

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.O R D E R

Dr.R.P.Modi v. State of Raj. & Anr.

S.B.CIVIL WRIT PETITION NO.624/2005
under Article 226 of the
Constitution of India.

Date of Order : 25th February, 2005P R E S E N THON'BLE MR.JUSTICE GOVIND MATHUR

Mr.Anil Kumar Singh, for the petitioner.
Mr.S.N.Tiwari, Dy. Govt. Advocate.

BY THE COURT :

The petitioner, a Junior Specialist (Surgery), under Rajasthan Medical and Health Services, submitted an application dated 29.9.2003 to the Secretary, Department of Medical and Health Services, Government of Rajasthan, Jaipur, seeking voluntary retirement under sub-rule(1) of Rule 50 of the Rajasthan Civil Services (Pension) Rules, 1996 (hereinafter referred to as "the Rules of 1996"). The application submitted by the petitioner seeking voluntary retirement w.e.f. 1.4.2004 was not accepted by the competent authority due to paucity of experts in the subject of surgery. The decision of the competent authority was communicated to the petitioner under communication dated 29.3.2004. The petitioner after receiving the communication

dated 29.3.2004 again submitted an application dated 28.5.2004 seeking voluntary retirement under Rule 50 of the Rules of 1996 w.e.f. 2.9.2004. The petitioner in the application dated 28.5.2004 specifically averred that he wants premature retirement due to serious illness of his wife. The petitioner also submitted a certificate issued by Dr.R.P.Agarwal, Associate Professor (Medicine), S.P. Medical College, Bikaner certifying that Smt. Rajkumari Modi wife of the petitioner is suffering from florid Rheumatoid Arthritis and she requires continuous assistance to look after her. The application submitted by the petitioner dated 28.5.2004 seeking voluntary retirement w.e.f. 2.9.2004 was also rejected by the competent authority. The petitioner was subsequently transferred from District Churu to General Hospital, Dholpur. The petitioner was again subjected to transfer under an order dated 24.12.2004 and he was transferred to Community Health Centre, Nagar in District Bharatpur.

The petitioner being aggrieved by the decision of the respondents not to accept his request for voluntary retirement and also by the orders of transfer preferred the present writ petition praying for a direction for respondents to accept his request for voluntary retirement and also further to direct the respondents to post the petitioner in District Bikaner until his application for voluntary retirement is accepted.

The notices issued by this Court were served upon the respondents, however, no reply to the same has been filed. By the consent of the parties, the writ petition is heard finally at admission stage.

The contention of counsel for the petitioner is that under Rule 50 of the Rules of 1996 a Government Servant who has completed 20 years of qualifying service may by giving notice of not less than three months in writing to the appointing authority retire from service. The petitioner who is in employment of the respondents since 1971 has already completed qualifying service and he is neither facing disciplinary proceedings nor the same are under contemplation. The sole reason given by the respondents for rejecting the application at first instance was the paucity of specialist in surgery and that cannot be a reason to refuse the request for voluntary retirement made under sub-rule (1) of Rule 50 of the Rules of 1996. According to the petitioner right of voluntary retirement is a statutory right belonging to the Government Servant and the same is not dependent to acceptance by government.

The counsel for the respondents at the other hand stated that the request made by the Government Servant under sub-rule(1) of Rule 50 of the Rules of 1996 for voluntary retirement requires acceptance from the appointing authority,

meaning thereby a Government Servant cannot claim for voluntary retirement as a matter of right. The appointing authority is well within its domain to refuse request for voluntary retirement after considering the same objectively.

I have heard counsel for the parties.

The appointing authority refused request of the petitioner for voluntary retirement on the count that there is paucity of specialist (surgery). The petitioner has served the respondents for more than 33 years and in the advance age of 57 years he made a request for a voluntary retirement from service for the reason that his wife was suffering from an ailment which requires his support and assistance. The fact with regard to illness of wife of the petitioner was certified by a competent medical practitioner. There is no reason to disbelieve it. It is also to be noticed that after refusing the request for voluntary retirement the petitioner was subjected to long distance transfers. Competence to transfer was certainly available to the respondent but in the circumstances in which petitioner was transferred from Churu to Dholpur and then to Nagar in District Bharatpur creates doubts about objectivity behind the transfer of the petitioner. It is further pertinent to note that the petitioner is holding the post of Junior Specialist (Surgery) and in present days it does not appear to be correct that there is paucity of

specialists in surgery. It is true that an application under sub-rule(1) of Rule 50 of the Rules of 1996 requires acceptance from government but at the same time it is also true that government should consider such applications objectively and with view to make the right prescribed effective. In normal course an application under sub-rule(1) of Rule 50 should be accepted and denial for voluntary retirement should be an acceptance. The government is also aware of it and, therefore, under its decision government has provided certain guidelines for acceptance of notice which reads as follows:-

"GOVERNMENT OF RAJASTHAN'S DECISION

Guidelines for acceptance of notice.-A notice of voluntary retirement given after completion of twenty years qualifying service will require acceptance by the appointing authority. Such acceptance may be generally given in all cases except that the Appointing Authority shall withhold permission to retire a Government servant:

(i) who is under suspension;

(ii) in whose case the disciplinary proceedings are pending or contemplated for the imposition of a major penalty and the disciplinary authority having regard to the circumstances of the case, is of the view that such disciplinary proceedings might result in imposition of the penalty of removal or dismissal from service;

(iii) in whose case prosecution is contemplated or may have been launched in a court of law.

In such cases, if it is proposed to accept the notice of voluntary retirement approval of the Government should be obtained. Even where the notice of voluntary retirement given by the Government servant requires acceptance by the appointing authority, the Government servant giving notice may

presume acceptance and the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of notice.”

In the instant case no normal circumstances to deny request for voluntary retirement was available with the respondents. Narration of facts hereinabove clearly show non-objectivity of the respondents while considering request of the petitioner for voluntary retirement. In totality of facts and circumstances of the case I do not consider the reason prescribed by the respondents for not accepting request made by the petitioner bonafide and objective.

In view of it the writ petition succeeds and, therefore, the same is allowed with direction for respondents to accept the application preferred by the petitioner for voluntary retirement forthwith.

No order as to cost.

(GOVIND MATHUR), J.

kkm/ps.