



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 2881/2012

Ram Niwas Yadav Ret'd Gram Sewak S.o Shri Jagmal Singh Yadav, Village- Jonaycha Khurd, Tehsil- Behror, District - Alwar, Rajasthan.



-----Petitioner

Versus

1. State of Rajasthan through its Principal Secretary, Department of Rural Development Panchayati Raj, Government Secretariat, B.D. Road, Jaipur.
2. Chief Executive Officer, Zila Parishad, Alwar Rajasthan.
3. Vikas Adhikari, Panchayat Samiti, Neemrana, District- Alwar, Rajasthan.
4. Director, Department of Pension and Pensioners' Welfare, Pension Bhawan, Vidyut Marg, Jyoti Nagar, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Mahendra Singh Yadav
For Respondent(s)	:	Mr. Manvijay Singh Rathore for Mr. Kesar Singh Shekhawat, Addl. GC

JUSTICE ANOOP KUMAR DHAND

Order

14/02/2025

1. Learned counsel for the petitioner submits that on account of mental health condition, the petitioner submitted an application before the respondents seeking voluntary retirement from service (for short 'VRS') on 22.10.2007 with effect from 01.02.2008.
2. Counsel for the petitioner submits that the aforesaid application of the petitioner was forwarded by the Block Development Officer, Panchayat Samiti Neemrana, District Alwar to the Additional Chief Executive Officer, Zila Parishad, Alwar and thereafter, the matter was kept in general body meeting of the



Panchayat Samiti on 31.12.2007 and the VRS application of the petitioner was accepted with effect from 01.02.2008. Counsel submits that immediately thereafter, a request was made by the petitioner to the respondent-authority for granting him retiral benefits. Counsel submits that the said application of the petitioner has been rejected by the respondents vide impugned order dated 29.01.2009 and 30.04.2009 stating therein that he has not completed 15 years qualifying service for getting VRS, hence, he is not entitled to get retiral benefits.

3. Counsel submits that if the respondents were of the view that the petitioner was not entitled to get VRS, his application seeking VRS could have been rejected but the same was allowed and his premature retirement application was accepted. Counsel submits that for the aforesaid act on the part of the respondents, the petitioner cannot be allowed to make sufferer. In support of his contentions he has placed reliance upon the judgment passed by the Co-ordinate Bench of this Court in the case of **Sudheer Kumar Khana vs. State of Rajsthan** reported in **2018(4) WLC (Raj.) 117**.

4. Per contra, learned counsel for the respondent-State opposed the arguments raised by counsel for the petitioner and submitted that the petitioner himself submitted an application seeking voluntary retirement on account of his mental health conditions and looking to the same, his prayer was accepted and he was granted VRS with effect from 01.02.2008. Counsel submits that as per the Rules, a person is entitled to seek VRS with pensionary benefits if he/she completes 15 years of qualifying service but in the instant case, the petitioner has not completed



the said period, hence, under these circumstances, he was not entitled to get VRS at pensionary benefits. Counsel submits that under these circumstances, interference of this Court is not warranted.



5. Heard and considered the submissions made at Bar and perused the material available on the record.

6. This fact is not in dispute that as per Rule 50 of the Rajasthan Civil Services (Pension) Rules, 1996 (hereinafter referred to as "the Rules of 1996") a person can apply for voluntary retirement after completion of 15 years of qualifying service. This fact is not in dispute that the petitioner has not completed the said period and prior to completion of that period, he submitted an application seeking VRS with effect from 01.02.2008. This fact is also not in dispute that the aforesaid application submitted by the petitioner was not rejected by the respondents but the same was allowed and the petitioner was allowed to get premature retirement. The mistake was committed not only by the petitioner but also by the respondents, the respondents could have rejected the application submitted by the petitioner but instead of doing so, they have accepted the premature retirement of the petitioner based on wrong assumptions.

7. It is quite shocking and surprising that when this fact came into the notice of the State authorities that the VRS could not have been granted to the petitioner, the State authorities could have cancelled the order accepting the VRS of the petitioner but instead of doing so, they have justified their stand. Now, at this stage, the respondents cannot deny the retiral benefits of the petitioner only



on the count that the petitioner has retired as at a premature stage without completing 15 years of qualifying service. The respondents cannot put the petitioner in a disadvantageous situation. Firstly, they accepted the premature resignation of petitioner to grant him premature voluntary retirement prior to completing 15 years of services in terms of Rule 50 of the Rules of 1996. Secondly, once the respondents have acted upon the premature request of the petitioner while accepting his prayer for VRS, they are bound to grant him the retirement benefits looking to the total length of his service.

