

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT  
JABALPUR**

<b>Case No. Parties Name</b>	<b>W.P. No.19818/2020</b> <i>D.K. Mishra</i> vs. <i>Hon'ble High Court of M.P. and another</i>
<b>Date of Order</b>	<b>01/04/2021</b>
<b>Bench Constituted</b>	<b><u>Division Bench</u> :</b> <b>Justice Prakash Shrivastava</b> <b>Justice Rajeev Kumar Dubey</b>
<b>Order passed by</b>	<b>Justice Prakash Shrivastava</b>
<b>Whether approved for reporting</b>	Yes
<b>Name of counsels for parties</b>	For petitioner : Shri Amit Seth, Advocate For respondents : Shri K.N. Fakhruddin, Advocate.
<b>Law laid down</b>	<p><b>(i)</b> Under Rule 42 of the M.P. Civil Services (Pension) Rules, 1976, a Government servant who had elected for voluntary retirement can withdraw his election subsequently with the specific approval of the authority and no absolute right exists in favour of such Government servant but the discretion given to the authority under Rule 42(2) is to be exercised “on consideration of the circumstances of the case” and on the objective application of mind. Hence, the authority can deny the permission to withdraw the application for voluntary retirement by assigning appropriate reasons.</p> <p><b>(ii)</b> While exercising jurisdiction under Article 226 of the Constitution, this Court does not exercise the appellate power as against the decision impugned. Judicial review is merely confined to decision making process.</p>
<b>Significant paragraph numbers</b>	5, 6, 7, 8, 9, 10, 11

**ORDER**  
**( 01.04.2021)**

**Per : Prakash Shrivastava, J.**

By this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 09.12.2020 whereby the petitioner's application for voluntary retirement has been accepted. The petitioner is also aggrieved with the order dated 09.12.2020 whereby his application for withdrawal of the application for voluntary retirement has been rejected.

2. The case of the petitioner is that he was working as Dy. Registrar (M) and had submitted the application dated 11.09.2020 under prescribed Form No.28 for voluntary retirement w.e.f. 31.12.2020 under Rule 42 of the M.P. Civil Services (Pension) Rules, 1976 (for short '**the Pension Rules**'). After filing the application, the petitioner realized that he is in need of continuation of his employment, therefore, he had filed the application dated 12.10.2020 requesting for withdrawal of his earlier application dated 11.09.2020 for voluntary retirement and also seeking permission to continue in service up to the age of superannuation. Further case of the petitioner is that till the submission of the application dated 12.10.2020, no decision was taken on the petitioner's earlier application dated 11.09.2020. By the impugned order, the petitioner's application for withdrawal of application for voluntary retirement has been rejected and the petitioner's application for voluntary retirement has been accepted and he has been retired w.e.f. 31.12.2020 afternoon.

3. Learned counsel appearing for the petitioner submits that the petitioner had submitted the application for withdrawal of the application for voluntary retirement before the acceptance of the application for voluntary retirement, therefore, the respondents are not justified in rejecting the petitioner's application for withdrawal of the application and accepting the application for voluntary retirement. He also submits that no D.E. is pending and he has a good record, which is reflected from his promotion as Assistant Registrar on 03.08.2019. He also submits that in terms of the judgment of the

Supreme Court in the matter of **Balram Gupta Vs. Union of India and another**, reported in **1987 (Supp) SCC 228**, the petitioner has the absolute right to withdraw the application for voluntary retirement before its acceptance. He has further placed reliance upon the judgment of the Division Bench of this Court in the matter of **Director General, Employees' State Insurance Corporation and another Vs. Puroshottam Malani**, reported in **(2007) 1 MPHT 173 (DB)** in support of his submission that the opportunity should have been given to the petitioner before rejection of the application for withdrawal.

4. As against this, learned counsel for the respondents has submitted that in terms of the Pension Rules, the petitioner has no absolute right of withdrawal of application for voluntary retirement and justifiable reason exists for rejecting the petitioner's prayer for withdrawal of the application for voluntary retirement. He further submits that the Rule which has been considered by the Supreme Court in the case of **Balram Gupta** (supra) is differently worded, therefore, the petitioner is not entitled to the benefit of the said judgment.

