway Establishment Code came up for interpretation before the Hon'ble Apex Court in the case of **Union of India and others vs. Sayed Muzaffar Mir 1995 Supp (1) SCC 76** wherein the following was observed:-

*"5. The second aspect of the matter is that it has been held by a three-Judge Bench of this Court in *Dinesh Chandra Sangma v. State of Assam*, which has dealt with a *pari materia* provision finding place in Rule 56(c) of the Fundamental Rules, that where the government servant seeks premature retirement the same does not require any acceptance and comes into effect on the completion of the notice period. This decision was followed by another three-Judge Bench in *B.J. Shelat v. State of Gujarat*."*

35. Applying the proposition of law as culled out in the above noted judgements in the facts of the case, we find that neither on the date when the original applicant applied for voluntarily retirement i.e. 26.6.2013 nor the effective date of voluntarily retirement i.e. 30.9.2013, there was any order of appointing authority either placing the original applicant under suspension or any departmental enquiry initiated or pending. It has come on record that the departmental charge sheet has been issued on 10.10.2013 i.e. much after the effective date of voluntarily retirement.

36. As regards the contention of the writ petitioners that the original applicant became unauthorisedly absent w.e.f. 1.8.2013 subjecting to a conduct unbecoming of a Government Servant, the same would not be of much relevance inasmuch as Rule 48 of the Rules, 1972 stipulates that it is the right of the government servant to claim voluntarily retirement, however, subject to completion of 30 years of qualifying service and not placed under suspension.

37. On a pointed query being raised, the learned counsel for the writ petitioners could not dispute the fact that the original applicant has to his credit 30 years of qualifying service and he was not placed under suspension. The theory propounded by the writ petitioners that since a decision had been taken on 19.9.2013 for holding departmental proceedings against the original applicant also stands eroded particularly when the charge sheet is dated 10.10.2013 much after the effective date of voluntarily retirement.

38. In so far as the submission of learned counsel for the writ petitioners that once an Original Application No.330/00944/2014 has been instituted by the original applicant before the tribunal challenging the charge sheet dated 10.10.2013 and in the wake of the pendency of the said original application, it was not appropriate to decide the original application in isolation order whereof has been impugned in the writ

petition is concerned, the same at the first blush may appear to be attractive but the same would not hold water particularly when the cause of action and subject matter in both the original applications are distinct and different in that regard.

39. Despite repeated query being made to the learned counsel for the writ petitioners to place the provisions which gave handle to the writ petitioners/employers to withhold the retiral benefits in the wake of the explicit provision contained under Rule 48 of the Rules, 1972, nothing is forthcoming. Even otherwise, the Tribunal in the impugned judgement has considered each and every aspect of the matter and has also relied and followed the decisions of the coordinate bench of the Tribunal on the same issues.

40. Viewing the case from all angles, we do not find any manifest illegality or infirmity committed by the Tribunal so as to warrant interference in the present proceedings.

41. Resultantly, the writ petition is liable to be dismissed and is dismissed.

Order Date :- 16.7.2024
piyush

(Vikas Budhwar, J) (Arun Bhansali, CJ)