

**Court No. - 4**

**Case :-** WRIT - A No. - 9427 of 2023

**Petitioner :-**

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Medical And Health Services, U.P. Lucknow And 2 Others

**Counsel for Petitioner :-** Niraj Kumar Srivastava, Neelima Jaiswal

**Counsel for Respondent :-** C.S.C.

**Hon'ble Rajesh Singh Chauhan, J.**

1. Heard Sri Niraj Kumar Srivastava, learned counsel for the petitioner and Sri Ashwani Kumar Singh Rathaur, learned Standing Counsel for the State-opposite parties.

2. In the present case, pleadings are complete, therefore, learned counsels for the parties have requested that the matter may be heard and disposed of finally.

3. By means of this petition, the petitioner has prayed following main reliefs:-

*"i. Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 23.8.23, passed by the opposite party no.2 contained in Annexure no. 1.*

*ii. Issue a writ, order or direction in the nature of Mandamus restraining the opposite parties to give effect to the operation and implementation of the impugned orders dated 23.8.2023 contained in Annexure no.1.*

*iii. Issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to calculate the entire post retiral dues within a shortest stipulated time and to disburse the same to the petitioner immediately."*

4. This is a peculiar case where the petitioner, who is an employee and is suffering from physical and mental ailment severely, is not able to discharge her duties, therefore, she requested for voluntary retirement after completing 30 years of services. She is aged about 55 years and in view of Rule 56 of Fundamental Rules, Volume-2, Part 2 to 4 of the Financial Hand Book, she is fulfilling all required conditions to get voluntary retirement. To be more precise, the petitioner was appointed in the Department on 28.10.1992 and she was serving at Malkhan Singh District Hospital, Aligarh on the post of Head

Assistant.

5. Attention has been drawn by the learned counsel for the petitioner towards Annexure No.2 of the writ petition, which is a Medical Certificate issued from Mother's Institute of Neuro - Psychiatric Disorders (MIND), E-106, Sector-41, Noida (UP), which reads as under:-

"MEDICAL CERTIFICATE

Date-28 May, 2023

This is to certify that Mr. , W/o Sh. Arvind Singh is receiving treatment from our clinic from 04 April 2016 onwards to till date. she has been severely depressed with seven anxiety neurosis. Despite medication and psychologist therapies, she is not fully recovered and still needs someone along with her for any work. She is advised to take long rest along the ongoing medicines for an early and better amelioration of her symptoms.

28.05.2023"

6. Further attention has been drawn towards the prescription of the Orthopedic Surgeon dated 25.05.2023, which reads as under:-

"Certified that I have been treating Ms , whose signatures are attested below, since 2015, for various Orthopedic issues, chiefly being PROGRESSIVE CERVICAL SPONDYLOSIS WITH CERVICAL SLIP DISC CAUSING SEVERE LEFT SIDED RADICULOPATHY with SUSPECTED INFLAMMATORY ARTHRITIS which causes RECURRENT MULTIPLE JOINT PAINS.

Based on this I recommend that she should not indulge in following activities.

1. Prolonged sitting.
2. Prolonged desk work / writing work.
3. Traveling.
4. Household work.

Being progressive in nature, her medical condition is unlikely to improve."

7. In the light of aforesaid compelling medical circumstances, the petitioner preferred a representation dated 30.05.2023 to the Director (Administration), Medical and Health Services, U.P., Lucknow (Annexure No.4) and again on 31.07.2023 to the same authority (Annexure No.5) apprising her physical and mental condition seeking voluntary retirement indicating therein that she is fulfilling all the requisite conditions to get the

voluntary retirement. She has preferred a reminder representation through registered post on 22.08.2023 (Annexure No.6).

8. Further attention has been drawn towards Annexure No.7 of the writ petition, which is a case law of the Apex Court laid down in the case of **Manjushree Pathak v. Assam Industrial Development Corpn. Ltd. and Others, (2000) 7 SCC 390**, referring para-16 thereof, which reads as under:-

*"16. The Division Bench of the High Court has failed to see that the Scheme conferred discretion on the Corporation under clause 8.1 coupled with the duty to act judiciously when application for voluntary retirement was made by an employee. The said clause did not confer any unfettered discretion upon the Corporation to refuse the benefit of the Scheme to any employee, being an authority coming within the meaning of Article 12 of the Constitution. It was not open to the Managing Director of the respondent Corporation to act on extraneous consideration by issuing a show-cause notice dated 15-2-1996/16-2-1996 so as to deprive the appellant of the benefit flowing from acceptance of her voluntary retirement. It is true that under clause 8.1 of the Scheme, discretion was available to the respondent Corporation but that discretion was not absolute. It was circumscribed by the terms mentioned in the said clause and it was to be exercised judiciously. In the case on hand the Managing Director of the Corporation has failed to act reasonably and fairly. He abdicated his duty by not exercising discretion at all in the light of the facts and circumstances of the case stated above in sufficient detail."*

9. Learned counsel for the petitioner has stated that despite the aforesaid critical physical and mental condition of the petitioner and also despite the fact that she was fulfilling all the requisite conditions to get the voluntary retirement, her request has been turned down by the competent authority vide impugned order dated 23.08.2023 only for the reason that since there is scarcity of the employees in Group-C clerical cadre, therefore, she may not be granted voluntary retirement.

10. Learned counsel for the petitioner and learned Standing Counsel are agreed on the point that the competent authority is having jurisdiction to turn down such application of an employee inasmuch as this is the prerogative of the employer to accept the application for voluntary retirement or to turn down the same and if the reason to turn down such application is valid and legal, the same should not be interfered in the routine manner.

11. However, in view of the present facts and circumstances of the issue in question, if the petitioner is compelled to discharge her duties, she may suffer irreparable loss and injury, which cannot be compensated in terms of money inasmuch as on account of suffering from severe depression with seven anxiety

neurosis and she is taking heavy medication regarding mental ailment as well as she is not able for prolonged sitting or prolonged desk work/ writing work as per the specific opinion of the Orthopedic Surgeon, her life may be endangered, in that way, her Fundamental Right enshrined under Article 21 of the Constitution of India would be violated. Every citizen of the country is having Fundamental Right to life and personal liberty and that right to life may not be violated without having any cogent and proper reason.

12. The reason so indicated by the employer is not proper in the case of the present petitioner to the effect that if the Department is not having proper employees and the petitioner is compelled to discharge her duties in such critical medical condition, she may likely to loose her life or she may likely to cause damage to herself. This is not a case where the petitioner has applied for voluntary retirement in a casual manner only after completing the requisite term of service and attaining the age but it appears that her application for seeking voluntary retirement has been filed under serious compelling circumstances. Therefore, the reason so indicated in the impugned order suffers from perversity, arbitrariness and given without proper application of mind.

13. Accordingly, this writ petition is **allowed**. The order dated 23.08.2023 passed by opposite party no.2, contained in Annexure no.1 to the writ petition, is set aside/ quashed.

14. Opposite party no.2 i.e. Director (Administration), Medical and Health Services, U.P., Lucknow is directed to pass a fresh order, strictly in accordance with law, considering the medical and physical ailment of the petitioner and also in the light of the observation so given herein-above. After passing the appropriate order, consequential order shall be passed by the opposite party no.2 forthwith, preferably within a period of four weeks from the date of receipt of certified copy of this order and the petitioner shall be paid all post retiral dues/ benefits strictly in accordance with law.

15. No order as to costs.

**[Rajesh Singh Chauhan,J.]**

**Order Date :- 12.7.2024**  
RBS/-