

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**ON THE 30<sup>th</sup> DAY OF OCTOBER, 2021**

**BEFORE**

**HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN**

**&**

**HON'BLE MS. JUSTICE JYOTSNA REWAL DUA**

**CIVIL WRIT PETITION(TRANSFER APPLICATION)No.39 of 2019**

**Between:-**

- 1. STATE OF HIMACHAL PRADESH THROUGH  
PRINCIPAL SECRETARY (HEALTH) TO  
THE GOVERNMENT OF HIMACHAL  
PRADESH, SHIMLA.**
- 2. DIRECTOR OF HEALTH AND FAMILY WELFARE,  
HIMACHAL PRADESH, SHIMLA-9.**

**.....PETITIONERS.**

**(BY SH. AJAY VAIDYA, SENIOR ADDITIONAL  
ADVOCATE GENERAL)**

**AND**

**DR. BIPON CHANDER SHARMA, S/O  
SHRI HEM RAJ SHARMA, R/O  
VILLAGE & PO TAKKA, TEHSIL  
AND DISTRICT UNA (HP), PRESENTLY  
WORKING AS MEDICAL OFFICER  
(PAEDIATRICIAN) IN REGIONAL HOSPITAL  
UNA, TEHSIL AND DISTRICT UNA,  
HIMACHAL PRADESH.**

**.....RESPONDENT.**

**(BY SH. ONKAR JAIRATH,  
SH. SHUBHAM SOOD AND  
SH. PIYUSH, ADVOCATES)**

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*This petition coming on for admission after notice this day, **Hon'ble Mr. Justice Tarlok Singh Chauhan**, passed the following:*

**ORDER**

Aggrieved by the order passed by the erstwhile Himachal Pradesh Administrative Tribunal, Shimla (for short 'Tribunal') whereby it allowed the Original Application filed by the respondent for voluntary retirement in accordance with the H.P. Civil Services (Premature Retirement) Rules, 1976, (for short 'Rules'), the State has filed the instant petition.

2. Briefly stated the facts of the case are that respondent-applicant was appointed as a Medical Officer on 14.03.1990 and after having served for more than twenty-eight years, he submitted an application dated 30.04.2012 (Annexure A-6) followed by another application dated 30.01.2017 (Annexure P-10) for voluntary retirement. The request so made by the respondent was disapproved vide communications dated 23.06.2012(Annexure A-7) and 27.03.2017 (Annexure A-12), constraining the respondent to file Original Application before the learned Tribunal.

3. The petitioners contested the petition mainly on ground that since there was an acute shortage of Specialists in the State, therefore, the request of the respondent could not be acceded to.

4. The learned Tribunal after taking into consideration the provisions of the Rules allowed the Original Application and aggrieved thereby the State has filed the instant petition.

5. It is vehemently argued by Shri Ajay Vaidya, learned Senior Additional Advocate General that the cases of the doctors for premature retirement cannot be considered like other employees of the State because the concept of public interest has to be taken into consideration by the Government.

6. In support of such contention, strong reliance is placed on the observations made by the Hon'ble Supreme Court in ***State of Uttar Pradesh and others versus Achal Singh (2018) 17 SCC 578***, more particularly, in paragraphs 36 and 37 which read as under:-

*"36. The concept of public interest can also be invoked by the Government when voluntary retirement sought by an employee, would be against the public interest. The provisions cannot be said to be violative of any of the*

*rights. There is already paucity of the doctors as observed by the High Court, the system cannot be left without competent senior persons and particularly, the High Court has itself observed that doctors are not being attracted to join services and there is an existing scarcity of the doctors. Poorest of the poor obtain treatment at the Government hospitals. They cannot be put at the peril, even when certain doctors are posted against the administrative posts. It is not that they have been posted against their seniority or to the other cadre. Somebody has to man these administrative posts also, which are absolutely necessary to run the medical services which are part and parcel of the right to life itself. In the instant case, where the right of the public are involved in obtaining treatment, the State Government has taken a decision as per Explanations to decline the prayer for voluntary retirement considering the public interest. It cannot be said that State has committed any illegality or its decision suffers from any vice of arbitrariness.*

