

Venugopal Vs. State of Kerala

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Court : Kerala

Decided On : Feb-23-2010

Reported in : 2010(2)KLT111

Judge : P.R. Raman, C.J. and; Thottathil B. Radhakrishnan, JJ.

Acts : [Kerala Public Services Act, 1968](#); ;Kerala Service Rules - Rule 56; ;Punjab Civil Services Rules - Rule 5.32(B)

Appeal No. : W.A. No. 2134 of 2009

Appellant : Venugopal

Respondent : State of Kerala

Advocate for Def. : K. Meera, Government Pleader

Advocate for Pet/Ap. : Pirappancode V.S. Sudheer, Adv.

Disposition : Appeal allowed

Judgement :

Thottathil B. Radhakrishnan, J.

1. The appellant, then working as a Police Constable, submitted a representation dated 15.1.2008 to the competent appointing authority, namely, the Superintendent of Police, requesting permission to voluntarily retire from service

with effect from 30.4.2008 A.N. With materials evidencing transmission of his representation, service book etc. by the Superintendent of Police to the Office of the Accountant General, he filed the Writ Petition seeking a direction to the respondents to permit him to voluntarily retire as sought for by him and for a declaration that he is entitled to voluntary retirement in terms of the statutory rules. When the Writ Petition came up for admission, the respondents submitted through learned Government Pleader on 17.6.2009, that the petitioner's application for permission to voluntarily retire from the service with effect from 30.4.2008 was rejected by the Superintendent of Police on 17.11.2008 and that therefore, the relief sought for cannot be granted. It was also then stated that disciplinary action is pending against the petitioner and for that reason also, permission could not be granted. In the light of those submissions, the learned single Judge declined relief to the petitioner holding that he is not entitled to the reliefs sought for in the light of the fact that permission sought for by him to voluntarily retire from service was declined on the ground that disciplinary action is pending against the petitioner. The Superintendent of Police was, however, directed to issue to the petitioner a copy of the order stated to have been issued by that officer on 17.11.2008. Aggrieved, the petitioner appeals.

Appellant's contentions and arguments

2. Appealing, the petitioner reiterates his specific ground in the Writ Petition that the competent authority having not refused to grant permission for retirement before the date on which he wished to retire as specified in the notice under Clause (i) of Rule 56 of Part III of the Kerala Service Rules, for short, the 'K.S.R.', appellant's voluntary retirement became effective in terms of the proviso occurring after Clause (iv) of that rule. Clause (vi) of Rule 56 is also pointed out to state that cases in which permission cannot be given by the appointing authority shall be referred to Government intimating the fact to the person concerned, before the date notified in the officer's notice as the date on which he desires to retire. No disciplinary action was taken against the appellant and he has an unblemished track record of 33 years of qualifying service, it is contended.

Respondents' contentions and arguments

3. In the Writ Appeal, a statement is filed on behalf of the second respondent Superintendent of Police. It is stated therein, inter alia, that the appellant's representation dated 15.1.2008, requesting that he be allowed to retire voluntarily from the service with effect from 30.4.2008 was forwarded along with his service book, to the Accountant General vide letter dated 12.2.2008 with request to verify his qualifying service. It is stated that in the meanwhile, on verification to ascertain his liabilities, it was found that the appellant is an accused in a criminal case registered on 30.1.2008 which is pending investigation. It is pointed out that the Superintendent of Police rejected the appellant's request for voluntary retirement in the light of Clause (v) of Rule 56 which provides an exception to the grant of permission to retire, in cases in which disciplinary proceedings are pending for imposition of a major penalty or the disciplinary authority, having regard to the circumstances of the cases, is of the view that the imposition of the penalty of removal or dismissal from service would be warranted or in which prosecution is contemplated or may have been launched against the officer in a court of law. It is stated that the appellant was unauthorizedly absent from 15.1.2008 and on 7.4.2009, an application was received from him, for leave for 107 days and thereafter, Ext.R2 (a) order dated 7.4.2009 was issued on 28.7.2009 declaring him a deserter and consequential oral enquiry was ordered for unauthorised absence. In answer to the query posed by the Court earlier, it is stated that on 15.1.2008, the date on which the appellant notified his desire to voluntarily retire, he was a Police Constable and the Superintendent of Police was the appointing authority.

