

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

Chandan Singh v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.3616/2000
under Articles 226 and 227 of the
Constitution of India.

Date of order : 29th July, 2005

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rajesh Joshi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The Rajasthan Civil Services Appellate Tribunal, Jaipur by its order dated 23.5.2000 rejected the appeal preferred by the petitioner giving challenge the order dated 5.5.1999 passed by the Chief Town Planner, Government of Rajasthan, Jaipur rejecting the application submitted by the petitioner for withdrawal of his request for voluntary retirement from service.

The facts necessary for adjudication of present writ petition are stated in succeeding paras.

The petitioner while working as Office Assistant in the office of Senior Town Planner, Bikaner submitted an application dated 17.3.1999 to

the Chief Town Planner, Government of Rajasthan through proper channel seeking voluntary retirement from service w.e.f. 8.5.1999. The petitioner on 2.4.1999 by an another application made a request to the Chief Town Planner to treat his request for voluntary retirement under the application dated 17.3.1999 cancelled. The Chief Town Planner without considering the application submitted by the petitioner on 2.4.1999 passed an order dated 15.4.1999 accepting the request of the petitioner to proceed for voluntary retirement w.e.f. 8.5.1999. On receiving the order dated 15.4.1999 the petitioner immediately submitted a representation to the Chief Town Planner, Government of Rajasthan, Jaipur to reconsider the decision communicated under office order dated 15.4.1999 in view of application dated 2.4.1999 whereby a request was made to treat the application dated 17.3.1999 cancelled. By communication dated 5.5.1999 the Senior Town Planner (Headquarters) Rajasthan communicated to the Senior Town Planner, Bikaner Zone, Bikaner that no reason exists to accept the application dated 2.4.1999 submitted by the petitioner for withdrawal of his request to proceed on voluntary retirement w.e.f. 8.5.1999. Being aggrieved by the same the petitioner preferred an appeal under Section 4 of the Rajasthan Civil Services (Service Matter) Appellate Tribunal Act, 1976 before the Rajasthan Civil Services Appellate Tribunal, Jaipur. The Tribunal by its order dated 23.5.2000 rejected the

appeal preferred by the petitioner on the count that the petitioner failed to give reason sufficient to withdraw the request made by him seeking voluntary retirement.

By instant petition validity of the order dated 23.5.2000 passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur and the orders dated 5.5.1999 and 15.4.1999 passed by the respondents No.3 and 2 respectively is required to be examined.

No reply to the writ petition has been filed though this court on 20.1.2003 ordered for final hearing of the writ petition at admission stage in second week of February, 2003.

I have heard counsel for the parties.

The contention of the counsel for the petitioner is that the respondents without any sufficient cause declined for grant of approval to the notice for withdrawal of request for voluntary retirement. The learned tribunal failed to appreciate that in view of law laid down by Hon'ble Supreme Court in the case of Balram Gupta v. Union of India and another, reported in AIR 1987 SC 2354, it was obligatory for employer to provide reason for not granting such approval.

Per contra, it is contended by the counsel for the respondents that under Rule 50(4) of the Rajasthan Civil Services (Pension) Rules, 1996 (hereinafter referred to as "the Rules of 1996") a government servant who has elected to voluntarily retired and has given necessary notice to that effect to the appointing authority shall be precluded from withdrawing his notice except with specific approval of such authority. The Government of Rajasthan under its decision made it clear that a government servant who has given notice to proceed on voluntary retirement is having no right to withdraw such notice in normal course. He is required to give specific reasons.

Sub-rule(4) of Rule 50 of the Rules of 1996 and the decision on basis of which the respondents coming forward to defend the orders impugned read as under:-

"50(4)A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement."

GOVERNMENT OF RAJASTHAN'S DECISION
withdrawal of notice of retirement not
ordinarily permissible

“A question has been raised whether a Government servant who has given to the appropriate authority, notice of retirement has any right subsequently (but during the currency of the notice) to withdraw the same and return to duty. The question has been considered carefully and the conclusion reached is that the Government servant has no such rights. There would, however, be no objection to permission being given to such a Government servant, on consideration of the circumstances of his case, to withdraw the notice given by him, but ordinarily such permission should not be granted unless he 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.”

Hon'ble Supreme Court in the case of Balram Gupta (supra) considered an analogous provision under Central civil services (Pension) Rules, 1972. Sub-rule (4) of Rule 48-A which was subject matter in the case of Balram Gupta's case (supra) is paramateria to sub-rule(4) of Rule 50 of the Rules of 1996.

The decision of Government of Rajasthan too is having the same language as considered by Hon'ble Supreme Court in the case of Balram Gupta (supra). Hon'ble Supreme Court while dealing with aforesaid provision held 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 arrangement 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.

13.-We hold, therefore, that there was no valid reason for withholding the permission by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in Government service and induced the appellant

to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees."

It is relevant to note that in the present case also the petitioner before learned tribunal contended that after submission of application dated 17.3.1999 his family members and colleagues persuaded him to withdraw the request for voluntary retirement. The petitioner in quite a short span of time submitted application to treat his request for voluntary retirement cancelled. The decision to proceed for retirement was changed by the petitioner just within sixteen days. It is also not the case of the respondents that within this period of sixteen days administrative set up or arrangements were made by them and there were chances of getting those administrative set up or arrangements effected adversely.

Learned tribunal failed to appreciate the position of law as enunciated by Hon'ble Supreme Court in the case of Balram Gupta (supra).

In view of legal position discussed above and in view of law laid down by Hon'ble Supreme Court in the case of Balram Gupta(supra) this writ petition deserves acceptance. The same, therefore, is allowed. The judgment impugned dated 23.5.2000 passed by Learned Rajasthan Civil Services Appellate Tribunal, Jaipur is quashed. The appeal preferred by the petitioner before Rajasthan Civil Services Appellate Tribunal, Jaipur bearing No.1023/99, Chandan Singh v. Urban Development and Housing Department, Jaipur & Ors. is accepted. The orders dated 15.4.1999 and 5.5.1999 passed by Chief Town Planner, Government of Rajasthan, Jaipur and Senior Town Planner (Headquarters), Jaipur are hereby quashed. The respondents are directed to restore the position of the petitioner as it was existing prior to his retirement w.e.f. 8.5.1999. The petitioner be allowed to continue in service till the date of his regular retirement on acquiring the age of superannuation. The petitioner shall also be entitled for all consequential benefits. However, the retiral benefits already paid to him are required to be adjusted against the pay required to be paid to the petitioner in view of directions given above.

No order as to costs.

(GOVIND MATHUR), J.

kkm/ps.