

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7676 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

BHUPENDRA ATMARAMDAS PATEL
Versus
STATE OF GUJARAT & 2 other(s)

Appearance:

(MR PRANAV S DAVE)(5104) for the Petitioner(s) No. 1

SR ADV MR S.N.SHELAT WITH MR SHIVANG M SHAH(5916) for the
Petitioner(s) No. 1

MR DHAWAN JAYSWAL, AGP for the Respondent(s) No. 1

SR ADV MR DEVANG VYAS WITH MR SIDDHARTH H DAVE(5306) for the
Respondent(s) No. 2

RULE SERVED for the Respondent(s) No. 3

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 10/06/2022
CAV JUDGMENT

1. Heard learned Senior Advocate Mr. S.N.Shelat assisted by learned advocate Mr. Shivang Shah for the petitioner, learned Assistant Government Pleader Mr. Dhawan Jayswal for the

respondent-State and learned Senior Advocate Mr. Devang Vyas for learned advocate Mr. Siddharth Dave for respondent No.2.

2. By this petition under Article 226 of the Constitution of India the petitioner has prayed for the following reliefs:

"A. Your Lordships may be pleased to admit and allow this application;

B. Your Lordships may be pleased to issue a writ of mandamus or in the nature of certiorari or any other appropriate writ, order or direction declaring that the petitioner has voluntarily retired from his services with effect from 6.1.2014 and further declaring that initiation of departmental proceedings after voluntary retirement of petitioner w.e.f. 06.01.2014 is non-est and null and void ab initio and further directing the respondent authorities to immediately process and release the consequential retiral benefits accrued in favour of the petitioner after 6.1.2014 and pay the same with 9% interest.

C. Pending admission, hearing and final disposal of the present Special Civil Application Your Lordships may be pleased to direct the respondent authorities to process and release the retiral dues of the petitioner accrued in favour of the petitioner from 6.1.2014 and release the same with 9% interest and further be pleased to stay the purported departmental proceeding initiated, if any, after

voluntary retirement of petitioner w.e.f. 6.1.20174 as it is non-est and null and void ab initio.

D. Your Lordships may be pleased to stay such other and further order(s) that may be deemed fit and proper in the facts and circumstances of the case.

3. Brief facts of the case are that the petitioner applied for the post of Deputy Engineer pursuant to the advertisement dated 19.02.1992 issued by the respondent No.2-Vice Chancellor of Hemchandracharya North Gujarat University.

3.1 The petitioner was called for the interview by respondent No.2 vide letter dated 08.05.1992 and thereafter, the petitioner was appointed vide appointment order dated 18.06.1992 as Deputy Engineer with respondent No.2-University w.e.f. 22.06.1992.

3.2 The petitioner served a notice for voluntary retirement on 01.10.2013 upon respondent No.2-University on completion of 20 years of qualifying service. In the said letter the petitioner stated that the petitioner would retire voluntarily w.e.f. 06.01.2014. It is the case of the petitioner that respondent No.2-University did not issue

any intimation with regard to any order rejecting or accepting the voluntary retirement of the petitioner and therefore, as per Rule 48 of the Gujarat Civil Service (Pension) Rules, 2002 (for short 'Rules, 2002'), the petitioner is deemed to have retired on 06.01.2014 on expiry of the three months' notice period.

3.3 Respondent-University, however, issued a charge-sheet dated 04.09.2015 levelling various charges against the petitioner after a period of 21 months from the date of voluntary retirement.

3.4 The petitioner filed a detailed reply dated 14.10.2015 and denied all the charges levelled against him and also contended that no charge-sheet can be issued to a retired employee after his date of retirement without fulfilling the condition precedent as per Rule 24 of the Rules, 2002. It is the case of the petitioner that in view of the above facts as the petitioner has retired voluntarily w.e.f. 06.01.2014, the respondent-authorities are required to process the retirement dues and benefits payable to the petitioner and issuance of charge-sheet and other disciplinary

proceedings would be non-est and void as they are initiated after the petitioner has retired from service on 06.01.2014.

4. Learned Senior Advocate Mr. S.N.Shelat for the petitioner referred to the University Non-teaching Staff Conditions of Service (Conduct and Discipline) Ordinance, 1986 (for short 'the Ordinance, 1986') and submitted that, Ordinance 147 pertains to Recruitment, Appointment and other service conditions including conduct and disciplinary Rules and Leave Rules of the Non-teaching Staff of the University and sub-rule (14) of the said Ordinance stipulates that the University employee shall be eligible to get the benefit of the various provisions contained in the Voluntary Retirement Scheme of the Government of Gujarat as amended from time to time. It was therefore submitted that the charge-sheet dated 14.09.2015 would not have been issued to the petitioner after the date of the retirement without following the provisions of Rule 24 of the Rules, 2002.