5. We have heard the learned counsel for the parties and perused the record. Rule 42 of the Pension Rules, which is relevant for the present controversy 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 Department, until they have not completed 25 years qualifying service :--

- (a) Public Health & Family Welfare Department (Medical, 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 to 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 or, for the period by which such notice falls short of three months, as the case may be.

**NOTE-1.-** Before a Government servant service notice of retirement under clause (a) above, he should satisfy himself by means of a reference to the appointing authority that he has in fact, completed [20 or 25 years] qualifying service, as the case may be, for pension. Similarly, the appointing authority, while giving notice of retirement to a Government servant under clause (b), above, should also satisfy itself, that the Government servant has, in fact completed 20 years qualifying service or he attains the age of 50 years.

**NOTE-2.-** The period of notice of [one month or three months] or the notice period which is short of [one month or three months] as the case may be, shall be reckoned from the date on which it is signed and put in communication under registered post. Where the notice is served personally, the period shall be reckoned from the date of receipt thereof.

**NOTE-3.-**The Government servant, on submission of an application shall be granted such leave during the period of notice to which he is entitled according to rules:

Provided that no leave shall be granted beyond the expiry of the period of notice.

**NOTE-4.-** The payment of pension for the period for which pay and allowances have been paid to a Government Servant in lieu of notice, shall be regulated by the provision of sub-rule (2) of rule 33 of these rules.

**(2)** A Government servant who has elected to retire under clause (a) of sub-rule (1) 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.]”

6. Sub-rule (2) of Rule 42 makes it clear that a Government servant who had elected for voluntary retirement can withdraw his election subsequently only with the specific approval of the authority on consideration of the circumstances of the case. The Division Bench of this Court in the matter of **NARAYAN PRASAD RAM RATAN KACHHWAHA Vs. DISTRICT AND SESSIONS JUDGE, RATLAM and others**, reported in **1997 (2) MPLJ 665** has considered the effect of sub-rule (2) of Rule 42 of the Pension Rules and has held that the notice of voluntary retirement cannot be withdrawn as of right and the said Rule puts an embargo on the right of the Government servant to do so. It has been further held that the exception gives the discretion to the appointing authority to permit withdrawal of the notice of voluntary retirement and such discretion is to be exercised “on consideration of the circumstances of the case” on the objective application of mind. The Division Bench of this Court in the case of **NARAYAN PRASAD RAM RATAN KACHHWAHA** (supra) has held that :

“11. Rule 42(2) further provides that 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. Thus the notice of voluntary retirement cannot be withdrawn as of right. The rule puts an embargo on the right of the Government servant to do so. Then it carves out an exception. That exception gives a discretion to the appointing authority to permit withdrawal of the notice of voluntary retirement. That discretion is to be exercised "on consideration of the circumstances of the case". The appointing authority has to apply his mind objectively and take into account the facts and circumstances of the case. The discretion must be exercised rationally and reasonably as laid down by the Supreme Court in *Balram Gupta's* case (supra) while dealing with

similar rule in Central Civil Services (Pension) Rules, 1972. On the facts of that case the Supreme Court found that there was no valid reason for withholding the withdrawal. But in the present case the appropriate reasons have been given for refusing the withdrawal.”

7. Learned counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in the matter of **Balram Gupta** (supra) but in that case Rule 48-A of the Central Civil Services (Pension) Rules, 1972 was under consideration, which is differently worded. The Division Bench of this Court in the matter of **NARAYAN PRASAD RAM RATAN KACHHWAHA** (supra) has affirmed the judgment of the Single Bench wherein the learned Single Judge had found the judgment in the case of **Balram Gupta** (supra) to be distinguishable. The judgment in the matter of **NARAYAN PRASAD RAM RATAN KACHHWAHA** (supra) has been subsequently followed by the different Benches of this Court in the matter of **S.S.NAFDE Vs STATE OF M.P. & ors., 2013 (1) MPLJ 396**, in the matter of **RUKSANA BEGUM SIDDIQUI Vs. STATE OF M.P. & ors., ILR 2009 MP 3072** and in the matter of **Brajkishore Khare Vs. State of M.P. & Others, 2016 SCC OnLine MP 5796**.

