



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 6781 of 2025

Judgment reserved on :03.07.2025

Date of Decision: 15.07.2025

Dr. Seema Sharma

.....Petitioner

Versus

The Secretary (Health) to the Government of Himachal Pradesh & others

... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner:

Mr. Sunil Mohan Goel, Senior Advocate
with Mr. Abhinav Mohan Goel, Advocate.

For the Respondents:

Mr. Anup Rattan, Advocate General with
Mr. Rajan Kahol and Mr. B.C.Verma,
Additional Advocate Generals and Mr. Ravi
Chauhan, Deputy Advocate General.

Sandeep Sharma, Judge(oral):

By way of instant petition, petitioner has prayed for
following main reliefs:-

“a) This Hon'ble Court may be pleased to issue writ of
certiorari quashing impugned communication dated
21.03.2025 issued by Principal Dr. YSGMC, Nahan,
District Sirmour (Annexure P-23) alongwith
communication dated 24.02.2025 (Annexure P24)
whereby the request of the petitioner for premature

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

retirement has been rejected and the petitioner has been directed to join back the duties immediately;

b) This Hon'ble Court may be pleased to issue writ of mandamus directing the respondents to consider the petitioner retired from services strictly in accordance with Rule 4(2) proviso three of the H.P. Civil Service (Premature Retirement) Rules 2022 and further they may be directed to pay all the retrial benefits of the petitioner from the date of expiry of the notice period of the petitioner i.e. 03.01.2024 including pension, gratuity, leave encashment etc.”

2. Facts, relevant for adjudication of the case at hand, as emerge from the pleadings adduced on record by the respective parties, are that that petitioner herein, who completed her MBBS in May, 1998 from Indira Gandhi Medical College, Shimla, was offered adhoc appointment by respondent No.1 vide notification dated 07.10.1999 (Annexure P-1), pursuant to which, she joined as Medical Officer at Community Health Centre, Gohar, District Mandi on 18.10.1999 (Annexure P-2). She was allotted GPF Account No. H-MED-17504 on 06.12.2000 (Annexure P-3). The services of the petitioner were regularized as Medical Officer vide Office Memorandum dated 05.03.2007 (Annexure P-5). After completion of MD in Dermatology, vide notification dated 31.01.2015, petitioner was posted as Medical Officer (Specialist) at Regional Hospital, Nahan, District Sirmour. Vide communication dated 09.09.2015, petitioner

was informed that the State Government vide letter dated 31.08.2015, had approved her deputation to the Union Territory of Chandigarh (Annexure P-8). After serving Union Territory, Chandigarh for a period of eight years, she was repatriated / relieved from Chandigarh to her parent State of Himachal Pradesh (Annexure P-13). Vide Office Order dated 24.09.2024, petitioner was posted as Medical Officer (Dermatology) at Dr. YSPGMC Nahan.

3. After having served the respondent-Department for more than 25 years, petitioner submitted notice to Respondent No.3- Principal, Dr. YSPGMC, Nahan for premature retirement under the Himachal Pradesh Civil Service (Premature Retirement) Rules, 2022 (for short 'Rule 2022') on 3.10.2024, stating therein that her father-in-law, aged 90, is suffering from lung cancer since January, 2021 and mother-in-law is suffering from Systemic Lupus Erythematosus (SLE), and there is none to look after them. Along with the application, petitioner also attached the medical records of her father-in-law (Annexure P-18 Colly). Afore notice submitted by the petitioner for premature retirement was forwarded by the Principal, Dr YSPGMC, Nahan, to the Respondent No.2- Director of Health Services on 23.10.2024 (Annexure P-20). Since, for more than three months, nothing was heard from department concerned with regard to the request made by the petitioner for premature retirement, petitioner

issued a communication on 08.01.2025, thereby relinquishing the charge as Medical Officer (Specialist) in Dr. YSPGMC and requested for all retiral benefits w.e.f. 09.01.2025. (Annexure P-21) Afore communication was forwarded by the Principal, Dr YSPGMC, Nahan to the Director of Health Services HP vide letter dated 10.01.2025 (Annexure P-22). However, the Principal of the College concerned vide communication dated 21.03.2025, (Annexure P-23) informed the petitioner that her application for premature retirement has been rejected by Government of H.P. vide letter dated 24.02.2025. (Annexure P-24). In the aforesaid background, petitioner has approached this Court in the instant proceedings, praying therein for the reliefs, as have been reproduced hereinabove.

