



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 3797 OF 2024

(UNION OF INDIA & OTHERS ..VERSUS.. SATISH NAMDEORAO ANDRASKAR)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Ashwini Athalye, Counsel for the petitioners,
Mr. M.M. Sudame, Senior Advocate with and Shri A.M. Sudame, Counsel for the
respondent.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATED : JULY 26, 2024

(PER : NITIN W. SAMBRE, J.)

Heard finally.

This is a petition by the Union of India questioning the order dated 01.03.2024 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (for short the "Tribunal") in Original Application No.802 of 2023 (Satish Namdeorao Andraskar v. Union of India and others). In the said original application preferred by the respondent-employee, the challenge was to the decision dated 07.07.2023 issued by the petitioners thereby rejecting the prayer of the respondent who is working as an Assistant for grant of voluntary retirement, which was moved on 09.05.2023.

2. The Tribunal *vide* order impugned dated 01.03.2024 has allowed the original application and directed the acceptance of notice of voluntary retirement dated 09.05.2023 referred supra. A further declaration is awarded that the respondent stood retired on 09.05.2023 and directions are also issued to the petitioners, to take necessary steps for release of pension and pensionary benefits of the respondent within a period of three months from the date of receipt of certified copy of the said order. As a sequel of above, the Circular dated 12.05.2023 issued by petitioner No.2 came to be quashed, as the circular puts an embargo contrary to the relevant rules on the

power of the petitioners to process and accept a request for voluntary retirement.

3. The facts necessary for deciding the writ petition are as under:

(a) Through Staff Selection Commission the respondent was selected on 27.08.1996 as a Lower Division Clerk and was promoted to the post of Upper Division Clerk *vide* order dated 10.01.2011. A further promotion was conferred on 12.01.2021 in favour of the respondent on the post of Assistant.

(b) The respondent in past couple of years has suffered certain calamities in his family life viz. the death of entire family of his brother in an accident, his father and mother underwent depression because of the same, the death of his father subsequent thereto and his mother losing her speech. As a sequel of this, not only the respondent is suffering from the hardship but also his health is informed to have been deteriorated.

(c) The respondent accordingly moved an application on 24.03.2023 citing cause of his hardship with a request for grant of retention in his favour at Nagpur office.

(d) It appears that under the scheme which is adopted by the petitioners for the purpose of effecting annual transfers, the respondent's option was invited and the respondent accordingly, furnished preferences of getting transferred to West Circle, Vadodara and North Circle.

(e) The petitioner authorities ignoring the aforesaid preferences which were furnished by the respondent, ordered his transfer to Guwahati *vide* order dated 25.04.2023.

(f) Honouring such transfer order, the respondent joined his duties on 08.05.2023, worked till 14.05.2023 and thereafter went on earned leave for a period from 15.05.2023 to 19.05.2023. Subsequent thereto, the respondent submitted a prayer for extension of leave which was subsequently followed with a request for grant of voluntary retirement pursuant to the provisions of Rule 48 of the CCS Pension Rules.

(g) The prayer as moved by the respondent on 09.05.2023 for grant of voluntary retirement was rejected *vide* communication dated 07.07.2023, which has prompted the respondent to prefer an original application before the Tribunal.

4. Since the original application is allowed by the Tribunal, the present writ petition.

5. The learned Counsel appearing for the petitioners has made threefold contentions; (a) That whether to grant voluntary retirement or not, is purely within the domain and ambit of the petitioners. A support is drawn from the provisions of Rule 48-A(2) of the CCS Pension Rules; (b) That the Tribunal has committed an error of fact by considering that date on which application was tendered by the respondent for voluntary retirement his age was 57 years; and (c) The Tribunal proceeded to grant relief contrary to the Circular dated 12.05.2023 and also ignoring the mandate provided under Rule 56(k)(1) of the Fundamental Rules.

6. So as to substantiate the aforesaid contentions, the learned Counsel appearing for the petitioners would invite our attention to the vacancies which are existing in the office of the petitioners at Nagpur and other places. It is claimed that petitioners are facing

shortage of staff and in such an eventuality, the Tribunal should have been sensitive to the hardship faced by the petitioners who are working in the field of discharging public duty. It is urged that grant of voluntary retirement to the respondent is against the public policy. So as to substantiate the claim, a support is drawn from the judgment of the Apex Court in the matter of ***State of Uttar Pradesh and others v. Achal Singh*** reported in ***(2018)17 SCC 578***. Paragraphs 34, 35 and 36 of the said judgment read thus:

“34. The submission made upon principle of liberty and its curtailment, the law must be just, fair and reasonable can also not be accepted as the Fundamental Rules are statutory rules and have been made by the Governor under Section 241(2)(b) of the Government of India Act, 1935 and the provisions of rule in question cannot be said to be unfair, unreasonable and oppressive.

