

PETITIONER:
STATE OF HARYANA & ORS.

Vs.

RESPONDENT:
S.K.SINGHAL

DATE OF JUDGMENT: 16/04/1999

BENCH:
M.Jagannadha Rao, S.N.Phukan

JUDGMENT:

JUDGEMENT
M.Jagannadha Rao.J.

Leave granted.

The appellant, State of Haryana has filed this appeal against the Judgment of the High Court of Punjab & Haryana in C.W.P. No. 675 of 1996 dated 12.9.1997. By that Judgment, the High Court allowed the writ petition filed by the respondent and quashed the order dated 13.12.95 of the Civil Surgeon. The Civil Surgeon in his order stated that the respondent-writ petitioner could not be deemed to have retired voluntarily w.e.f. 16.11.95 pursuant to his notice dated 16.8.1995. The respondent had claimed that by virtue of the proviso to sub-clause (2) of Rule 5.32.B of the Punjab Civil Service Rules (Vol.II), he must be deemed to have retired on the expiry of three months of notice issued after completion of 20 years qualifying service.

The facts of the case are as follows. The respondent joined service on 4.6.75. Which he was working as Medical Officer, Civil Hospital Kaithal, the respondent was transferred on 8.8.1995 as Medical Officer, Primary Health Centre Kharak Ramji, District Jind. The respondent joined at Jind on 16.8.95 and on the same date (i.e. 16.8.95), he issued a notice seeding voluntary retirement, and the letter was addressed to the Commissioner and Secretary, Health Department, Haryana, Chandigarh. He sent an advance copy to the Commissioner Secretary and presented the application to his departmental head, Civil Surgeon, Jind. There was no response from the concerned authorities till 16.11.1995. Government stated in its counter filed in the High Court that the respondent was not allowed to retire w.e.f. 16.11.1995. "as he was absent from duty and he did not perform his duties during the period of 3 months notice". Long after the expiry of 3 months on 16.11.1995, a telegram was sent on 5.12.95 asking the respondent to join duty. It was the case of the respondent that his retirement was automatic on expiry of 3 months and that in any event, there was no truth in the allegation that he did not perform his duties in those 3 months. He pointed out that he wrote in the movement register on 1.9.95 at 11 a.m. that he was going to meet the Senior Medical Officer (SMO) incharge of Primary Health Centre, Kharak Ramji, Dr.Khazan Singh and had placed a copy of the station leave in the Movement Register, that he took the second copy with himself to seek permission but at Jind, Dr. Dhazan Singh was not available because on

that day, the Govt. had declared 1st and 2nd Sept. 1995 as holidays on account of the assassination of the Chief Minister, Sri Beant Singh. On 4.9.95, the respondent had to give evidence in the Kaithal Court. (He had started from Kaithal on 1.9.95 itself). Thereafter, he had to give evidence in another Court on 6.9.95 and he could not go to Kharak Ramji to meet the SMO. Unfortunately, on 5.10.95, there were floods and the roads reaching to Jind were blocked. He sent a letter dated 7.9.95 to the Civil Surgeon, Jind from Kaithal informing him that due to floods he was unable to report at his head quarters and that he would be able to do so only after the floods receded and transport services were restored. The respondent obtained certificates from the Courts regarding his attendance at those Courts. He met the SMO and requested that his salary bill could be forwarded. The SMO said that the respondent could not join without permission of the Director and without explaining his absence to the Civil Surgeon. These facts were put on record in a separate letter dated 6.10.95 from Kaithal to the Director seeking permission to join duty at PHC, Kharak Ramji. He had to stay at Kaithal from 7 to 10th due to floods, then he attended Court at Kaithal from 11 to 14th Sept. 1995, continued to stay at Kaithal due to floods from 15 to 17th Sept. 1995. Then 23rd to 25th were Gazetted holidays (24th was Sunday). The floods continued and there was no transport. He attended Court again from 27th to 29th Sept. and had to stay at Kaithal on 30.9.95 due to floods. 1st Oct. was a Sunday, 2nd and 3rd Oct. were gazetted holidays. Respondent approached the SMO Kharak Ramji on 3.10.95 evening. The latter asked the respondent to see the Civil Surgeon, Jind. The respondent gave a letter on 4.10.95 (duly forwarded by the SMO) narrating the above facts and soliciting permission to join duty w.e.f. 4.10.95 & seeking salary from Sept. 95. The Civil Surgeon addressed a letter to the Director on 4.10.95 seeking the letter's approval for the respondent joining. The respondent sent a further letter to the Director on 6.10.95 giving the above facts and sought permission to join. No reply was received. Respondent attended the Criminal Court on 6, 12, 14, 18, 20, 27, 30.10.95, 9, 14, 21, 23.11.95 for giving evidence as certified by the Court. For the first time he received a letter dated 16.11.95 from the Civil Surgeon, Jind that the respondent should join after

"Rule 5.32 (B):

(1) At any time a Govt. employee 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. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months given reason therefor. On receipt of a request, 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 of three months.