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

5. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Sunil Mohan Goel, learned Senior Counsel representing the petitioner, is that once no action, pursuant to the request made by the petitioner vide notice dated 03.10.2024(Annexure P-18), thereby requesting to retire her prematurely in terms of Rule 4(2) was taken, petitioner herein is deemed to have been retired w.e.f. 08.01.2025 when she, after completion of three months from the date of issuance of notice dated

03.10.2024, had relinquished the charge. Mr. Goel, while making this Court peruse Rule 4(2) (Annexure P-19), especially proviso three, vehemently argued that communication dated 21.03.2025 (Annexure P-23), issued by Principal of the college concerned, thereby informing the petitioner that her application for premature retirement has been rejected by the Government of Himachal Pradesh vide letter dated 24.02.2025 (Annexure P-24), is of no consequence, because by that time, petitioner stood prematurely retired in terms of proviso 3 of Rule 4(2) of the Rules. He submitted that since it is not in dispute that petitioner satisfied all statutory requirements for voluntary retirement as provided under Rule 4(2), prayer made on behalf of the petitioner for premature retirement otherwise could not have been refused. He submitted that subsequent communications dated 24.02.2025 (Annexure P-24) and 21.03.2025 (Annexure P-23) rejecting the application of the petitioner are void *ab-initio*, as Rule 4(2) clearly mandates that retirement shall be deemed effective unless refused within the notice period. He submitted that since petitioner had issued notice on 03.10.2024, which fact has been fairly acknowledged by the respondents in their reply, and after receipt of aforesaid notice, no communication was ever made to the petitioner till issuance of letter dated 21.03.2025, thereby informing her that application for premature retirement has

been rejected by the Government of Himachal Pradesh vide letter dated 24.02.2025, proviso 3 of Rule 4(2) would come into operation, which clearly provides that retirement shall be deemed to be effective unless refused during the notice period. Lastly, learned Senior counsel representing the petitioner submitted that rejection order is a non-speaking order that fails to specify which eligibility criteria was unmet, thus rendering it arbitrary, discriminatory and violative of Article 14 of the Constitution of India. While placing reliance upon Rule 5 of the Rules, Mr. Goel, submitted that this Rule entitles the petitioner to pension, gratuity, leave encashment, GIS, and related benefits effective from 02.01.2025, being the day after the notice expiry and deemed retirement date.

6. While refuting the aforesaid submission made by learned Senior counsel representing the petitioner, Mr. Rajan Kahol, learned Additional Advocate General submitted that since no legal, legitimate or enforceable right of the petitioner has ever been infringed or denied by Respondents No. 1 to 3, and petitioner has not suffered any prejudice due to any act or omission on the part of the respondents, the present petition deserves to be dismissed in the interest of justice. While fairly admitting factum with regard to notice given by the petitioner for premature retirement dated 03.10.2024 through proper channel, Mr. Kahol, submitted that though afore notice was duly

forwarded by Respondent No. 3 to Respondent No. 2 vide communication dated 23.10.2024 (Annexure P-20), but since certain information was sought from respondent No.2 and same was not received back within time, necessary action on the notice of premature retirement given by petitioner could not be taken within the notice period and in that regard, clarification was sought from the person responsible for delay. He further submitted that subsequently, since confusion arose on account of nature of initial appointment of the petitioner, i.e. contract of adhoc, matter was delayed, and now taking note of the fact that initial appointment of the petitioner was on adhoc basis followed by regularization, matter is pending adjudication before the Competent Authority.

7. Before ascertaining the correctness of rival contention of learned counsel for the parties, this Court, besides taking note of the fact that facts, as have been taken note hereinabove, are not in dispute, rather stand duly admitted by the respondents in their reply, deems it fit to take note of Rule 4(2) and 5 of Rules, 2022 herein below:-

“4(2) Any Government servant may after giving at least three months’ previous notice in writing to the Appropriate Authority retire from service on the date on which he, -

(a) completes 20 years of qualifying service; or

(b) completes 10 years of qualifying service, on medical grounds subject to production of medical certificate of incapacity from the medical authority i.e. Medical Board in the case of Gazetted Government servant and Chief Medical Officer or Medical Officer in other cases;

(c) completes 10 years of qualifying service, in extreme adverse circumstances;

(d) **attains the age of**

(i) 50 years in respect of Class-I and Class-II Government servant who have entered Government service before attaining the age of thirty five years; and

(ii) 55 years in case of all other Class-1, Class-II, Class-III and Class-IV Government servants:

Provided that the notice of premature retirement given under this sub-rule shall require acceptance by the Appropriate authority;

Provided further that such notice can be considered to be disallowed in cases of such Government servant belonging to the category of Scientists, Technocrats, Doctors, Engineers, Educationist or any other category of service which may fall in the well as of exigencies of services, on administrative grounds as well as in the larger interest of public services;

Provided further that where the Appropriate Authority does not refuse to grant permission for retirement before expiry of the period specified in the said notice, the retirement shall be deemed to be effect from the date of expiry of the said period;

Provided further that it shall be open to the Appropriate Authority to withhold/ deny permission to the Government servant who seeks premature retirement under these rules in the following circumstances except with the specific approval of the Appropriate Authority:-

- (i) if the Government servant is under suspension; or
- (ii) if a charge sheet has been issued and the disciplinary proceedings are pending: or
- (iii) if judicial proceedings on charges which amount to grave misconduct, are pending.

5. Pension and Gratuity-(1) The Government servant appointed on regular basis on or before 14.05.2003 who is retired or is likely to be retired under rule 4 of the said rules, shall be allowed pension and other retirement benefits in accordance with CCS(Pension) Rules,1972. Other service benefits viz. leave encashment/GIS etc. will be worked out under the rules as applicable to the Government servant.

(2) The Pension and Gratuity of Government servant appointed on or after 15.05.2003 and who is retired or is likely to be retired under rule 4 of these rules, shall be allowed the Pension (Annuity) in accordance with Pension Fund Regulatory and Development Authority Government Regulations and the Gratuity shall be paid as per the State Government instructions issued from time to time. Other service benefits viz. leave encashment/GIS etc., will be worked out under the rules as applicable to the Government servant.”

8. Since Rule 4(1) is not attracted in the case at hand, rather empowers Appropriate Authority to retire any Government Servant by giving notice of not less than three months, this Court has specifically not referred to the same. Rule 4(2), as reproduced hereinabove, is applicable in the case at hand. Bare reading of aforesaid Rule provides that any Government servant, after giving at least three months' previous notice in writing to the Appropriate Authority, may retire from service on the date on which he completes 20 years of qualifying service; or completes 10 years of qualifying service, on medical grounds subject to production of medical certificate of incapacity from the medical authority; or completes 10 years of qualifying service, in extreme adverse circumstances.

9. Third proviso to aforesaid Rule further provides that where the appropriate authority does not refuse to grant permission for retirement before expiry of the period specified in the said notice, the retirement shall be deemed to be effective from the date of expiry of said period. In the case at hand, petitioner served notice for premature retirement under the Rules, 2022 (Annexure P-18), on 03.10.2024. It would be appropriate to reproduce Annexure P-18 herein below:-

“ To

The Secretary Health
To the Government of Himachal Pradesh.

(Through proper channel)

Subject: Notice for premature retirement under the Himachal Pradesh Civil Services (Premature Retirement) Rules, 2022.

Respected Madam,

I, Dr. Seema Sharma, am working as Medical Officer in department of Dermatology in Dr. YSPGMC Nahan. I had joined government service on 18.10.1999 at CHC Gohar, District Mandi and will complete 25 years of service on 17.10.2024.

My 90 years old father-in-law is suffering from lung cancer since January 2021. My mother-in-law is suffering from Systemic Lupus erythematosus (SLE). There is nobody else to look after them so I need to bear my ailing father-in-law and mother-in-law.

I, therefore, earnestly, request you to kindly grant me premature retirement under the Himachal Pradesh Civil Services (Premature Retirement) Rules 2022 for the aforementioned reasons and extreme adverse circumstances basis on completion of notice period or earlier. The notice for premature retirement is submitted on 03.10.2024."

10. Careful perusal of aforesaid notice reveals that the petitioner sought premature retirement on the ground of extreme adverse circumstances, to be effective upon completion of the notice period or earlier. The notice was submitted on 03.10.2024, meaning thereby prayer, if any, for premature retirement was required to be considered by the Appellate Authority within a period of three months from the date of submission of notice i.e. 03.10.2024.

11. Though, respondents in the reply have nowhere disputed the factum with regard to petitioner's having completed more than 20 years of qualifying service, but during the course of arguments, Mr. Rajan Kahol, learned Additional Advocate General, attempted to

argue that since services of the petitioner were regularized in the year, 2007, she cannot be said to have completed 20 years of qualifying service at the time of submission of notice dated 03.10.2024.