35. The concept of liberty not to serve when the public interest requires cannot be attracted as retirement which carries pecuniary benefits can be subject to certain riders. The general public has the right to obtain treatment from super skilled specialists, not second rates. In Jagadish Saran v. Union of India, the Court observed thus (SCC p.786, para 44)

“44. Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post-graduate or post-doctoral courses in specialized subjects... To sympathize mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by overruling equality and quality altogether, is a social risk where the stage is post-graduate or post-doctoral.”

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 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 is 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.”

7. She would further claim that voluntary retirement is not an absolute right of the employee. It is purely at the discretion of the petitioner-employer such right can be accepted upon proper evaluation of public policy. She would urge that having evaluated the claim of the respondent and by citing the reasonable cause viz. shortage of staff, the prayer was rejected. According to her, the right to claim voluntary retirement is not an absolute right, is already ruled by the Apex Court in the matter of ***C.V. Francis v. Union of India and others*** reported in ***(2013) 14 SCC 486***. Paragraphs 13 and 14 of the said judgment read thus:

“13. It is well-established that a Voluntary Retirement Scheme introduced by a company, does not entitle an employee as a matter of right to the benefits of the Scheme. Whether an employee should be allowed to retire in terms of the Scheme is a decision which can only be taken by the employer company,

except in cases where the Scheme itself provides for retirement to take effect when the notice period comes to an end. A Voluntary Retirement Scheme introduced by a company is essentially a part of the company's desire to weed out the deadwood.

14. The Petitioner's contention that his application for voluntary retirement came into effect on the expiry of the period of notice given by him must fail, since there was no such stipulation in the scheme that even without acceptance of his application it would be deemed that the petitioner's voluntary retirement application had been accepted. Once that is not accepted, the entire case of the petitioner falls to the ground. The decision in [Tek Chand's](#) case will not, therefore, have any application to the facts of this case, particularly when the petitioner's application for voluntary retirement had not been accepted and he had been asked to rejoin his services. The petitioner was fully aware of this position as he continued to apply for leave after the notice period was over.”

8. In addition to above, she would invite our attention to the provisions of Fundamental Rule 56(k)(1). According to her, in view of the said Rule, which will have overriding effect over the claim made by the respondent under Rule 48(A) of the CCS Pension Rules, it is purely within the domain of the petitioners to accept or reject the prayer for voluntary retirement. She would claim that the respondent has failed to qualify the requirement under the said Rule i.e. 56(k)(1) and that being so, the decision of the petitioners to reject the claim of the respondent for grant of voluntary retirement scheme ought not to have been interfered by the Tribunal. In this background, she would urge that the order impugned is not sustainable and is liable to be quashed and set aside.

9. As against above, Mr. M.M. Sudame, learned Counsel appearing for the respondent would invite our attention to the provisions of Rule 48-A of the CCS Pension Rules. He would submit

that Rule 48-A provides for conditions to be qualified for claiming voluntary retirement. According to him, such qualifications are duly satisfied by the respondent which has prompted the Tribunal to pass an order in favour of the respondent. According to him, the administrative circulars issued by the petitioner authorities or the Central Government will not override the statutory rule and in such an eventuality, the Circular dated 12.05.2023 is rightly set aside by the Tribunal. He would further urge that Fundamental Rule 56(k) (1) will have hardly any applicability or attraction in the facts of the present case. He would claim that Rule 56(k)(1) contemplates the contingencies in which the said rule can be taken recourse to. He would claim that since the case of the respondent is covered under Rule 48-A thereby qualifying all the necessary requirements prescribed thereunder, the Tribunal was justified in taking recourse to the said provisions and directing the petitioners to accept the resignation. It is further urge that the circular empowering the employer to reject the prayer for voluntary retirement cannot be stretched to mean that in absence of reasonable reason or cause, such prayer for acceptance of the voluntary retirement can be rejected arbitrarily. In this background, he would pray that the petition is liable to be dismissed.

