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WP-23249-2021

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

ON THE 14<sup>th</sup> OF JULY, 2025WRIT PETITION No. 23249 of 2021*SHAHZAD KHAN**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Mr. Anil Kumar Mishra and Mr. Akram Khan - Advocate for the petitioner.

Mr. Brij Mohan Patel - GA for the State.

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ORDER

The petitioner has filed this petition under Article 226 of the Constitution of India challenging the order, dated 22.09.2021, whereby his application for voluntary retirement was accepted by the respondents. He has also challenged the order dated 18.11.2021, whereby his application for withdrawal of voluntary retirement application was rejected by the respondents.

2. The facts necessary for decision of this case are that the petitioner was initially appointed as Constable (GD) on 15.11.1979. He was promoted on the post of Head Constable in the year 2012 and at the relevant time, he was working in 5th Battalion, S.A.F., Morena. From the records, it appears that the petitioner was facing certain family problems relating to health issues of his wife who is stated to have suffered paralysis. While he was facing



these difficulties, the petitioner was sent on deputation for a period of two years to Madhya Pradesh State Industrial Security Force, Bina, vide order dated 18.08.2021 (Annexure P-3). The petitioner requested the respondents for reconsideration of his deputation, however, the same was not reconsidered and on the contrary he was relieved on 03.09.2021 for submitting his joining on the post of deputation.

3. Having failed to cope up with the adverse conditions, the petitioner submitted an application on 01.09.2021 (Annexure P-1) seeking voluntary retirement from service w.e.f. 30.11.2021. Thereafter, pursuant to the order of deputation, he joined at S.I.S.F. at Bina on 03.09.2021. The respondent no.3, thereafter, accepted the application for voluntary retirement on 22.09.2021 (Annexure P-5) and directed that the petitioner shall retire from service w.e.f. 30.11.2021. As a result of acceptance of his application for voluntary retirement, the petitioner was repatriated to his original post at 5th Battalion, S.A.F., Morena vide order dated 29.09.2021 (Annexure P-6).

4. The petitioner, thereafter, submitted an application on 13.10.2021 (Annexure P-7) whereby he requested for withdrawal of his application for voluntary retirement. When no action was taken on his application, he approached this Court by filing the present petition, wherein this Court passed the interim order on 24.11.2021, staying the operation of the order, dated 22.09.2021, (Annexure P-5 & P-6). Consequently, the petitioner continued to work and stood retired on attaining the age of superannuation w.e.f. 30.11.2023. During the pendency of this petition, the respondents rejected the petitioner's application for withdrawal of his voluntary



retirement request vide order dated 18.11.2021, (Annexure P/8) which has been challenged by the petitioner in this petition by way of amendment.

5. The learned counsel for the petitioner submitted that because of his family problems as also because of non-cooperative attitude of the respondents, the petitioner was constrained to submit the application for voluntary retirement. Looking to the facts and circumstances of the case, it cannot be said that the request for voluntary retirement was willful. He further submitted that the petitioner requested for voluntary retirement w.e.f. 30.11.2021. The respondent no.3 also accepted his requested w.e.f. 30.11.2021. Therefore, before the effective date, the petitioner was well within his rights to withdraw the application for voluntary retirement. Therefore, action of the respondents in rejecting the application for withdrawal of the application for voluntary retirement vide order, dated 18.11.2021, is illegal. The learned counsel further submitted that pursuant to the interim order passed by this Court on 24.11.2021, the petitioner continued and retired from service on attaining the age of superannuation on 30.11.2023. Therefore, at this stage he should not be directed to be voluntarily retired. He also submitted that because of pendency of this petition, his retiral dues have not been settled so far by the respondents. He, therefore, prays for setting aside of the impugned orders and a direction to the respondents to settle his retiral dues.

6. On the other hand, the learned Government Advocate supported the impugned order and submitted that the petitioner willfully submitted the application for voluntary retirement. He was advised by respondent



authorities to reconsider his decision for voluntary retirement. Thereafter, vide his application dated 30.09.2021, (Annexure R-1) the petitioner reiterated the request for voluntary retirement. He thus submitted that the petitioner willfully requested for voluntary retirement which was rightly accepted by respondent no.3 vide order dated 22.09.2021. He submitted that the allegation of the petitioner that the request for voluntary retirement was not willful, is incorrect and unacceptable. The leaned counsel for the respondents further submitted that since the application for voluntary retirement was already accepted vide order, dated 22.09.2021, the petitioner's request for its withdrawal is not permissible in law. The respondents counsel relied upon Rule 42(2) of M.P. Civil Services (Pension) Rules, 1976, and submitted that the withdrawal of request for voluntary retirement is not permissible without the approval of the competent authority. He, therefore, submitted that the order dated 18.11.2021, whereby petitioner's request for withdrawal of request for voluntary retirement was rejected, is legal and valid and does not warrant any interference by this Court.

7. Considered the arguments and perused the record.

8. The law with regard to voluntary retirement and withdrawal of request for voluntary retirement is well settled. The Apex Court considered this issue in the case of **J.N. Srivastava Vs. Union of India & another** reported in (1998)9 SCC 559. In somewhat similar circumstances, the Apex Court held in para - 3 as under :

"The short question is whether the appellant was entitled to withdraw his voluntary retirement notice of three months submitted by him on 3-10-1989 which was to come into effect



from 31-1-1990. It is true that this proposal was accepted by the authorities on 2-11-1989. But thereafter before 31-1-1990 was reached, the appellant wrote a letter to withdraw his voluntary retirement proposal. This letter is dated 11-12-1989. The said request permitting him to withdraw the voluntary retirement proposal was not accepted by the respondents by communication dated 26-12-1989. The appellant, therefore, went to the Tribunal but the Tribunal gave him no relief and took the view that the voluntary retirement had come into force on 31-1-1990 and the appellant had given up the charge of the post as per his memo relinquishing the charge and consequently, he was estopped from withdrawing his voluntary retirement notice. In our view the said reasoning of the Tribunal cannot be sustained on the facts of the case. It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta v. Union of India, 1987 Supp SCC 228. In view of the aforesaid decision of this Court it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31-1-1990...."

