

**2023 STPL(Web) 27 HP  
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN AND HON'BLE MR. JUSTICE SATYEN VAIDYA,  
JJ.)

**NAZEER AHMED KHAN**

Petitioner

*VERSUS*

**STATE OF H.P. & ORS.**

Respondents

CWP No. 2256 of 2023-Decided on 13.7.2023

**Service Law**

**Service Law – Premature retirement** – Apply for premature retirement after 20 years of service – Application nor accepted neither rejected – Approach to High Court for direction to accept application for premature retirement – Held: Since there is no formal decision communicated by respondents No. 1 and 2 regarding acceptance or rejection of the request of the petitioner for his premature retirement, a direction is issued to these respondents to take a decision thereon and while doing so, it shall be open to respondents No. 1 and 2 to inquire into the conduct of respondent No.3 SDO (C) in regularizing the period of absence of the petitioner from duties, for which inquiry was otherwise contemplated and any other aspect as they may deem proper. it shall be open for respondents No. 1 and 2 to reject the request made by the petitioner for pre mature retirement or else accept the same as per law.

(Para 9)

Advocate(s): For the Petitioner: Mr. K. B. Khajuria, Advocate.

For the Respondents: Mr. Anup Rattan, A.G. with Mr. Ramakant Sharma, Ms. Sharmila Patial, Addl. A.Gs., Ms. Priyanka Chauhan, Dy.A.G. & Mr. Rajat Chauhan, Law Officer.

**JUDGMENT**

**Justice Tarlok Singh Chauhan, Judge**-The instant petition has been filed for grant of the following substantive reliefs:-

“(i) that the respondent department may kindly be directed to accept the premature retirement notice and the same may kindly be directed to give effect after the completion of the statutory period w.e.f. 31.1.2022.

(ii) that the respondent department may kindly be directed to pass formal retirement order with all consequential service benefits.

(iii) that the respondent department may kindly be directed to release the all retiral dues with upto date interest, in a time bound manner.”

2. The petitioner joined respondent-Department as Patwari on 13.9.1991 and on completion of 20 years' service, applied for pre-mature retirement on 22.10.2021. Request of the petitioner was forwarded by the S.D.O. (Civil), Salooni to the Deputy Commissioner, Chamba, however certain objections were raised on the notice by the District Revenue Officer, which were duly removed by the petitioner and a note was appended by the SDO (C) that no departmental inquiry was pending against the petitioner. On 27.1.2022, the Additional District Magistrate, Chamba pointed that some charges were pending against the petitioner, therefore, it was necessary to conclude the departmental inquiry against the petitioner before permitting him to avail premature retirement.

3. According to the petitioner, he has never been served with any notice or charge sheet or any other communication, which may indicate that the departmental inquiry was contemplated against him. Therefore, the petitioner filed a detailed representation with the respondent-Department on 28.4.2022 informing that withholding of his pre-mature retirement was absolutely wrong without there being any department inquiry. However, despite this, the District Revenue Officer directed the petitioner to explain his willful absence from the duties w.e.f. 4.5.2020 to 25.5.2020 (22 days) and w.e.f. 5.6.2020 to 3.10.2020 (111 days). It is averred that on expiry of three months, the petitioner was deemed to have retired prematurely in terms of Rule 48 of the CCS (Pension) Rules 1972, more particularly, when there was no case pending against him nor he had been convicted by any authority.

4. The respondents have filed the reply, wherein factual matrix has not been denied, however it has been averred that the SDO (C) Salooni had wrongly intimated the department that there were no disciplinary proceedings, charge sheet and financial irregularities pending against the petitioner, whereas prior to receipt of application for premature retirement dated 22.10.2021, it was already proposed to take disciplinary action against the petitioner on the basis of his act of willful absence reported by the SDO (C) vide letter dated 26.6.2020. Rather, a fact finding inquiry was also conducted by the SDO (C) and conveyed to the office. Even not only the SDO (C) was directed to prepare the draft charge sheet, copy whereof has been annexed with the reply, but the SDO (C) had also submitted the charge sheet on 30.9.2020 with the office and specific charges were regarding the petitioner's willful absence w.e.f. 4.5.2020 to 25.5.2020 (22 days) along with six other charges. Later, the SDO (C) had submitted a charge sheet dated 5.10.2020 and charged the petitioner only for the remaining willful absence from the duties w.e.f. 4.5.2020 to 25.5.2020 (22 days) and w.e.f. 15.6.2020 to 3.10.2020 (111 days). The matter was examined in the office and the Additional District Magistrate, Chamba, directed to seek the amended charge from the SDO (C), which was duly communicated to the concerned SDO.