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

authority subject to rule 2.2. of pb.
C.S.R. Vol. II:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub rule (1) supra, the retirement shall become effective from the date of expiry of the said period:

Provided further that before a Govt. employee gives notice of voluntary retirement with reference to sub-rule (1) he should satisfy himself by means of a reference to the appropriate authority that he has in fact, completed twenty years service qualifying for pension."

Rule 2.2 (a) of the Punjab Civil Service Regulation (Vol.II) referred to in Rule 5.32(b)(2) reads as follows : approval by the Director. According to the respondent, in view of the above facts, the allegation that he was not on duty after 16.8.95 was not correct. No letter was received from the Commissioner and Secretary to Govt. before 16.11.95.

In the meantime, the 3 months period was over on 16.11.95. The respondent sent a letter on 23.11.95 to the Commissioner/Secretary, Health narrating the above facts and requested to treat him as retired w.e.f. 16.11.95 & pay him salary for Sept., Oct. and upto 16.11.95 in November and grant him retrial benefits. On 29.11.;95 a telegram was sent by the appellant (received by respondent on 30.11.95) requesting him to join at kharak Ramji at once. The respondent sent a reply dated 2.12.95 to the Civil Surgeon, Jind stating that he stood retired w.e.f. 16.11.95 and so there was no question of his joining.

It is in the light of the above facts that it has to be considered if the respondent must be deemed to have retired. That is the crucial question. Question also arises whether the allegation that the respondent was "not attending to duties" after notice was relevant and could be a valid ground for refusing to permit the voluntary retirement coming into force under Rule 5.32 (B).

The said rule 5.32 (B) of the Punjab Civil Service Rules, (Vol.2) reads as follows :

"Rule 2.2 (a) Future good conduct is an implied condition of every grant of a pension. The (appointing authority) reserve to itself the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct. The decision of the (appointing authority) on any question of withholding or withdrawing the whole or any part of pension under this rule shall be final and conclusive."

It will be noticed that under Rule 5.32 B, a government employee who has completed 20 years of qualifying

service may, by giving notice of not less than 3 months in writing to the appointing authority, retire from service. There is provision for requesting for relaxation of the notice period of 3 months and for consideration thereof. As to what the appointing authority is to do is governed squarely by sub-clause (2). That sub-clause states that the notice of voluntary retirement given under sub-clause (1) "shall" require acceptance by the appointing authority subject to Rule 2.2 of the Punjab Civil Service Regulation (Vol.II). Acceptance of the request is subject to Rule 2.2 of the Rules. But the proviso to sub-clause (2) of Rule 5.32B states that if the permission to retire is not refused within the period specified in sub-clause (1) the retirement shall become effective from the date of expiry of the period. Therefore, it is clear that if a person has completed 20 years qualifying service and has given a notice under rule 5.32B of 3 months (or if his request for relaxation of 3 months is accepted), then the request "shall" be accepted subject to invoking the provision of Rule 2.2 of the Punjab Civil Service Regulation (Vol.II). Under Rule 2.2, the "future good conduct" of an employee is an implied condition of every grant of pension. In other words, what all it means is that even if the acceptance of the voluntary retirement is mandatory, there is an obligation cast on the retired employee to maintain good conduct after such retirement. The words "future good conduct" mean good conduct after retirement. If the employee does not continue to maintain good conduct after retirement, then the govt. can withhold or withdraw the pension or a part of it in case he is convicted of serious crime or in case he be guilty of grave misconduct. Such decision to withhold or withdraw the whole or part of pension would be final and conclusive, that is to say, so far as the governmental hierarchy is concerned. It will be noticed that Rule 2.2 does not obstruct the voluntary retirement to come into force automatically on expiry of 3 months and it only enables withdrawal or withholding of pension subject to certain conditions, to a retired employee.

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 Govt. 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 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 vs. State of Gujarat & Others 1978 (2) SCC 202; and Union of India & Others vs. Sayed Muzaffar Mir 1995 Supp. (1) SCC 76 belong to the former category where it is held that upon 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 HPMC vs. Suman Behari Sharma 1996 (4) SCC 584 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.