12. Having carefully perused Rule 4(2) in its entirety, this Court finds it not necessary to go into the aforesaid submission raised at the behest of the respondents/State. Even if the claim of the petitioner, as put forth in notice dated 03.10.2024, is considered by taking note of the date of her regularization i.e. 05.03.2007, it cannot be disputed that she had completed more than ten years of service at the time of submitting the notice of premature retirement in terms of Rule 4(2), dated 03.10.2024. It is quite apparent from the bare reading of notice of premature retirement dated 03.10.2024 submitted by the petitioner that petitioner sought premature retirement on the ground of extreme adverse circumstances.

13. At the cost of repetition, Rule 4(2) envisages three situations, which are independent of each other, meaning thereby, in any one of the situation, the case of the employee for premature Retirement can be considered, subject to requisite compliances. First situation talks about completion of 20 years service; the second situation, though permits a government employee to seek premature retirement after completion of ten years service on medical grounds,

but subject to production of a medical certificate of incapacity from the medical authority; the last situation, which is relevant in the case at hand, is that an employee can seek premature retirement after completion of ten years of service, in extreme adverse circumstances.

14. At this stage, it would be apt to take note of the definitions of 'qualifying service' and 'extreme adverse circumstances, as defined in Rule 3 herein below:-

"Definition(s)- In these rules, unless the context otherwise requires:-

(iii) Qualifying service means service qualifying for pension/gratuity under Central Civil Service (Pension) Rules, 1972 and under Rules/Regulations issued by the State Government/Pension Fund Regulatory and Development Authority under National Pension System, as the case may be;

(iv) Extreme adverse circumstances means adverse health/medical condition personal hardship, compelling family circumstances, domestic or social obligations etc."

15. 'Qualifying service' would mean service qualifying for pension/Gratuity under the Central Civil Service (Pension) Rules, 1972. 'Extreme adverse circumstances' would mean adverse health/medical condition, personal hardship, compelling family circumstances, domestic or social obligations etc. Needless to say, under Central Civil Service (Pension) Rules, which are applicable in the case at hand, in the case of the petitioner, there is a requirement

of ten years of qualifying service for pension, which, in any case, has been completed by the petitioner. Similarly, the definition of 'extreme adverse circumstances', as noted hereinabove, clearly reveals that besides personal adverse health condition of the employee, he/she can also seek premature retirement on the ground of extreme adverse circumstances, if there are compelling family circumstances, domestic or social obligation etc. In the case at hand, petitioner has categorically submitted in her notice of retirement (Annexure P-18) that she, on account of serious ailment of her 90 years old father-in-law, who has been suffering from lung cancer since January 2021 and mother-in-law, who is suffering from Systemic Lupus Erythematosus (SLE), and there being none to look after them, needs to be near her father-in-law and mother-in-law. The adverse circumstances as indicated by the petitioner in the afore communication squarely fall under the definitions, as reproduced hereinabove.

16. It is quite apparent from the discussion made hereinabove that petitioner, on account of compelling circumstances, as detailed hereinabove, is/was well within her right to seek premature retirement in terms of Rule 4(2). It is also not in dispute that she gave a three months' notice as required under afore Rule on 03.10.2024, which could have been accepted by the authorities on the first day or on any day prior to the expiry of three months period.

However, in the instant case, no decision ever came to be taken on the afore request dated 03.10.2024 submitted by the petitioner, within a period of three months from the date of submission of notice, as such, precise claim of the petitioner is that, in terms of third proviso to Rule 4(2), she is deemed to have prematurely retired w.e.f.08.01.2025, on which date, she sent a communication, thereby apprising authorities that she has relinquished the charge of Medical Officer(Specialist) in Dr. YSPGMC, Nahan.

17. If the reply filed by the respondents is perused in its entirety, it clearly reveals that there is no dispute with regard to the fact that no decision, if any, pursuant to the notice dated 03.10.2024 (Annexure P-18), was taken by the department within the stipulated period of three months. As per reply filed by the respondents, notice dated 03.10.2024 was forwarded by the Principal of the College concerned to the Director Health Service, Himachal Pradesh on 23.10.2024 (Annexure P-20). It is also not in dispute, rather stands duly admitted that notice dated 03.10.2024 was received in the office of Principal of the College concerned, through whom case for premature retirement was otherwise required to be submitted by the petitioner to Secretary (Health) to the Government of Himachal Pradesh.