5. It is averred that at that time, the petitioner was posted in the office of SDO (C) and when he came to know about intention of the department to take action against him, he tendered his application dated 22.10.2021 for voluntary retirement through SDO (C), Salooni, who, in turn, while sending communication wrongly intimated the department that there were no departmental proceedings, charge sheet and financial irregularity pending against the petitioner.

6. It is further averred that the application of the petitioner for voluntary retirement was also examined in the department at various levels and his request could not be considered by the Deputy Commissioner in view of the provisions contained in sub rule(2) of Rule 3 of notification dated 1.8.2013, which prohibits consideration of such requests when disciplinary proceedings are contemplated. Accordingly, the SDO (C) was again directed to forward draft charge sheet vide letter dated 27.1.2022. A number of reminders were written to the SDO (C) to submit the draft charge sheet, but nothing was received from the office. Later SDO (C) vide letter dated 2.7.2022 addressed to the Deputy Commissioner, Chamba, intimated that following leaves were sanctioned in favour of the petitioner:-

(i) 11.6.2020 to 14.6.2020 = 4 days earned leave.

(ii) 15.6.2020 to 3.1.2021 =  $203 \times 2 = 406$  commuted leave on MC.

(iii) 4.1.2021 to 8.7.2021 = 186 days earned leave.

7. Accordingly, the period from 15.6.2020 to 3.10.2020 (111 days) of the unauthorized absence, which was subject matter of contemplated proceedings, was duly sanctioned by the SDO(C). The SDO(C) further stated in the above letter that the petitioner had applied for earned leave w.e.f. 4.5.2020 to 25.5.2020 (22 days), which also related to contemplated proceedings. The matter was dealt with in the department and the SDO(C) was also again directed to send the draft charge sheet for the remaining period of 22 days. The SDO(C) vide letter dated 22.3.2023 intimated the office about ex post facto sanction of earned leave for the period from 4.5.2020 to 22.5.2020 (22 days) and stated that petitioner's request for voluntary retirement may be considered in view of his illness.

8. Thus, what is evident from the averments as contained in the reply of the respondents along with Annexures appended therewith, is that overall absence of 22+111 days of the petitioner, which was the reason for his contemplated disciplinary proceedings, has already been regularized by the SDO(C) on different occasions, and therefore, as for the present, there are no basis on which the request of the petitioner for voluntary retirement could have been withheld in terms of either Rule 48-A of the CCS (Pension) Rules, 1972 or sub-rule 2 of Rule 3 of Himachal Pradesh Civil Services (Premature Retirement) Rules, 1976 or on the basis of notification dated 1.8.2013, whereby amendment was made to the Himachal Pradesh Civil Services (Premature Retirement) Rules, 1976, wherein provisos in sub-rule 2 of Rule 3 were ordered to be substituted in the following manner:- "provided that any government servant with satisfactory service record may, after giving notice of not less than 3 month's in writing to the appropriate authority, retire from service on completion of 20 years of regular service after such notice has been accepted by the appropriate authority; Provided further that no employee under suspension or against whom disciplinary proceedings are either contemplated or have already been initiated shall be allowed to retire except with the specific approval of the appropriate authority."

9. Since there is no formal decision communicated by respondents No. 1 and 2 regarding acceptance or rejection of the request of the petitioner for his premature retirement, a direction is issued to these respondents to take a decision thereon and while doing so, it shall be open to respondents No. 1 and 2 to inquire into the conduct of respondent No.3 SDO (C) in regularizing the period of absence of the petitioner from duties, for which inquiry was otherwise contemplated and any other aspect as they may deem proper. In case, it is ultimately found in the said inquiry that it was with a view to illegally extend benefit to the petitioner that the charge sheet, as was directed, had not been issued and even period of absence, for which respondents had contemplated to hold department proceedings, has been illegally

regularized by the SDO (C), then it shall be open for respondents No. 1 and 2 to reject the request made by the petitioner for pre mature retirement or else accept the same as per law.

10. The instant petition is disposed of, in the aforesaid terms, so also the pending application(s), if any.

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