10. We have considered the rival submissions.

11. It can be borne out of record that the respondent has suffered certain catastrophic events in his life. The same has caused mental agony to him and his mother. He is also suffering from uncontrolled diabetes and breathing problems whereas his mother is suffering from depression, cancer, diabetes, etc. as well as she has also lost her speech. Due to the same, the respondent had given

preferences of getting transferred to West Circle, Vadodara and North Circle. However, the respondent was transferred to Guwahati i.e. approximately 1851 kms away *vide* order dated 25.04.2023 ignoring the preferences given by the respondent which were invited by the petitioners. As per application dated 09.05.2023, the respondent applied for voluntary retirement from the government service as per provision contained in Rule 48(A) & 48(B) of the CCS (Pension) Rules. He further stated that the application shall be treated as a notice of three months for voluntary retirement.

12. The respondent has opted to apply under Rule 48 (A) & 48 (B) of the CCS (Pension) Rules as against the argument canvassed by the petitioner that he is not satisfying the requirements of grant of voluntary retirement under Rule 56(k)(1) of the Fundamental Rules. It is not disputed that the respondent has joined the services on 27.08.1996 and therefore he has completed more than 26 years continuous service with the respondent.

13. Rule 48-A of CCS Pension Rules reads as under:

“(1) At any time after a government servant has completed twenty years’ qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

Provided that this sub-rule shall not apply to a Government Servant, including scientist or technical expert who is-

i) On assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes.

ii) Posted abroad in foreign based offices of the Ministries/ Departments,

iii) On a specific contract assignment to a foreign Government, Unless, after having been transferred to India, he has resumed the charge of the post of India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority:

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) Deleted

(3-A) (a) A Government servant referred to in sub-rule (1) may make a request in writing to the Appointing Authority to accept the notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under Clause (a), the Appointing Authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointment authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given 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.

(5) Omitted.

(6) This rule shall not apply to a Government servant who-

(a) retires under the Special Voluntary Retirement Scheme relating to voluntary retirement of surplus employees, or

(b) retires from Government service for being absorbed permanently in an Autonomous Body or a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement.

Explanation- For the purpose of this rule, the expression 'Appointing Authority' shall mean the authority which is competent to make appointment to the service or post from the Government servant seeks voluntary retirement."

The above referred rule contemplates two grounds on which an application for grant of voluntary retirement can be rejected; (a) when disciplinary proceeding is pending or contemplated against the Government servant concerned for the imposition of a major penalty and the disciplinary authority, having regard to the circumstances of the case, is of view that the imposition of the penalty of removal or dismissal from service would be warranted in the case; and (b) in which prosecution is contemplated or may have been launched in a Court of Law against the Government servant concerned.

The respondent-employee has completed more than 26 years' service and neither any disciplinary proceeding nor prosecution is contemplated against him. Hence, he was entitled to apply for voluntary retirement as per Rule 48-A(1) and the petitioners were required to consider the same as per sub-rule (2) in view of the words 'shall require'.

14. Recently, the Orissa High Court in the case of ***Manoranjan Mallik Versus State of Odisha and Ors. [W.P. (C) No. 9003 of 2024]*** has interpreted a similar rule i.e. Rule 42 of the Odisha Pension Rules, 1992 whereby, it has been held that if the applicant satisfies the minimum qualifying service period viz 20 years required for moving an application for voluntary retirement and has given a notice of three months as per the said rule then generally, the application seeking voluntary retirement by a Government employee may be accepted unless it falls under the two exceptions carved out by the said rule.

15. Both Rule 48-A(4) of CCS Pension Rules and Rule 56(k)(2) of the Fundamental Rules read as under :

“A Government servant, who has elected to retire under this rule.....”

The Respondent has elected to retire under CCS Pension Rules and not under Rule 56(k) of the Fundamental Rules. It is a fit case for the application of doctrine of election of remedies as it satisfies all the three essentials for application of the said doctrine as laid down in the case of ***Transcore Versus Union of India*** reported in ***(2008) 1 SCC 125***, which are: (1) existence of two or more remedies, (2) inconsistencies between such remedies and (3) a choice of one of them. Recently, the Apex Court in the case of ***Ireo Grace Realtech Private Limited Versus Abhishek Khanna and Others*** reported in ***(2021) 3 SCC 241***, has, in detail, dealt with the doctrine of election of remedies from paragraph 37.5 to 41. Paragraph 37.5 of the said judgment is relevant and is reproduced as under:

“37.5 An allottee may elect or opt for one out of the remedies provided by law for redressal of its injury or grievance. An election of remedies arises when two concurrent remedies are available, and the aggrieved party chooses to exercise one, in which event he loses the right to simultaneously exercise the other for the same cause of action.”