*37. The decision of the Government cater to the needs of the human life and carry the objectives of public interest. The respondents are claiming the right to retire under Part III of the Constitution such right cannot be supreme than right to life. It has to be interpreted along with the rights of the State Government in Part IV of the Constitution as it is obligatory upon the State Government to make an endeavour under Article 47 to look after the provisions for health and nutrition. The fundamental duties itself are enshrined under Article 51(A) which require observance. The right under Article 19(1)(g) is subject to the interest of the general public and once service has been joined, the right can only be exercised as per rules and not otherwise. Such conditions of service*

*made in public interest cannot be said to be illegal or arbitrary or taking away the right of liberty. The provisions of the rule in question cannot be said to be against the Constitutional provisions. In case of voluntary retirement, gratuity, pensions, and other dues etc. are payable to the employee in accordance with rules and when there is a requirement of the services of an employee, the appointing authority may exercise its right not to accept the prayer for voluntary retirement. In case all the doctors are permitted to retire, in that situation, there would be a chaos and no doctor would be left in the Government hospitals, which would be against the concept of the welfare state and injurious to public interest. In the case of voluntary retirement, there is a provision in Rule 56 that a Government servant may be extended benefit of an additional period of five years then an actual period of service rendered by him there is the corresponding obligation to serve in dire need."*

7. We have considered the aforesaid submission and find no merit in the same.

8. No doubt, the judgment rendered by the Hon'ble Supreme Court including the aforesaid observations are binding upon this Court, but then the further question that requires consideration is whether voluntary retirement is automatic or a specific order to this effect is required to be passed under the Rules. As held even by the Hon'ble Supreme Court in **Achal Singh's case** (supra) and the said observations reiterated by one of us (Hon'ble Ms. Justice

Jyotsna Rewal Dua) in ***Dr. Sanjay Chadha versus State of Himachal Pradesh and others 2021 (3) Him. L.R. (HC)1763***, it all depends on the phraseology used in the particular rule. It is apt to quote the relevant observations made in ***Dr. Sanjay Chadha's case*** (supra) which read as under:-

***“4(ii)(b). In (2018) 17 SCC 578, titled State of Uttar Pradesh and others Versus Achal Singh, Hon’ble Apex Court after taking note of various precedents, held that whether voluntary retirement is automatic or an order is required to be passed depends on phraseology used in particular rule under which the retirement is to be ordered or voluntary retirement sought. Relevant portion of the judgment while discussing Rule 56(2) of U.P. Fundamental Rules is as under:-***

*“12. In our opinion, whether voluntary retirement is automatic or an order is required to be passed would depend upon the phraseology used in a particular rule under which retirement is to be ordered or voluntary retirement is sought. The factual position of each and every case has to be seen along with applicable rules while applying a dictum of the Court interpreting any other rule it should be in pari material. Rule 56(2) deals with the satisfaction of the Government to require a government servant to retire in the public interest. For the purpose, the Government may consider any material relating to government servant and may requisition any report from the Vigilance establishment.*

22. *In State of Haryana, (1999) 4 SCC 293, this Court also observed that:*

*“9. ... Some rules are couched in language, which results in an automatic retirement of the employee*

*upon the expiry of the period specified in the employee's notice. On the other hand, certain rules in some other departments are couched in the language which makes it clear that even upon expiry of the period specified in the notice, the retirement is not automatic and an express order granting permission is required and has to be communicated. The relationship of master and servant in the latter type of rules continues after the period specified in the notice till such acceptance is communicated ... the refusal of permission could also be communicated after three months and the employee continues to be in service."*

*It is the aforesaid later observations made by this Court, which are squarely applicable to the rule in question as applicable in the State of Uttar Pradesh."*

After considering Suman Behari Sharma's case, *supra* and **(2009) 10 SCC 514**, titled **Padubidri Damodar Shenoy v. Indian Airlines Ltd.**, **(2013) 14 SCC 486**, titled **C.V. Francis v. Union of India** and **(2001) 3 SCC 290**, titled **Tek Chand v. Dile Ram**, following was observed in respect of Rule 56 of U.P. Fundamental Rules:-

*"28. In our opinion, Rule 56(c) does not fall in the category where there is an absolute right on the employee to seek voluntary retirement. In view of the aforesaid dictum and what is held by this Court, we find that the prayer made to make a reference to a large Bench, in case this Court does not follow the earlier decision is entirely devoid of merit as on the basis of what has been held by this Court in the earlier decisions, we have arrived at the conclusion. This Court has authoritatively laid down the law umpteen number of times."*