4.1 It was submitted that the disciplinary proceedings cannot be continued once the petitioner has retired from service.

4.2 In support of his submissions, learned advocate Mr. Shelat referred to and relied upon the following decisions:

(I) *State of Haryana and ors vs. S.K.Singhal* reported in *1999 (4) SCC 293* to submit that voluntary retirement of the petitioner would be an automatic retirement if no reply is communicated to the petitioner for accepting or rejecting the application of voluntary retirement preferred by the petitioner. Therefore, Rule 48 of the Rules 2002 would come into effect and on completion of three months' notice as the permission to retire is not refused, retirement becomes effective from the date of expiry of the said period.

(II) *J.T.Rahti vs. State of Gujarat* reported in *2013 (4) GLR 3439* to submit that after the date of voluntary retirement i.e. 06.01.2014, the respondent-University could not have issued the charge-sheet on 14.09.2015.

5. It was submitted that aforesaid decision in case of *J.T.Rahti vs. State of Gujarat* (supra) was confirmed in the Letters Patent Appeal No. 448 of 2014 by the Division Bench.

6. On the other hand, learned Senior Advocate Mr. Devang Vyas for respondent No.2-University submitted that this petition may not be entertained in view of the inordinate and unexplained delay and laches on the part of the petitioner for more than three years. It was submitted that the petition is filed at belated stage and inquiry was initiated against the petitioner and reached at the substantial stage and sufficient material has been found in preliminary inquiry that the petitioner has caused huge loss to the respondent-University while working as Deputy Engineer with the respondent-University.

6.1 It was submitted that the Executive Engineer of the respondent-University has passed many resolutions with regard to illegality and irregularity committed by the petitioner and upon an Inquiry Committee formed by the respondent-University, a report has been given by the said Committee which clearly shows that the petitioner in connivance with the other employee has caused huge loss to the respondent-University while he was in service.

6.2 It was submitted that though the

petitioner was aware about the said inquiry report dated 15.07.2015, the same has not been placed on record and therefore, there is deliberate suppression of the material facts by the petitioner which would affect the merits of the case. It was pointed out that in the supplementary report also it was found that the petitioner along with another Engineer have made excess payment than the actual work done and therefore, this caused loss to the respondent-University. It was submitted that when the respondent-University considered aforesaid report in its meeting held on 21.03.2017, the petitioner has approached this Court by filing this petition as the Executive Council in the meeting held on 11.05.2017 has decided to take appropriate action against the responsible persons for causing huge loss and for committing fraud with the respondent-University.

6.3 It was pointed out that the respondent-University has never accepted the application of voluntary retirement dated 01.10.2013 submitted by the petitioner and the respondent-University has decided to take appropriate action against the petitioner for causing huge loss to the respondent-University.

6.4 In support of his submissions, learned Senior Advocate Mr. Vyas referred to and relied upon the following decisions:

(I) **Virender Chaudhary vs. Bharat Petroleum Corporation and others** reported in (2009) 1 SCC 297 to submit that though a writ remedy is discretionary remedy and the Court exercises its jurisdiction only upon satisfying itself that it would be equitable to do so but, at the same time, delay and/or laches, indisputably, are the relevant factors.

(ii) **Girish Jivrambhai Thakkar vs. Hemchandracharya North Gujarat University and others** in Special Civil Application No. 15213 of 2017 rendered on 24.03.2021.

7. Considering the submissions made by the learned advocate for the respective parties it is not in dispute that the petitioner tendered resignation on 01.10.2013 for voluntary retirement w.e.f. 06.01.2014.

8. Rule 48 of the Rules, 2002 reads as under:

"RULE 48 : Retirement on completion of twenty years' qualifying service

(1) A Government employee on completion of twenty years' qualifying service, may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

(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."

9. The respondent-University did not either except or refuse the application dated 01.10.2013 filed by the petitioner for voluntary retirement giving three months' notice as required by the Rule 48 of the Rules, 2002. It is also not in dispute that the petitioner completed 20 years of qualifying service and therefore, he was entitled to apply for voluntary retirement.

10. As per proviso to sub-rule (2) of Rule 48 of the Rules, 2002, if 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. Thus, the petitioner having served three months' notice for being retired w.e.f. 06.01.2014 and the same was not refused by the respondent-University, the petitioner is deemed to have retired with effect from the said date.