Consideration by Court

The appellant notified in writing, his intention to retire voluntarily from service. That notice was issued on 15.1.2008. He proposed to retire voluntarily with effect from 30.4.2008 A.N. Therefore, that notice is in terms of Clause (i) of Rule 56. There is no dispute on this.

4. The Superintendent of Police is the appointing authority for the post held by the appellant when he issued the notice intimating his intention to retire. Though Clause (vi) provides that cases in which permission cannot be given by the appointing authority shall be referred to Government intimating the fact to the

person concerned, before the date specified in the notice as the date on which the employee desires to retire, the appointing authority, namely, the Superintendent of Police has no case that such intimation was given or that such reference was made to the Government.

5. Clause (iv) of Rule 56 provides that voluntary retirement of an employee shall become effective on the grant of permission to retire, by the authority competent to make appointment to the post; however that, where permission to retire is not refused by the competent authority before the date on which he wishes to retire as specified in his notice, the retirement shall be effective from the date specified in the notice. Clause (iv) of Rule 56 with the proviso thereto reads as follows:

(iv) Voluntary retirement of an employee shall become effective on the grant of permission to retire by the authority competent to make appointment to the post:

Provided that where the authority competent to make appointment to the post does not refuse to grant permission for retirement before the date on which the employee wishes to retire specified in the notice under Clause (i), the retirement shall become effective from the date specified in the notice.

6. The proviso to Rule 56(iv) comes into operation on the date notified by the employee as the date on which he wishes to retire as specified in the notice under Clause (i). The effect of the proviso is that unless the authority competent to make appointment to the post refuses to grant permission for retirement before the date on which the employee wishes to retire as specified in the notice under Clause (i), the retirement shall become effective from the date specified in the notice. The said provision is clear and categorical. It is part of the statutory rules made by the State in exercise of authority under the [Kerala Public Services Act, 1968](#), germinating from the Constitution. It is a rule which binds the employer and the employee. Formidable support to this, can be found in *Dinesh Chandra Sangma v. State of Assam* : (1977) 4 SCC 441, wherein dealing with FR 56(b) among the Fundamental Rules that apply to Central Government servants, it was held that it is one of the statutory rules which binds the Government as well as the Government servant.

7. A survey of the service rules and the relevant arena of precedents in service law would show that certain rules in some of the States or departments are couched in different languages. It is profitable in this context to refer to some of the decisions of the Apex Court.

8. In *State of Haryana v. S.K. Singhal* : (1999) 4 SCC 293, it was noticed as follows:

9. The employment of government servants is governed by rules. These rules provide a particular age as the age of superannuation. Nonetheless, the rules confer a right on the Government to compulsorily retire an employee before the age of superannuation provided the employee has reached a particular age or has completed a particular number of years of qualifying service in case it is found that his service has not been found to be satisfactory. The rules also provide that an employee who has completed the said number of years in his age or who has completed the prescribed number of years of qualifying service could give notice of, say, three months that he would voluntarily retire on the expiry of the said period of three months. 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 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; refusal of permission could also be communicated after 3 months and the employee continues to be in service....

(underlined to emphasise)

9. It was noted in *S.K. Singhal* (supra) that *Dinesh Chandra Sangma* (supra), *B.J. Shelat v. State of Gujarat* : (1978) 2 SCC 202 and *Union of India v. Sayed Muzaffar Mir* : 1995 Supp (1) SCC 76, were cases where the relevant rule provided that upon the expiry of the notice period, the voluntary retirement took effect automatically as no order of refusal is passed within the notice period. On the other hand, *H.P. Horticultural Produce Marketing & Processing Corporation*

Ltd. v. Suman Behari Sharma : (1996) 4 SCC 584 was noticed as belonging to the category where the relevant provision did not give an option to retire but only provided a limited right to seek retirement thereby implying the need for a consent of the employer even if the period of the notice had elapsed.

10. After referring to the aforesaid precedents, it is further laid down in S.K. Singhal (supra) that if the right to voluntarily retire is conferred by the relevant rules; in absolute terms, as in Dinesh Chandra Sangma (supra) and there is no provision in the rules to withhold permission in certain contingencies, the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. It was noticed that if however, as in B.J. Shelat (supra), and as in Sayed Muzaffar Mir (supra), the authority concerned is empowered to withhold permission to retire if certain conditions exist, like the employee being under suspension or departmental enquiry is pending or is contemplated; the authority concerned must pass a positive order with holding permission to retire and must also communicate the same to the employee before the expiry of the notice period.