In Dinesh Chandra Sangma's case 1977 (4) SCC 441, this Court was dealing with F.R. 56 (c) as it stood then. The Court pointed out that FR 56(b) and FR 56(c) referred to rights respectively conferred on the State and on the employee. FR 56(b) conferred a right on government to compulsorily retire an employee in public interest by giving him notice of not less than 3 months in writing or 3 months pay and allowances in lieu of such notice, after he attained 50 years of age or had completed 25 years of service, whichever was earlier. Correspondingly FR, 56(c) stated as follows :

"FR 56(c): Any Govt. 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.

It was held by the three Judge Bench that it was clear that effect of FR 56(c) was statutory unlike in the case of contracts of employment requiring an express order of acceptance of the retirement notice. It was stated (p.445):

"There was no question of acceptance of the request for voluntary retirement by the Govt. when the Govt. servant exercises his right under FR 56(c)."

It was again stated (p.447):

"FR 56 is one of the statutory rules which binds the Govt. as well as the Govt. Servant. The condition of service which is envisaged in Rule 56(c) giving an option in absolute terms to a Govt. 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."

and at (p.447-448) as follows:

"The appellant has voluntarily retired by three months' notice, not in accordance with an express or implied term of his contract of

employment, but in pursuance of a statutory rule."

Another three Judge Bench in B.J.Shelat's case 1978 (2) SCC 202 was dealing with Rule 161 (2)(i) of the Bombay Civil Service Rules which contained a proviso similar to the proviso (b) or FR 56(K) to the effect that "it shall be open to the appointing authority to withhold permission to retire to a Govt. servant who is under suspension, or against whom departmental proceedings are pending or contemplated, and who seeks to retire under this sub-clause". It was noticed that no suspension was in force and no departmental proceedings were pending but on facts, it could be said that a departmental proceeding was noticed that no suspension was in force and no departmental proceedings were pending but, on facts, it could be said that a departmental proceeding was under contemplation. However, on a reading of the Rule and the proviso, it was held that inasmuch as no order refusing permission was passed or communicated within the notice period, the voluntary retirement took effect automatically. The Court observed that this result followed even though the right to retire conferred on the employee was not as absolute as in Dinesh Chandra Sangma's case but was a qualified right. The Court held (p.205) as follows:

"A right is conferred on the Govt. Servant under Rule 161(2)(ii) to retire by giving not less than three months; notice on his attaining the prescribed age. Such a right is subject to the proviso which is incorporated to the sub-section which reads as follows

But for the proviso, a Govt. servant would be at liberty to retire by giving not less than three months' notice in writing to the appointing authority on attaining a prescribed age. this position has been made clear by this Court in Dinesh Chandra Sangam vs. State of Assam 1977 (4) SCC 441 where the Court was considering the effect of the (Assam) Fundamental Rule 56(c)"

The Court further stated (p.206) :

"But for the proviso to Rule 161(2)(ii), the decision of this Court in the case Cited above would be applicable and the right would have been absolute. But the proviso has restricted the right conferred on the Govt. servant Thus the permission to retire can be withheld by the appointing authority either when the Govt. servant is under suspension or against whom departmental proceedings are pending or contemplated.....No departmental proceeding was pending but on the facts, one cannot say that a proceeding was not under contemplation."

Having stated that the right conferred on the government servant was not absolute but conditional and that one of the conditions, namely, that departmental proceedings were contemplated, was in existence which could have been taken advantage of by the Govt. the Court held (p.207) as

follows:

"In the case before us it is incumbent on the appointing authority to withhold permission to retire on one of the conditions mentioned in the proviso. We are of the opinion that the proviso contemplates a positive action by the appointing authority."

and it was finally declared (p.207):

:For the proviso to become operative, it is necessary that the government should not only take a decision but communicate it to the govt. servant admittedly the order of suspension was not communicated before the date of superannuation".

And explaining the inditical proviso in the proviso (b) to FR 56(k), this Court again reiterated that (p.208) :

"It is incumbent on the govt. to communicate to the government servant its decision to withhold permission to retire on one of the grounds specified in the proviso."

It was further made clear that the appointing authority

"has no jurisdiction to take disciplinary action against a government servant who had effectively retired."

It was held (p.209) that :

"disciplinary action cannot be taken after the date off retirement

Therefore, it was necessary to communicate the decision of refusal of permission before the expiry of the notice period.