11. This Court in case of *J.T.Rahti vs. State of Gujarat*(supra) in similar facts has held as under:

"10. Rule 48(2) clearly provides that after receipt of the notice for voluntary retirement from an employee, the appointing authority, if does not refuse to grant permission for retirement, before expiry of the period specified in the notice, retirement shall become effective from the date of expiry of the said period. Therefore, as clearly provided if the appointing authority does not want to permit the employee to voluntarily retire from the effective date, it has to positively refuse to grant permission of retirement before the expiry of the period of three months specified in the notice. Communication dated 6.9.2005 for its language and its author, in no circumstances, could be said to be refusal to grant permission for retirement to the petitioner as contemplated in sub-Rule (2) of Rule 48. The appointing authority has not refused to grant permission for retirement to the petitioner before expiry of the specified period of notice. Communication dated 6.9.2005 was just an intimation to the appointing authority

about the decision taken for filing of the application and such could never be said to be a decision of the appointing authority to refuse to grant permission to the petitioner for retirement as asked for by the petitioner in the notice.

11. In the case of Tek chand Vs.Dile Ram reported in (2001)3 SCC 290, the Hon'ble Supreme Court in the context of similar rule providing for voluntary retirement on completion of 20 years of service has held and observed from para 31 to 34 as under:-

"31. It is not disputed that the appointing authority did not refuse to grant the permission for retirement before expiry of the period specified in the said application dated 5-12-1994 given by Nikka Ram. Further, no communication whatsoever was made to him within the said period. During the course of the argument before the High Court, the learned counsel for the parties referred to Rule 48-A of the Rules, of course, placing their own interpretation. Since the said Rule is material and has bearing on the question to be determined, it is extracted below :-

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"48-A.Retirement on completion of 20 years qualifying service.

(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 Co-operation (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 in 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."

32. Under sub-rule (1) of the said Rule, at any time after completion of 20 years' qualifying service, a Government servant could give notice of not less than three months' in writing to the appointing authority for retirement from service. Under sub-rule (2), voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority. In the

proviso to sub-rule (2) of Rule 48-A, it is clearly stated that in case 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.

33. It is clear from sub-rule (2) of the Rule that the appointing authority is required to accept the notice of voluntary retirement given under sub-rule (1). It is open to the appointing authority to refuse also on whatever grounds available to it but such refusal has to be before the expiry of the period specified in the notice. The proviso to sub-rule (2) is clear and certain in its terms. If 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 sought for become effective from the date of expiry of the said period. In this case, admittedly, the appointing authority did not refuse to grant the permission for retirement to Nikka Ram before the expiry of the period specified in the notice dated 5- 12- 1994. The learned senior counsel for the respondent argued that the acceptance of voluntary retirement by appointing authority in all cases is mandatory. In the absence of such express acceptance the Government servant continues to be in service. In support of this submission, he drew our attention to Rule 56(k) of Fundamental Rules. He also submitted that acceptance may be on a later date, that is, even after the expiry of the period

specified in the notice and the retirement could be effective from the date specified in the notice. Since the proviso to sub-rule (2) of Rule 48-A is clear in itself and the said Rule 48-A is self-contained, in our opinion, it is unnecessary to look to other provisions, moreso in the light of law laid down by this Court. An argument that acceptance can be even long after the date of the expiry of the period specified in the notice and that the voluntary retirement may become effective from the date specified in the notice, will lead to anomalous situation. Take a case, if an application for voluntary retirement is accepted few years' later from the date specified in the notice and voluntary retirement becomes operative from the date of expiry of the notice period itself, what would be the position or status of such a Government Servant during the period from the date of expiry of the notice period up to the date of acceptance of the voluntary retirement by the appointing authority? One either continues in service or does not continue in service. It cannot be both that the voluntary retirement could be effective from the date of expiry of the period mentioned in the notice and still a Government servant could continue in service till the voluntary retirement is accepted. The proviso to sub-rule (2) of Rule 48-A of the Rules does not admit such situation.

34. This Court in a recent judgment in the case of State of Haryana v. S. K. Singhal, (1999) 4 SCC 293 : (1999 AIR SCW 1427 : AIR 1999 SC 1829 : 1999 Lab

IC 2072), after referring to few earlier decisions of this Court touching the very point in controversy in para 13 of the judgment has held thus :-

"13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case (AIR 1978 SC 17 : 1977 Lab IC 1852) by the relevant rules 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. If, however, as in B. J. Shelat case (AIR 1978 SC 1109 : 1978 Lab IC 824) and as in Sayed Muzaffar Mir case (AIR 1995 SC 176) the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz. in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a posting order withholding permission to retire and must also communicate the same to the employee as stated in B. J. Shelat case and in Sayed Muzaffar Mir case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication

of acceptance should be treated as amounting to withholding of permission."

