

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 3659 of 2025

Date of Decision: 15.05.2025

Indira DarochPetitioner

Versus

State of Himachal Pradesh & others ... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner: Mr. Arun Kaushal, Advocate.

For the Respondents: Mr. Anup Rattan, Advocate General with Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C.Verma, Additional Advocate Generals and Mr. Ravi Chauhan, Deputy Advocate General.

Sandeep Sharma, Judge(oral):

Petitioner herein has approached this Court with a prayer to quash notification dated 20.09.2024 vide which application filed by her for premature retirement was accepted and further to quash the notification dated 14.11.2024, whereby representation of the petitioner for withdrawal of application for premature retirement was rejected by the competent authority.

2. Precisely, the facts of the case as emerge from the record are that petitioner applied for premature retirement vide application dated 08.08.2024, which request of her was accepted and

¹ Whether the reporters of the local papers may be allowed to see the judgment?

accordingly vide notification dated 20.09.2024, petitioner was ordered to be retired w.e.f. 05.11.2024(AN). However, before petitioner could retire in terms of notification dated 20.09.2024, she made representation to the respondent for withdrawal of notice for premature retirement vide letter dated 14.10.2024. Since aforesaid request made by the petitioner was not considered, she approached this Court in the instant proceedings, praying therein for following reliefs:-

- “i) That the impugned notification dated 20.09.2024 (Annexure P-2) and order dated 14.11.2024 (Annexure P-4) may kindly be quashed and set aside;**
- ii) That respondents may kindly be directed to reinstate the petitioner to the post of Principal (College Cadre).”**

3. Precisely, the grouse of the petitioner as has been highlighted in the petition and further canvassed by learned counsel for the petitioner, is that since petitioner had represented for withdrawal of notice of premature retirement prior to her actual retirement on 05.11.2024, there was no occasion for the competent authority to reject such application, rather it ought to have accepted the same in terms of Rule 43(6) of CCS (Pension) Rules, 2021.

4. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General states that though vide notification dated

20.09.2024 petitioner was ordered to be retired w.e.f.05.11.2024 (AN), but since her request for premature retirement was accepted vide notification dated 20.09.2024, subsequent representation dated 14.10.2024 for withdrawal of notice for premature retirement was rightly not considered by the respondents. While referring to communication dated 14.11.2024 (Annexure P-4), issued under the signatures of Additional Secretary (Education) to the Government of Himachal Pradesh, Mr. Rajan Kahol, learned Additional Advocate General, vehemently argued that since there is no provision in the Department of Personnel, Government of Himachal Pradesh notification No. Per (AP-S)-A (3)-3/2019, dated 19.01.2022(Himachal Pradesh Civil Services (Premature Retirement) Rules, 2022), allowing such request for withdrawal, therefore, her request for withdrawal of notification dated 20.09.2024 has been rightly rejected.

5. I have heard learned counsel for the parties and gone through the record carefully.

6. True, it is that bare perusal of the pleadings adduced on record reveals that petitioner herein, who was initially appointed as Lecturer in the month of October, 1993 and subsequently retired from the post of Principal, submitted an application on 08.08.2024, thereby giving three months notice for premature retirement from the post of Principal of Government Degree College, Kandaghat, District Solan,

due to her ailment and bad health and such request of her was duly accepted by the department by issuing notification dated 20.09.2024, whereby Department, while accepting the request for premature retirement of the petitioner, ordered retirement of the petitioner w.e.f.5.11.2024, but it is also not in dispute that before petitioner's superannuation on 5.11.2024, she submitted an application dated 14.10.2024, praying therein for withdrawal of notice of premature retirement and also withdrawal of notification dated 20.09.2024 on account of the fact that her health had improved and was fit to continue the service.

7. At this stage, it would be profitable to reproduce Rule 43(6) of CCS (Pension) Rules, 2021 herein below:-

“(6) Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority.”

8. Careful perusal of aforesaid rule clearly reveals that government servant, who decides to retire under aforesaid rule and gives notice to that effect to the appointing authority shall be precluded from withdrawing his notice except with the specific approval of such authority. Though bare reading of aforesaid rules debars an employee from withdrawing notice for retirement, but with the specific approval of competent authority, he/she can do the same.