The third case which falls in the first category is the one in Union of India & Others vs. Sayed Muzaffar Mir 1995 Supp. (1) SCC 76 decided by a Bench of two learned Judges. In this case, the above-said two rulings were followed. The case arose under Rule 1802 (b)(1) of the Railway Establishment Code. In that case, the respondent had given a notice on 22.7.85 of 3 months to the Railways to retire from service as visualised by Rule 1802(b). The period expired on 21.10.1985 and the order of removal was passed on 4.11.1985. The proviso to the Rule permitted withholding of permission to retire in case the employee was under suspension. As a fact, the employee was under suspension at the relevant time and this could have been taken advantage of by the govt. In fact, Rule 1801(d) which started with a non-obstante clause, stated that the competent authority might require a railway servant under suspension to continue his service beyond the date of his retirement in which case he shall not be permitted by that authority to retire from service and shall be retained in service till such time as required by that authority. It was held that even though the officer was under suspension and the request for retirement could be denied, still an

order withholding such permission or requiring him to continue was required to be passed. It was "admitted" that no such order was passed. Therefore, it was held that the employer had not exercised a right given to it under Rule 1801(d). The Court further observed that in Dinesh Chandra Sangma's case 1977 (4) SCC 441 it was held that "the same does not require acceptance and comes into effect on the completion of the notice period" and that decision was followed in B.J.Shelat's case 1978 (2) SCC 202. The Court finally held :

"The period of notice in the present case having expired on 21.10.1985, and the first order of removal having been passed on 4.11.1985, we held that the Tribunal had rightly come to the conclusion that the order of removal was non-est in the eye of law."

Thus from the aforesaid three decisions it is clear that if the right to voluntarily retirement is conferred in absolute terms as in Dinesh Chandra Sangma's case by the relevant rules and there is no provision in Rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J.Shelat's case and as in Sayed Muzaffar Mir's case, the concerned authority is empowered to withhold permission to retire if certain conditions exist, viz. in case the employee is under suspension or in case a departmental inquiry is pending or is contemplated, the mere pendency of the suspension or departmental inquiry or its contemplation does not result in the notice of voluntary retirement not coming into effect on expiry of the period specified. What is further needed is that the concerned authority must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J.Shelat's case and in Sayed Muzaffar Mir's case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.

Before referring to the second category of cases where the rules require a positive acceptance of the notice of voluntary retirement and communication thereof, it is necessary to refer to the decision of this Court in Dr. Baljit Singh vs. State of Haryana 1997 (1) SCC 754 strongly relied upon by the learned counsel for the appellants and to Power Finance Corporation Ltd. vs. Pramod Kumar Bhatia 1997 (4) SCC 280. the format case arose under Rule 5.32(b) of the Punjab Civil Service Rules. That rule extracted earlier contains an express provision in the proviso to sub-section (2) that the retirement takes effect automatically if refusal is not communicated within 3 months. In that case, when the employee gave notice for voluntary retirement on 20.9./1993, criminal cases were pending against him. After expiry of 3 months, on 25.2.1994, the competent authority declined to accept the notice. A two Judge Bench of this Court, however, held that the voluntary retirement did not come about automatically on the expiry of the notice period but that it could take effect only upon acceptance of the notice by govt. and that the acceptance must also be communicated and till then the

jural relationship of master and servant continues. This Court referred only to the decision of the two Judge Bench in Sayed Mazaffar Mir's case 1995 Supp. (1) SCC 76 and stated that case was to be confined to its own facts. The two Judge Bench of this Court in Dr. Baljit Singh's case 1997 (1) SCC 754 did not notice that there were two three Judge Bench cases in Dinesh Chandra Sangma and Shelat taking the view under similar rules that a positive order was to be passed within the notice period withholding permission to retire and that the said order was also to be communicated to the employee during the said period. By stating that an order of acceptance of the notice was necessary and that the said acceptance must be communicated to the employee and till that was done the jural relationship continued and there was no automatic snapping thereof on expiry of 3 months period, the Two three Judge Bench cases which were not brought to its notice. In the above circumstances, we follow the two three Judge Bench cases for deciding the case before us.