8. The exact identical situation came before this Court in the case of **Sudheer Kumar Khana vs. State of Rajasthan** reported in **2018 (4) WLC (Raj.) 117** wherein the Co-ordinate Bench of this Court has held as under:

"21. A bare look at the above would reveal that the Dy. Secretary clearly indicated that as the petitioner had claimed that on account of his own illness and that of his wife, he remained absent and, therefore, administrative sanction is granted for treating the period of absence as extra ordinary leave and a specific indication was made that further proceedings for sanction of the pension case of the petitioner be undertaken.

22. The very fact that by order dated 05.08.2011 while granting administrative sanction, it was specifically noticed by the Dy. Secretary that on account of illness of petitioner and his wife, the absence took place and, therefore, he is entitled to grant of extra ordinary leave, the said order, essentially takes care of the requirement of Rule 20, inasmuch as, once the extra ordinary leave has been granted on the ground of illness of the petitioner and his wife and which in fact formed the basis for setting aside of the order of dismissal, the respondent authorities apparently were not justified in thereafter seeking any further certificate etc. pursuant to the requirements of provisions of Rule 20 of the Rules of 1996.





23. The order dated 16.10.2015 has been passed in a mechanical manner without taking into consideration that the order dated 09.09.2011 was passed pursuant to the administrative sanction which had taken into consideration the illness of the petitioner and his wife and, therefore, the said order cannot be sustained.

24. Besides the above, the issue of estoppel on part of the State also assumes great significance in the present case.

25. Once an application was filed by the petitioner under Rule 50 seeking premature retirement on the assumption that he had completed 15 years of qualifying service and the respondents once after examining the requirements of Rule 50 of the Rules of 1996 i.e. 15 years' qualifying service as required under the provisions of the Pension Rules came to a conclusion that he fulfills the requirement of qualifying service and grants premature retirement, the State cannot turn around and claim that as the petitioner had not completed the qualifying service, he would not be entitled to grant of retiral benefits.

26. In a given case, the authorities may commit a mistake in granting premature retirement based on wrong assumption of the government employee having completed 15 years' of qualifying service, in that case the State/appointing authority is not only required to cancel the order of premature retirement after affording an opportunity of hearing to the government servant, but offer reemployment to the said employee. It cannot simply deny the benefits of premature retirement so that the employee is left in a no man's land as on the one hand his premature retirement has been accepted assuming his having completed 15 years of qualifying service and on the other hand he is denied benefit of premature retirement on account of his having not completed 15 years of qualifying service, which conduct of the State will be not only contradictory but mutually destructive which cannot be permitted.

27. Admittedly, in the present case, the respondents despite coming to the conclusion that the petitioner had not completed the qualifying service, have chosen not to recall the order dated 20.01.2009 granting premature retirement to the petitioner w.e.f. 31.01.2009 and has simply denied the benefit of pension etc. to the petitioner, which action cannot be sustained.





28. Consequently, the writ petition filed by the petitioner is allowed. The order dated 16.10.2015 (Annexure-13) passed by the respondents denying the pension etc. to the petitioner is quashed and set aside. The respondents are directed to grant all retiral benefits to the petitioner as per the Rules of 1996. The needful be done within a period of three months. The petitioner would also be entitled to interest under Rule 89 of the Rules of 1996 on the delayed payment of retiral benefits @ 9% per annum from the date the retiral benefits became due."



9. Considering the proposition of law as laid down by the Co-ordiante Bench of this Court in the case of **Sudheer Kumar Khana (supra)**, and looking to the fact that the respondents despite coming to the conclusion that the petitioner has not completed the period of qualifying service and chose not to recall the order dated 31.12.2007 and as simply denied the retirement benefits to the petitioner, such action of the respondents is not liable to be sustained and the same is liable to be deprecated. Consequently, the instant petition stands allowed and the impugned order 29.01.2009 as well as 30.04.2009 stands quashed and set aside.

10. The respondents are directed to grant all retiral benefits to the petitioner and looking to his total length of service of the petitioner. He is also entitled to get interest at the rate of 9% in terms of Rule 89 of the Rules of 1996.

11. All pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

Garima/79