9. In the instant case, petitioner after having submitted application for premature retirement submitted representation vide letter dated 14.10.2024 to the competent authority, praying therein for withdrawal of notice, which ultimately came to be rejected vide notification dated 14.11.2024 on the ground that prior to submission of afore application, petitioner stood retired w.e.f. 05.11.2024 by issuance of notification dated 20.09.2024. No doubt, vide notification dated 20.09.2024, petitioner was ordered to be retired w.e.f. 05.11.2024, but it is not in dispute that before petitioner could retire w.e.f.05.11.2024 pursuant to notification dated 20.09.2024, she represented for withdrawal of notice for premature retirement vide letter dated 14.10.2024. If it is so, there was no occasion, if any, for competent authority to reject the prayer made on behalf of the petitioner for withdrawal of her resignation. Otherwise, Rule 43(6) of CCS (Pension) Rules, 2021 nowhere puts embargo to the competent authority to accept prayer, if any, made on behalf of the employee for withdrawal of notice, rather competent authority taking note of peculiar facts and circumstances can always accept the prayer made on behalf of the employee concerned for withdrawal of notice for retirement. Aforesaid rule though precludes an employee from withdrawing notice, but vests appointing authority with power to consider the same.

10. The issue of withdrawal of notice of voluntary retirement came up before Hon'ble Apex Court in **Balram Gupta v. Union of India and another**, 1987 (Supp) SCC 228. In the case before Their Lordships, appellant Balram Gupta gave notice of voluntary retirement on 24.12.1980, which was accepted on 20.1.1981. The notice period was with effect from 1.1.1981, but on 20.1.1981, said appellant withdrew his notice. Their Lordships held the actual date of retirement is the material date and not the date of acceptance. It was held by Hon'ble Apex Court that the appointing authority has no discretion to refuse withdrawal if the request is made before the notice period lapses and before retirement has actually taken effect. The employee "cannot be treated as functus officio during the notice period. While allowing the appeal with costs, Hon'ble Apex Court held as under:

"We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in Government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer

the government must conduct itself with high probity and candour with its employees.”

11. In State of **Haryana & Anr. v. S.N. Sharma** (1996) 6 SCC 409, Their Lordships, where, in similar circumstances, the employee withdrew the notice after its acceptance but before actual date of retirement, held that acceptance per se does not extinguish service; the decisive moment is the employee’s actual superannuation. Hence, the authority’s “acceptance” does not give it an overriding discretion to insist on retirement. It was held that till the employee stands relieved, withdrawal must ordinarily be allowed unless “employer shows overwhelming public-interest prejudice. Similar view has been expressed by Hon’ble Apex Court in **Power Finance Corporation Ltd. v. Pramod Kumar Bhatia** (1997) 4 SCC 280, **Punjab National Bank v. P.K. Mittal** (2003) 4 SCC 610 and **Punjab National Bank v. Phoolpati** (2016) 4 SCC 315.

12. A perusal of aforesaid judgments shows that the date of actual retirement is the key factor and not the date of acceptance of notice. It is further held that if there is a change in circumstance after submission of notice of withdrawal, competent authority, while considering request for withdrawal of notice for retirement, should exercise such discretion judiciously. It is held that the appointing authority has no discretion to refuse withdrawal if the request is made before the notice period lapses and before retirement has actually

taken effect. The employee “cannot be treated as functus officio during the notice period.

13. Another aspect of the matter is that while exercising discretionary power, authority must record its reasons. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations. (See: **M/S Kranti Asso. Pvt. Ltd. & Anr v. Masood Ahmed Khan & Ors**).

14. In the case at hand, perusal of Annexure P-4 shows that the authority concerned has not recorded any reasons for exercising its discretion while considering the application of the petitioner for withdrawal of notice of premature retirement. Petitioner has explained the circumstances under which she changed her mind i.e. her health and therefore, competent authority ought to have given due consideration to attending facts and circumstances. Though a plea has been taken by the respondents that the premature retirement of the petitioner is governed by the Himachal Pradesh Civil Services (Premature Retirement) Rules, 2022, which do not provide for withdrawal of a notice for retirement, but same also do not bar the appointing authority from reconsidering the matter on an application of employee for withdrawal of notice for premature retirement.

Otherwise, this Court is of the view that rule 43(6) of CCS (Pension) Rules, 1972 is applicable here.

15. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present petition and accordingly, same is allowed. The impugned notification dated 20.09.2024(Annexure P-2) and order dated 14.11.2024 (Annexure P-4) are quashed and set-aside and representation filed vide letter 14.10.2024 is allowed as a result of thereof, respondents are directed to permit the petitioner to re-join the service from the date she had tendered request for withdrawal of resignation. Since petitioner never worked w.e.f. 05.11.2022 till her joining, she shall not be entitled to any monetary benefits but certainly such period shall be counted for the purpose of her seniority. The petitioner shall be treated to be in continuous service from 5.11.2024, with all consequential benefits, except actual monetary benefits for the period w.e.f. 5.11.2024 till her joining back. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

May 15, 2025
(shankar)