Learned counsel for the appellant also relied on a two Judge Bench decision in Power Finance Corporation Ltd. vs. Pramod Kumar Bhatia 1997 (4) SCC 280. That was a case where the letter of voluntary retirement was conditionally accepted subject to payment of dues and the employee wrote a further letter seeding adjustment thereof but before that was done the scheme itself was withdrawn. There are again some observations made to the effect that there must be acceptance of request to retire and that it must be communicated. Neither Dinesh Chandra Sangma nor Shelat was referred to. In our opinion, the express provision in the proviso to sub-rule 2 of Rule 5.32B in the case before us does not permit such a view to be taken. The said observations again run contrary to the decision in the two three Judge Bench cases referred to above. Our comments on Baljit Singh apply equally to this case, so far as the observations are concerned.

We then come to the second category of cases where the rules require that an order of acceptance of notice be passed to make the voluntary retirement effective. In H.P.M.C. vs. Suman Behari Sharma 1996 (4) SCC 584, it will be noticed, the principle in Dinesh Chandra Sangma's case was accepted but the case was distinguished on the ground that the Bye-law 3.8(2) in HPMC case provided differently and that under that Bye law an employee could be permitted at his request to retire on completion of 25 years service or 50 years of age. Sub-para (5) of Bye-law 3.8 stated as follows:

"(5) : Notwithstanding the provision under para (2) above, the Corporation employees who have a satisfactory service record of 20 years may also seek retirement from the service of the corporation after giving three months' notice in writing to the appropriate authority. Persons under suspensions would not be retired under this clause unless proceedings of the case against them are finalised ...".

While Sub-clause (2) speaks of 25 years service, sub-clause (5) speaks of 20 years service.

The employee applied on 26.11.1990 for voluntary retirement effective from 30.11.1990 and also requested for

waiver of notice of 3 months. He did not report to duty right from 1.12.1990. Earlier on 12.12.1989, a charge sheet was issued against him for certain acts of misconduct. On 26.12.1990 he filed a reply to the chargesheet. On 22.8.1992 another chargesheet was served for unauthorised absence and one more on 18.9.1992. On 30.9.1992 he approached the Tribunal contending that he stood retired on expiry of 3 months from notice, w.e.f. 26.2.1990. The Tribunal accepted the said plea. Reversing the order of the Tribunal, this Court held while distinguishing Dinesh Chandra Sangma's case and other similar High Court Judgements, that clause (2) of the Bye law merely gave a right to make a request and the request would become effective only if permitted. Under clause (2) of the Bye law, it was a 'right to a request' and not 'a right to retire'. If the request was not accepted and permission was not granted, the employee could not claim that there was an automatic retirement on expiry of the period. Even under sub-clause (5) while it was true that there was a non-obstante clause, it was only an exception to clause (2) to a limited extent i.e. completion of 20 years satisfactory service [rather than 25 under clause (2)] but the grant of 'permission' to the request seeking retirement was necessary even under the sub-clause (5) and was not dispensed with. If under clause (2) a person who had put in 25 years had to seek to retire and had to be 'permitted to retire', a person with only 20 years service under clause (5) could not have been placed on a better footing it was held. The Court emphasised (p.588-589):

"The words 'seek retirement' in para 5 indicate that the right which is conferred by it is not the right to retire but a right to ask for retirement. The word 'seek' implies a request by the employee and corresponding acceptance or permission by HPMC. Therefore, there cannot be automatic retirement or snapping of service relationship on expiry of three months period."

On that basis, it was held that though the rejection of the request was not communicated within the notice period, there was no automatic retirement. There are no such provisions in the case before us.

In the case before us sub-clause (1) of Rule 5.32B contemplates a 'notice to retire' and not a request seeking permission to retire. The further "request" contemplated by the sub-section is only for seeking exemption from the 3 months period. The proviso to sub-clause (2) makes a positive provision that "where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the said period. The case before us stands on a stronger footing than Dinesh Chandra Sangma's case so far as the employee is concerned. As already stated Rule 2.2 of Punjab Civil Service Rules Vol.II only deals with a situation of withholding or withdrawing pension to a person who has already retired.

For the aforesaid reasons, we follow the two three Judge judgments in Dinesh Chandra Sangma and B.J.Shelat and the two judgment in Sayed Muzaffar Mir's case in preference

to the two Judge judgment in Dr. Baljit singh's case.

So far as the plea of the State in regard to absence from duty during the notice period is concerned, the High Court has shown that it is unsupportable on facts. In any event, in view of the express provision in the proviso to sub-rule (2) of Rule 5.32B referred to above requiring communication of rejection within the notice period, the said allegations of absence even if true, cannot help the State.

For the aforesaid reasons the appeal preferred by the State is dismissed but in the circumstances without costs. The order of the High Court will be implemented within 3 months from the receipt of this order.

JUDIS