18. As per own case of the respondents, respondent No.2 made a back reference to respondent No.3 seeking requisite information vide letter dated 12.11.2024 (Annexure R-1). The requisite information sought by respondent No.2 vide letter dated 12.11.2024 was not furnished by respondent No.3 on time, as a result whereof, no decision on the notice dated 03.10.2024 submitted by the petitioner could be taken well within time. It is also admitted case of the respondents that another correspondence dated 10.01.2025 (Annexure P-22) was received from respondent No.3, forwarding the petitioner's fresh representation dated 08.01.2025 for release of retiral benefits, along with intimation regarding her having relinquished the charge on 08.01.2025 (Annexure P-21). Though, respondent No.3 i.e. Principal of the College concerned, was called upon by respondent No.2 to explain the delay in processing the matter in accordance with the prescribed rules and within the stipulated time frame vide letter dated 15.02.2025 (Annexure R-2), but yet even in afore communication, nothing was conveyed with regard to decision, if any, taken upon the notice dated 03.10.2024 submitted by the petitioner. Interestingly, the matter was also forwarded to the Administrative Department, Health, along with a detailed factual report, with a request to issue formal orders regarding premature retirement of the petitioner (Annexure R-3).

19. Though, Director Health Service, Himachal Pradesh recommended the case of the petitioner for premature retirement, but interestingly vide communication dated 24.02.2025, Special Secretary (Health) to the Government of Himachal Pradesh apprised the Director Health Himachal Pradesh that request made by the petitioner for premature retirement stands rejected as the said Doctor has not fulfilled the criteria as mentioned in the Himachal Pradesh Civil Service (Premature Retirement) Rules, 2022.

20. At this stage, it would be profitable to take note of aforesaid communication herein below:-

“ To

The Director of Health Services,
Himachal Pradesh, Shimla-171009

Dated: Shimla -2 the 24.02.2025

Sub:

Regarding premature retirement under the HP Civil services(Premature Retirement), Rules 2022 in r/o Dr. Seema Sharma.

Sir,

I am directed to refer to your letter No.HFW-H(1)B(3)154/2000-811 dated 15.02.2025 on the subject cited above and to say that after the consideration, the request of Dr. Seema Sharma, MO (Dermatology), Dr. YSPGMC Nahan for premature retirement is rejected, as the said doctor has not fulfilled the criteria as mentioned in the HP Civil Services(Premature Retirement) Rules, 2022.

You are, therefore, requested to take further necessary action the matter accordingly.”

21. If the afore communication is read in its entirety, this Court is persuaded to agree with Mr. Sunil Mohan Goel, learned Senior counsel representing the petitioner, that no reason has been assigned for rejection of case of the petitioner. It has not been explained in what manner petitioner does not fulfill the criteria as mentioned in Rules, 2022. More interestingly, after issuance of aforesaid communication, and during the pendency of the present petition, Director Health Services, Himachal Pradesh forwarded communication dated 13.05.2025 (Annexure R-4) to the Secretary (Health) to the Government of Himachal Pradesh, thereby requesting to re-examine the case of premature retirement of Dr. Seema in light of changed circumstances with respect to the nature of her initial appointment, so as to apprise this Court about the factual position in the matter. In nutshell, in afore communication, it came to be apprised that earlier case of the petitioner was forwarded on the premise that her initial appointment was on contract basis, but now it has been transpired that nature of initial appointment of the petitioner was on adhoc basis, which was followed by regularization in the year 2007.

22. Having taken note of the facts, which are not in dispute, coupled with third proviso to Rule 4(2), this Court is persuaded to agree with learned counsel for the petitioner that this Court need not go into the aforesaid aspect of the matter, for the reason that once

respondents failed to refuse the request made by the petitioner vide notice dated 03.10.2024 for premature retirement (Annexure P-18) within the notice period, petitioner is deemed to have retired on 08.01.2025 after which otherwise petitioner relinquished the charge (Annexure P-21). Vide afore communication, petitioner apprised the authority concerned that she had given notice for premature retirement under sub rule 4(2)(a) and (c) of the Himachal Pradesh Civil Services (Premature Retirement), Rules 2022 on 03.10.2024 through proper channel, which was duly acknowledged. Notice period of three months for premature retirement was completed on 02.01.2025 without any communication or acceptance or refusal from the Government of Himachal Pradesh as on date 08.01.2025 as such, in terms of third proviso of Sub rule 4(2), in the absence of any refusal to grant permission for premature retirement before expiry of the period as specified in the notice as referred above, her premature retirement from government service is deemed to be effective from 02.01.2025 i.e. the date of expiry of the said notice.