Finally, it was held as under:-

*"42. There are several decisions of the High Court, namely, Anil Dewan v. State, State of Punjab v. Harbir Singh Dhillon and Kalpana Singh v. State of Rajasthan, which were cited to show that the decision in Dinesh Chandra Sangma had been followed. We have considered the aforesaid decisions and we find that it would depend upon the scheme of the Rules. Each and every judgment has to be considered in the light of the provisions which*

*"PREMATURE RETIREMENT*

(2) Any Government employee may, after giving atleast three months previous notice in writing to the appropriate authority retire from service on the date on which he:-

- (a) Completes 30 years of qualifying service; or
- (b) attains the age of:
  - (i) 50 years in respect of Class-I and Class-II officers who have entered Govt. service before attaining the age of thirty five years;
  - (ii) 55 years in case of all other Class-I and Class-II officers and all the Class-III employees; and
  - (iii) 55 years in case of such Class-IV employees who entered Govt. service after 23<sup>rd</sup> July, 1966.

*Provided that any Government servant with satisfactory service record may, after giving notice of not less than 3 months 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."*

10. The aforesaid Rule came up for consideration before the learned Division Bench of this Court in **C.W.P.(T) No. 14176/2008** titled **Dr. S.S. Negi vs. State of H.P.** , decided on 22.04.2010, wherein it was observed that Rule 3(2) itself is intended to give option to the incumbent concerned to retire voluntarily from service subject to the satisfaction of the required conditions under the rules.

11. It was further held that once an employee satisfies the conditions required for premature retirement as prescribed under Rule 3(2) of the Rules, no other formal order is required for the employee to retire from service. The rule itself enables the employees to retire even without any formal order. If the retirement cannot be permitted, the employee is to be intimated about the same during the period of service that too on the grounds available under the rules.

12. The respondent in the instant case has satisfied the required conditions since he has completed 50 years of age and joined the service before the age of 35 years. The rule clearly provides that a government employee after

giving at least three months prior notice in writing to the appropriate authority is to retire from service on the date on which he completed the age or intended date of retirement. The second proviso would indicate that in case of an employee against whom disciplinary proceedings are either contemplated or initiated, such employee cannot be allowed to retire except with the specific approval of the appropriate authority.

13. The inference can only be that in case of an employee, who has otherwise satisfied the required conditions under rule 3(2), no formal sanction is required for retirement as the retirement takes effect from the date as per the rules.

14. However, it is open to the State or the Appointing Authority to decline to accept the request for premature retirement in two contingencies (i) disciplinary proceedings are in contemplation (ii) disciplinary proceedings had already been initiated. In the instant case, even on facts, none of the aforesaid contingencies exists.

15. Once, an employee satisfied the conditions for premature retirement as prescribed under rule 3(2) of the Rules, no other formal orders are required for the employee

to retire from service as the Rules itself enable the employee to retire even without any formal order.

16. As observed above, once an employee otherwise satisfies the requirements or conditions stipulated under rule 3(2) of the Rules, no formal sanction is required for retirement as the retirement takes effect from the date as per the rules.

17. Similar reiteration of law can be found in a judgment rendered by the Division Bench of this Court, authored by one of us (Justice Tarlok Singh Chauhan) in ***CWP No. 2860 of 2019*** titled '***Sh. Niti Bibhash Acharya versus The Secretary, Urban Development, Government of Himachal Pradesh and others***, decided on 16.09.2021.

18. Now, in this background, in case the petitioners intended to withhold the request for premature retirement of the respondent, then a specific power at least residuary power ought to have been retained under the rules.

19. Having failed to retain such power, the request made by the respondent for premature retirement could not have been withheld by the petitioners solely on the ground that there was dearth or scarcity of doctors in the State.

20. In view of the aforesaid discussion, we find no merit in this petition and the same is accordingly dismissed, leaving the parties to bear their own costs. Pending application, if any, also stands disposed of.

**(Tarlok Singh Chauhan)**  
**Judge**

**(Jyotsna Rewal Dua)**  
**Judge**

**30<sup>th</sup> October, 2021.**  
**(krt)**