11. In S.K. Singhal (supra), reference was also made to Baljit Singh (Dr) v. State of Haryana : (1997) 1 SCC 754, wherein, what fell for consideration was Rule 5.32(B) of the Punjab Civil Services Rules, which rule included a proviso that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified for the notice, the retirement shall become effective from the date of expiry of the said period. That rule contained, as in the case in hand, an express provision in the form of a proviso, that the retirement takes effect automatically if refusal is not communicated within three months. On facts, that was a case where criminal cases were pending against the employee when he gave notice for voluntary retirement. After expiry of three months, the competent authority declined to accept notice. The two-Judge Bench of the Apex Court held that the voluntary retirement did not come about automatically on the expiry of the notice period but would take effect only upon acceptance of the notice by the Government and that the acceptance must also be communicated and till then, the jural relationship of master and servant continues. However, the Bench referred only to the decision of the two-Judge Bench in Sayed

Muzaffar Mir (supra) and stated that the said case was to be confined to its own facts. The two-Judge Bench, in Baljit Singh (Dr) (supra), did not notice that there were two three-Judge Bench judgments - Dinesh Chandra Sangma (supra) and B.J. Shelat (supra) - taking the view under similar rules that a positive order was to be passed, within the notice period withholding permission to retire and that the said order was also to be communicated to the employee during the said period. In the later decision in S.K. Singhal (supra), specific reference to this conflict of precedents is noticed in para. 14 as follows:

By stating that an order of acceptance of the notice was necessary and that the said acceptance must be communicated to the employee and till that was done the jural relationship continued and there was no automatic snapping thereof on the expiry of 3 months' period, the two-Judge Bench, in our view, has gone contrary to the two three-Judge Bench cases which were not brought to its notice. In the above circumstances, we follow the two three-Judge Bench cases for deciding the case before us.

12. So proceeding, S.K. Singhal (supra) was decided holding that when there is a positive provision that where the appointing authority does not refuse to grant the permission before the expiry of the notice period, the retirement shall become effective from the date of expiry of the said period, it becomes one on a stronger footing than Dinesh Chandra Sangma (supra). The plea of the State to the contrary was accordingly turned down. Thus, among the rules deducible as the ratio decidendi of S.K. Singhal (supra) supported by Dinesh Chandra Sangma (supra) and B.J. Shelat (supra), is the principle that when there is a positive provision that the voluntary retirement of an officer shall become effective from the date specified by the officer in his notice in terms of the rules, if the competent authority does not refuse such permission before that date, the retirement of that officer shall become automatically effective from the date of expiry of the notice period. This is, thus, the settled law on the point.

13. Reverting to the facts, the stand of the appointing authority is that the appellant's request was rejected on 17.11.2008. That is long after the date of retirement specified in the appellant's notice under Clause (i). Applying the law as

enunciated above; the effect of the proviso to Clause (iv) is that the jural employer-employee relationship between the State and the appellant stood snapped on 30.4.2008, by the appellant's voluntary retirement becoming automatically operative by efflux of time and there was nothing left for the Superintendent of Police to consider thereafter, in relation to the matter. Not only that, in terms of Clause (vi), even if the appointing authority had concluded that permission cannot be given, the case ought to have been referred to the Government and the factum of such reference ought to have been intimated to the appellant before 30.4.2008, the date specified by him for his voluntary retirement. This is the effect of Clause (vi). That was also not done.

14. In the light of the aforesaid, we are of the clear view that the appellant is deemed to have voluntarily retired with effect from 30.4.2008 A.N. and his such retirement had become effective by the force of the proviso to Rule 56(iv) of Part III K.S.R.

15. We hasten to add that though the learned Counsel for the appellant made certain submissions touching the Criminal case against his client and the views expressed by the reporting authority to the Superintendent of Police regarding the merits/demerits of the allegations in the criminal case, we desist from touching those aspects because they are matters pertaining to a pending criminal case and we do not intend to express any thing in that regard. The findings in this judgment would have no bearing on the criminal case.

In the result, this Writ Appeal is allowed vacating the impugned judgment and granting a declaration that the appellant has voluntarily retired from the service of the first respondent with effect from the A.N. of 30.4.2008 and his entitlement to retrial benefits would be considered and amounts found eligible shall be released within a period of three months from the date of a copy of this judgment. No costs.