12. In light of the above and as provided by Rule 48 of the Rules, retirement asked for by the petitioner by letter dated 30.6.2005 could be said to have come into effect from the date of expiry of the notice period i.e. from 30.9.2005."

12. In case of *State of Haryana and ors vs. S.K.Singhal* (supra), the Apex Court decided the issue of voluntary retirement of an employee in the context of Rule 5.32(B) of the Punjab Civil Service Rules as under:

"5. It is in the light of the above facts that it has to be considered if the respondent must be deemed to have retired. That is the crucial question. Question also arises whether the allegation that the respondent was "not attending to duties" after notice was relevant and could be a valid ground for refusing to permit the voluntary retirement coming into force under Rule 5.32 (B).

The said rule 5.32 (B) of the Punjab Civil Service Rules, (Vol.2) reads as follows :

(1) At any time a Govt. employee 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. However, a Government employee may make a request in

writing to the appointing authority to accept notice of less than three months given reason therefor. On receipt of a request, the appointing authority 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 of three months.

(2) The notice of voluntary retirement given under sub rule (1) shall require acceptance by the appointing authority subject to rule 2.2. of pb.C.S.R. Vol. II:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub rule (1) supra, the retirement shall become effective from the date of expiry of the said period:

Provided further that before a Govt. employee gives notice of voluntary retirement with reference to sub-rule (1) he should satisfy himself by means of a reference to the appropriate authority that he has in fact, completed twenty years service qualifying for pension."

7. Rule 2.2 (a) of the punjab Civil Service Regulation (Vol.II) referred to in Rule 5.32(b) (2) reads as follows :

"Rule 2.2 (a) Future good conduct is an implied condition of every grant of a pension. The (appointing authority) reserve to itself the right of withholding or withdrawing a pension or

any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct. The decision of the (appointing authority) on any question of withholding or withdrawing the whole or any part of pension under this rule shall be final and conclusive."

8. It will be noticed that under Rule 5.32 B, a government employee who has completed 20 years of qualifying service may, by giving notice of not less than 3 months in writing to the appointing authority, retire from service. There is provision for requesting for relaxation of the notice period of 3 months and for consideration thereof. As to what the appointing authority is to do is governed squarely by sub-clause (2). That sub-clause states that the notice of voluntary retirement given under sub-clause (1) "shall" require acceptance by the appointing authority subject to Rule 2.2 of the Punjab Civil Service Regulation (Vol.II). Acceptance of the request is subject to Rule 2.2 of the Rules. But the proviso to sub-clause (2) of Rule 5.32B states that if the permission to retire is not refused within the period specified in sub-clause (1) the retirement shall become effective from the date of expiry of the period. Therefore, it is clear that if a person has completed 20 years qualifying service and has given a notice under rule 5.32B of 3 months (or if his request for relaxation of 3 months is accepted), then the request "shall" be accepted subject to invoking the provision of Rule 2.2 of the Punjab Civil Service Regulation (Vol.II). Under Rule 2.2, the "future good conduct" of an employee is an implied condition of every grant of pension. In other words, what all it means is that even if the

acceptance of the voluntary retirement is mandatory, there is an obligation cast on the retired employee to maintain good conduct after such retirement. The words "future good conduct" mean good conduct after retirement. If the employee does not continue to maintain good conduct after retirement, then the govt. can withhold or withdraw the pension or a part of it in case he is convicted of serious crime or in case he be guilty of grave misconduct. Such decision to withhold or withdraw the whole or part of pension would be final and conclusive, that is to say, so far as the governmental hierarchy is concerned. It will be noticed that Rule 2.2 does not obstruct the voluntary retirement to come into force automatically on expiry of 3 months and it only enables withdrawal or withholding of pension subject to certain conditions, to a retired employee.

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 Govt. 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 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. Cases like *Dinesh Chandra Sangma vs. State of Gujarat & Others* 1978 (2) SCC 202; and *Union of India & Others vs. Sayed Muzaffar Mir* 1995 Supp. (1) SCC 76 belong to the former category where it is held that upon expiry of the period, the voluntary retirement takes effect automatically as no order of refusal is passed within the notice period. On the other hand *HPMC vs. Suman Behari Sharma* 1996 (4) SCC 584 belongs to the second category where the Bye-laws were interpreted as not giving 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 has elapsed. We shall refer to these two categories in some detail.