23. Interestingly, after receipt of aforesaid communication, which otherwise came to be apprised to the Secretary (Health) to the Government of Himachal Pradesh vide communication dated 10.01.2025, issued by Principal of the College concerned, the respondents remained silent for more than two months and thereafter,

all of a sudden, vide communication dated 21.03.2025 (Annexure P23) informed the petitioner that her application for premature retirement has been rejected by the Government of Himachal Pradesh vide letter 24.02.2025 (Annexure P-24). However, this Court is of the definite view that afore communications dated 21.03.2025 and 24.02.2024 are of no consequence and relevance, for the reason that during the subsistence of notice period, respondents failed to either accept or reject the prayer made on behalf of the petitioner vide communication dated 03.10.2024 for premature retirement in terms Rule 4(2).

24. It is admitted case of the respondents that request made by the petitioner vide notice dated 03.10.2024 for premature retirement under Rule 4(2) could not be considered within the notice period, if it is so, petitioner rightly relinquished her charge as M.O. Specialist from the College concerned on 08.01.2025 and requested for retiral benefits on 09.01.2025 (Annexure P-21) and thereafter, by no stretch of imagination, she can be said to be on the rolls of the department.

25. At this stage, it would be apt to take note of the judgment passed by Hon'ble Apex Court in case titled as **Tek Chand vs. Dile Ram (2001) 3 Supreme Court Cases 290**, wherein Hon'ble Apex Court, while answering the question that where the rules requires the

appointing authority to accept the three months' notice of voluntary retirement, and provides that in case of the authority's failure to refuse the permission to retire before expiry of the period specified in the notice, retirement shall become effective from the date of expiry of the said period, held acceptance by the authority not essential for coming into force of voluntary retirement. Relevant paras of aforesaid judgments are reproduced herein below:-

“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 becomes 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 the 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, more so 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

35. In our view, this judgment fully supports the contention urged on behalf of the appellant in this regard. In this judgment, it is observed that there are three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules. In the case decided, the relevant Rule required acceptance of notice by appointing authority and the proviso to the Rule further laid down that retirement shall come into force automatically if the appointing authority did not refuse permission during the notice period. Refusal was not communicated to the respondent during the notice period and the Court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntarily retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision."

26. Though, case before Hon'ble Apex Court was an appeal arising out of election petition decided by the Court below under Representation of People Act, 1951, but it is quite apparent from the aforesaid exposition of law that in case the authority fails to refuse the permission to retire before expiry of the period specified in the notice, voluntary retirement sought by an employee concerned would come into effect from the date specified in the notice. Since, in the instant case, no decision ever came to be taken by the respondents upon the notice dated 03.10.2024 submitted by the petitioner, seeking premature retirement on the ground of extreme adverse circumstances, within time specified in the notice, petitioner herein shall be deemed to have retired from the service on the date of expiry of the notice i.e. 08.01.2025 and thereafter, issuance of communications dated 21.03.2025 and 24.02.2025, thereby intimating the petitioner that her prayer for premature retirement has been rejected, are of no consequence.

27. Rule 5, as reproduced hereinabove, clearly provides that Government Servant appointed on regular basis on or before 14.05.2003, who is retired or is likely to be retired under Rule 4 of the said Rules, shall be allowed pension and other retirement benefits in accordance with CCS (Pension) Rules, 1972. Other service benefits i.e. leave encashment/GIS etc, shall be worked out as per the rules as

applicable to the Government servant. By now it is well settled that adhoc services rendered prior to regularization shall be calculated towards counting of retiral benefits, especially pension.

28. Consequently, in view of the above, this Court finds merit in the present petition and, accordingly, same is allowed and order dated 21.03.2025 issued by Principal Dr. YSGMC, Nahan, District Sirmour, Himachal Pradesh (Annexure P-23) alongwith communication dated 24.02.2025 (Annexure P-24) are quashed and set-aside. The respondents are directed to consider the petitioner as having retired from services w.e.f. 08.01.2025 strictly in accordance with third proviso of Rule 4(2) of H.P. Civil Service (Premature Retirement) Rules, 2022. The pensionary benefits be released in favour of the petitioner within a period of two months. Pending applications, if any, also stands disposed of.

**(Sandeep Sharma),
Judge**

July 15, 2025
(shankar)