16. The petitioners have canvassed an argument that, to grant voluntary retirement or not is purely within their domain. However, the Constitution of India does not envisage ‘absolute discretion’ as the same is arbitrary and hit by Article 14 of the Constitution of India. Accepting or refusing an application for voluntary retirement is surely in their discretion but such discretion is not absolute. The Hon’ble Supreme Court in the case of ***Manjushree Pathak Versus the Assam Industrial Development Corporation Ltd. And Others*** reported in ***AIR 2000 SC 2769***, has held that the discretion whether

to accept or reject the application for voluntary retirement is not absolute and the same has to be exercised judiciously. Further, though the respondent is satisfying the conditions laid down in Rule 48-A of CCS Pension Rules, the petitioners should have shown sensitivity towards the tragedies faced by the respondent and serious ailments of mother. The Allahabad High Court in the case of ***AS Versus State of U.P. through Additional Chief Secretary, Medical and Health Services, U.P. Lucknow and others*** bearing neutral citation no. 2024:AHC-LKO:47600, in paragraph 11 and 12 has held as under:

“11. However, in view of the present facts and circumstances of the issue in question, if the petitioner is compelled to discharge her duties, she may suffer irreparable loss and injury, which cannot be compensated in terms of money inasmuch as on account of suffering from severe depression with seven anxiety neurosis and she is taking heavy medication regarding mental ailment as well as she is not able for prolonged sitting or prolonged desk work/writing work as per the specific opinion of the Orthopedic Surgeon, her life may be endangered under Article 21 of the Constitution of India would be violated. Every citizen of the country is having Fundamental Right to life and personal liberty and that right to life may not be violated without having any cogent and proper reason.

12. The reason so indicated by the employer is not proper in the case of the present petitioner to the effect if the Department is not having proper employees and the petitioner is compelled to discharge her duties in such critical medical condition, she may likely to loose her life or she may likely to cause damage to herself. This is not a case where the petitioner has applied for voluntary retirement in a casual manner only after completing the requisite term of service and attaining the age but it appears that her application for seeking voluntary retirement has been filed under serious compelling circumstances. Therefore, the reason so indicated in the impugned order suffers from perversity, arbitrariness and given without proper application of mind.”

17. As far as the circular dated 12.05.2023 is concerned, the same has curtailed the right of a Government servant to make an application for voluntary retirement. It is in contravention of the Rule 48-A of CCS Pension Rules as well as Rule 56(k) of the Fundamental Rules. It is a settled position of law that executive instructions cannot override rules made in pursuance of a statute. The same has been reiterated by the Hon'ble Supreme Court in paragraph 34 of the judgment in ***Indian Ex-Servicemen Movement and others Versus Union of India and others*** reported in (2022) 7 SCC 323 which reads as under :-

“34. A hierarchy in law exists between statutes and rules — a statutory provision will have precedence over delegated legislation if the latter conflicts with the former. Similarly, executive instructions cannot override a statute or rules made in pursuance of a statute.....”

18. The counsel for the petitioners has placed strong reliance on the judgment of the Apex Court in *Achal Singh* (supra), wherein the Apex Court while considering the appeal preferred by the State against the Division Bench judgment of the Allahabad High Court had allowed the request of the Doctors seeking voluntary retirement. Therein, an interpretation was involved as to whether as per Rule 56 of the U.P Fundamental Rules, an employee has an unfettered right to seek voluntary retirement by serving a notice of three months to the State Government or whether the State Government under the explanation attached to Rule 56 of the said Rules, is authorized to decline the prayer under clause (c) of Rule 56 in public interest. On a careful reading of the aforesaid judgment, the same stands on a different footing than the present case. The present case has to be considered in the light of Rule 48-A of the CCS (Pension Rules).

19. Hence, we find that even though the observations made by the Central Administrative Tribunal in paragraph 9 stating that the application for voluntary retirement has been forwarded in terms of Rule 56(k) of the Fundamental Rules and the respondent has completed the age of 57 years at the time of making application which makes him eligible for voluntary retirement as he has satisfied the age criteria of 55 years is incorrect, ultimately the tribunal has directed the petitioners to accept the notice of voluntary retirement and declared that the respondent stood retired. The petitioners were also directed to take necessary steps to release his pension and all other benefits. The Tribunal further quashed and set aside the Circular dated 12.05.2023 issued by the petitioners and to that extent we uphold the view taken by the Tribunal.

It is further declared that the petitioner stood retired from service on August 09, 2023.

20. In this background, the petition is *sans* merit. Hence, it is dismissed. No order as to costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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