15. Thus from the aforesaid three decisions it is clear that if the right to voluntarily retirement is conferred in absolute terms as in *Dinesh Chandra Sangma's* case by the relevant rules and there is no provision in Rules to withhold permission in certain contingencies the voluntary retirement comes into effect

suthomatically on the expiry of the period specified in the notice. If, however, as in B.J.Shelat's case and as in Sayed Muzaffar Mir's case, the concerned authority is empowered to withhold permission to retire if certain conditions exist, viz. in case the employee is under suspension or in case a departmental inquiry is pending or is contemplated, the mere pendency of the suspension or departmental inquiry or its contemplation does not result in the notice of voluntary retirement not coming into effect on expiry of the period specified. What is further needed is that the concerned authority must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J.Shelat's case and in Sayed Muzaffar Mir's case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.

16. Before referring to the second category of cases where the rules require a positive acceptance of the notice of voluntary retirement and communication thereof, it is necessary to refer to the decision of this Court in [Dr. Baljit Singh vs. State of Haryana](#) 1997 (1) SCC 754 strongly relied upon by the learned counsel for the appellants and to [Power Finance Corporation Ltd. vs. Pramod Kumar Bhatia](#) 1997 (4) SCC 280. the format case arose under Rule 5.32(b) of the Punjab Civil Service Rules. That rule extracted earlier contains an express provision in the proviso to sub-section (2) that the

retirement takes effect automatically if refusal is not communicated within 3 months. In that case, when the employee gave notice for voluntary retirement on 20.9./1993, criminal cases were pending against him. After expiry of 3 months, on 25.2.1994, the competent authority declined to accept the notice. A two Judge Bench of this Court, however, held that the voluntary retirement did not come about automatically on the expiry of the notice period but that it could take effect only upon acceptance of the notice by govt. and that the acceptance must also be communicated and till then the jural relationship of master and servant continues. This Court referred only to the decision of the two Judge Bench in Sayed Mazaffar Mir's case 1995 Supp. (1) SCC 76 and stated that case was to be confined to its own facts. The two Judge Bench of this Court in Dr.Baljit Singh's case 1997 (1) SCC 754 did not notice that there were two three Judge Bench cases in Dinesh Chandra Sangma and Shelat 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. 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 expiry of 3 months period, 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."

13. Rule 2.2 of the Punjab Civil Service Rules, as referred by the Apex Court, provided for reservation to the Government to withhold or to withdraw pension or any part of it if the employee is alleged to have committed serious crime or is guilty of grave misconduct. However, it was held by the Apex Court that Rule 2.2 would not obstruct voluntary retirement to come into force automatically on expiry of three months and it only enables withdrawal or withholding of pension subject to certain conditions to a retired employee.
14. Therefore, in the facts of the case, when the petitioner has already tendered the resignation on 01.10.2013 to be effective from 06.01.2014 on completion of three months' period, the petitioner cannot be said to be continued in service.
15. In view of the above, the subsequent action of the respondent of issuance of charge-sheet for the allegations levelled against the petitioner would be ineffective in the eye of law. The respondent-authorities could not have issued charge-sheet upon the petitioner after his date of retirement as the petitioner cannot be said to be in service on the date of the service of the charge-sheet on 14.09.2015.

16. With regard to the contention raised on behalf of the respondent that the petition suffers from delay and laches is concerned, it is true that to entertain the writ petition under Article 226 of the Constitution of India delay and laches are relevant factors however in the facts of the case when the respondent-University could not have issued the charge-sheet after the petitioner has retired from the service, the delay and laches cannot come in the way of the petitioner as the action of the respondent-University for initiation of the departmental proceedings after voluntary retirement of the petitioner w.e.f. 06.01.2014 would be non-est and null and void from the beginning.

17. The respondent university can initiate any other proceedings if permissible under the law against the petitioner for the charges levelled against him on the basis of the inquiry report dated 15.07.2015 and supplementary report of the year 2016 but the petitioner cannot be proceeded with departmental inquiry or no departmental inquiry can be conducted against the petitioner as if he is in the service.

18. In view of the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned action of the respondent-University of initiation of the departmental inquiry after the voluntary retirement of the petitioner w.e.f. 06.01.2014 is declared as non-est and *ab initio* null and void as the petitioner is deemed to have retired w.e.f. 06.01.2014. The respondent-University is however, at liberty to initiate any appropriate proceedings against the petitioner in view of the inquiry report dated 15.07.2015 and supplementary report of the year 2016. The petitioner is also entitled to consequential retirement benefits subject to any proceeding which may be initiated by the respondent-University against the petitioner in accordance with law. Rule is made absolute to the aforesaid extent. No order as to costs.

JYOTI V. JANI

(BHARGAV D. KARIA, J)