9. Keeping in view the aforesaid legal position, if the facts of the present case are seen, it is evident that the petitioner requested for voluntary retirement to be effective from 30.11.2021. Thus, he had a right to withdraw the application for voluntary retirement before the said date. It is not in dispute that the petitioner submitted application for withdrawal of his application for voluntary retirement on 13.10.2021 i.e. prior to the effective date. Thus, in view of the aforesaid legal position settled by the Apex Court in the case of **J.N. Srivastava (supra)**, the petitioner was well within his rights



to withdraw his request for withdrawal of his voluntary retirement.

10. The respondents' counsel next submitted that once the application for voluntary retirement was accepted, the petitioner was precluded from withdrawing the same in view of specific provisions of Rule 42(2) of Pension Rules. To consider this argument, the provisions of Rule 42(2) & (3) of Pension Rules needs to be considered. Sub-rule (2) & (3) of Rule 42 of Pension Rules reads as under:

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

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

(3) Where the notice of retirement has been served by appointing authority on the Government servant, it may be withdrawn, if so desired for adequate reasons, provided that the Government servant concerned is agreeable.

11. Reading sub-rule (2), it is evident that the withdrawal of request for voluntary retirement is not wholly prohibited. Rather, it can be withdrawn with the specific approval of competent authority. It is also a condition for such consideration that the request for withdrawal is made prior to intended date of retirement. The language used in sub-rule 2 is "...except with the specific approval of such authority *on consideration of the circumstances of the case to withdraw the notice given by him*" which makes



it clear that the competent authority while considering the request for withdrawal of voluntary retirement, is required to consider the reasons assigned for such withdrawal. In the instant case, admittedly the petitioner made application for withdrawal of his request for voluntary retirement on 13.10.2021 which was much prior to intended date of retirement *viz.* 30.11.2021. In his application, he stated that he has two left for retirement and he has rendered 42 years of service and he wish to further serve the department and, therefore, he wants to withdraw his application for withdrawal of voluntary retirement. However, if the impugned order, dated 18.11.2021, is seen, it is gathered that the request for withdrawal was rejected on the ground that the petitioner was earlier given sufficient time to reconsider his request and still he reiterated his request for voluntary retirement. Thus, what the respondents have considered are the facts prevailing on the date of making application for voluntary retirement and not the reasons assigned for withdrawal of such request.

12. As discussed above, an employee has a right to withdraw his request for voluntary retirement before expiry of intended date of retirement. Under the Pension Rules, this right is controlled by sub-rule (2) of Rule 42 of Pension Rules whereunder the authority was required to consider the ground on which withdrawal of request was sought which the authority failed to consider in the present case. Further, sub-rule 3 of Rule 42 permits withdrawal of request for voluntary retirement for adequate reasons even when it is accepted by the competent authority.

13. The provisions of Rule 48-A(4) Central Civil Services (Pension)



Rules, 1972, which is paremateria to Rule 42(2) of Pension Rules, 1976, where under consideration before Apex Court in the case of **Balram Gupta Vs. Union of India & another** reported in 1987 (Supp.) SCC 228. The Apex Court held in para 12 as under:

"12. In this case the guidelines are that ordinarily permission should not be granted unless the Officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in so quick succession that it cannot be said that any administrative set up or management was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this purpose the respondent is to blame and not the appellant."

14. Like in the case before Apex Court, in the present case also, the respondents have not shown as to why the reasons for withdrawal stated in his application by petitioner are not acceptable. They have also not brought on record any material to show that acting on petitioner's request for retirement, an alternate arrangement was made to make other employee





available for his job. The respondents, therefore, failed to properly exercise the power vested in them under Rule 42(2) of Pension Rules. Thus, the action of the respondents in refusing petitioner's request for voluntary retirement vide order, dated 18.11.2021, is found to be unsustainable in law. The order, dated 18.11.2021, (Annexure P/8) is accordingly quashed. The petitioners' request for voluntary retirement is thus deemed to have been withdrawn pursuant to his application, dated 13.10.2021.

15. Pursuant to the interim order, dated 24.11.2021, the petitioner continued to discharge his duty till the age of his superannuation upto 30.11.2023. Therefore, at this stage it is not thought proper to remit the matter to respondents for reconsideration. The respondents are directed to settle the petitioner's retiral dues treating him to have retired w.e.f. 30.11.2023. From the averments made by the respondents in para-4 of the return, it is gathered that the amount of leave encashment and gratuity has not been paid to the petitioner because of pendency of this petitioner. Further, he is being paid provisional pension on account of pendency of this petition. Therefore, respondents are directed to forthwith disburse the amount of leave encashment, gratuity and the arrears of difference of pension together with interest @ 6 % per annum w.e.f. 01.12.2023 till its actual payment. Let this exercise be completed within a period of 90 days from the date of submission of certified copy of this order.

16. With the aforesaid, this petition is **allowed** and **disposed of**.

(ASHISH SHROTI)  
JUDGE