8. Thus, under Rule 42 of the M.P. Civil Services (Pension) Rules, 1976, a Government servant who had elected for voluntary retirement can withdraw his election subsequently with the specific approval of the authority and no absolute right exists in favour of such Government servant but the discretion given to the authority under Rule 42(2) is to be exercised “on consideration of the circumstances of the case” and on the objective application of mind. Hence, the authority can deny the permission to withdraw the application for voluntary retirement by assigning appropriate reasons.

9. The Rule 42(2) requires the competent authority to consider the circumstances of the case while deciding the prayer for withdrawal of the application for voluntary retirement. The reply filed by the respondents reveals that the petitioner had sought the retirement on the ground of

personal difficulty and health problems. Annexure R/4 was the application submitted by the petitioner at one point of time mentioning that he was suffering from ophthalmic problem due to dull/low vision. The reply of the respondents also reveals that the petitioner was not sincere towards his duty and was avoiding to take additional burden and work. The Administrative Judge of the Gwalior Bench had also made observation against the petitioner that he is a shirker and had become a liability to the institution and seems to be a deadwood. The reply reflects that while considering the prayer for withdrawal of the application for voluntary retirement, the service record of the petitioner was looked into and thereafter a decision was taken to reject the application for withdrawal of voluntary retirement application.

**10.** It is settled position in law that while exercising the power of judicial review under Article 226 of the Constitution of India, this Court does not exercise the appellate power as against the decision impugned. The judicial review is directed not against the decision but is confined to examining the correctness of decision making process. The Supreme Court in the matter of **State of U.P. v. Maharaja Dharmander Prasad Singh, (1989) 2 SCC 505** has held as under :

“**60.** However, judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision-making process. In *Chief Constable of the North Wales Police v. Evans* [(1982) 1 WLR 1155 : (1982) 3 All ER HL 141] refers to the merits-legality distinction in judicial review. Lord Hailsham said:

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court.”

**61.** Lord Brightman observed:

“... Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made ...”



And held that it would be an error to think:

“... that the court sits in judgment not only on the correctness of the decision-making process but also on the correctness of the decision itself.”

The scope of judicial review has been reiterated by the Supreme Court in the subsequent judgment also in the matter of **Union of India v. Flight Cadet Ashish Rai, (2006) 2 SCC 364**. The Hon'ble Supreme Court has expressed that there should be judicial restraint while making judicial review in administrative matters and has enumerated the principles in this regard. In the matter of **Sarvepalli Ramaiah v. District Collector, Chittoor, (2019) 4 SCC 500**, it has been held that administrative decisions are subject to judicial review under Article 226 of the Constitution, only on grounds of perversity, patent illegality, irrationality, want of power to take the decision and procedural irregularity. In the matter of **Nirmala J. Jhala v. State of Gujarat, (2013) 4 SCC 301**, it is held that the judicial review is not akin to adjudication on merits by re-appreciating the evidence as an appellate authority.

Having regard to the aforesaid scope of judicial review also, no case is made out for interfering in the impugned order.

**11.** So far as the judgment in the matter of **Director General, Employees' State Insurance Corporation** (supra) relied upon by the counsel for the petitioner is concerned, in that case the prayer for withdrawal of the application was rejected on the ground that the appellant therein had not indicated his reason for withdrawal, therefore, the issue of opportunity of hearing to disclose the reason came up but that is not so in the present case. Hence, the judgment in the case of **Director General, Employees' State Insurance Corporation** (supra) is distinguishable on its own facts.

**12.** In view of the above analysis, we are of the opinion that the impugned order rejecting the prayer for withdrawal of the application for voluntary retirement (Annexure P/8) and the impugned order dated 09.12.2020

(Annexure P/1) accepting the application for voluntary retirement do not suffer from any error. Hence, no case for interference is made out.

**13.** The writ petition is accordingly **dismissed**.

**(PRAKASH SHRIVASTAVA)**  
**JUDGE**

**(RAJEEV KUMAR DUBEY)**  
**JUDGE**

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