

DR. BALJIT SINGH  
v.  
STATE OF HARYANA

DECEMBER 9, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Punjab Civil Service Rules : Rule 5.32 (B).*

*Service Law—Voluntary retirement—Notice for—Effect of—Petitioner gave notice for voluntary retirement—Charge handed over by him without acceptance of notice—As prosecution for serious offences was pending against the petitioner Government refused to permit him to retire voluntarily—Unsuccessful challenge before High Court—Appeal—Held since serious offences were pending trial against the petitioner the Government have rightly refused to permit him to retire voluntarily from service—Mere expiry of three months' period of notice given, does not automatically put an end to jural relationship of employer and employee between Government and the delinquent official—Only on acceptance by the employer of resignation or request for voluntary retirement their jural relationship ceases—Until the acceptance or rejection of request for voluntary retirement is communicated to the employee, he is required to remain in office—His handing over the charge without any order of the competent authority and acceptance of his request for voluntary retirement have no result.*

*Union of India v. Sayed Muzaffar Mir, [1995] Supp. 1 SCC 76, distinguished.*

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)  
No. 23322 of 1996.

From the Judgement and Order dated 8.5.95 of the Punjab & Haryana High Court in C.W.P. No. 12167 of 1994.

Jasbir Malik and M.S. Dahiya for the Petitioner.

The following Order of the Court was delivered :

This Special Leave Petition arises from the judgement of the Division Bench of the Punjab and Haryana High Court, made in Civil Writ Petition

A No. 12167/94, on May 8, 1995.

B The Petitioner while working as H.C.M.S-II had tendered his voluntary retirement expressing his intention that he may be prematurely retired under Rule 5.32 (B) of Punjab Civil Services Rules (for short, 'The Rules') under which a government servant is given liberty to tender voluntary retirement by giving notice of not less than three months. Accordingly, on September 20, 1993, he had given the notice. On his own showing, he handed over the charge on February 11, 1994 even without acceptance of voluntary retirement. Thereafter, the authority by proceedings dated February 25, 1994 declined to accept his retirement which he challenged in the High Court. The High Court refused to interfere with the order passed by the Government.

D It is an admitted position that prosecution against the petitioner for offences punishable under Sections 465, 468, 471, 209, 406 I.P.C. etc. is pending trial in the Court of the Addl. District Judge, Gurgaon. Under those circumstances, the Government declined to permit the petitioner to retire voluntarily, from service. It is contended by Shri Jasbir Malik, learned counsel for the petitioner, that under the aforesaid Rule he is entitled to retire; due to his family circumstances he tendered his resignation; on expiry of three months' notice the petitioner is entitled to relinquish his office; the Government has no option but to accept his voluntary retirement. In support thereof, he placed reliance on the judgement of this Court in *Union of India v. Sayed Muzaffar Mir*, [1995] Supp. 1 SCC 76. Therein, while the respondent was under suspension pending enquiry, he tendered his voluntary retirement on July 22, 1985 under Rule 1802(b) of the Indian Railway Establishment Code. The period of three months had expired on October 21, 1985. The order of removal was passed against him on November 4, 1985. Under those circumstances, the Tribunal held that he was entitled to retire from service and the order of removal should, therefore, be treated as *non est*. In those circumstances, this Court appears to have upheld the contention of the respondent and the view taken by the Tribunal. But in this case it is seen that when serious offences are pending trial, it is open to the appropriate Government to decide whether or not the delinquent should be permitted to retire voluntarily or such disciplinary action as is available should be taken under the law. Therefore, mere expiry of three months' period of notice given, does not automatically put an end to jural relationship of employer and employee between Government and

the delinquent official. Only on acceptance by the employer of resignation or request for voluntary retirement their jural relationship ceases. It would, therefore, be of necessity that the Government takes appropriate decision whether the delinquent would be permitted to retire voluntarily from service pending the action against him. In this case since serious offences are pending trial against him, the Government have rightly refused to permit him to retire voluntarily from service. The ratio in the above judgment has no application to the fact situation and cannot be applied/extended to all the situations. Each case should be considered in its own backdrop of facts. Until the jural relations of employer and employee comes to a close according to law, the employer always has power to decide and pass appropriate order.

It is seen in the service jurisprudence that before an incumbent attains superannuation while an enquiry is contemplated against him, it may be open to the Government to postpone the superannuation for continuance of pending disciplinary proceedings for completing enquiry or to initiate action against a delinquent employee. When such is the situation, it will always be open to the Government to decide whether or not to permit an incumbent to retire from service. It is then contended by the learned counsel that when the petitioner handed over the charge which was accepted by the officers, there is no scope for the Government to refuse acceptance of the resignation. We find no force in the contention. If the contention is given acceptance, it would lead to deleterious consequences. For instance, if a public servant commits misappropriation of funds of the Government, and after tendering his resignation and handing over the charge walks away with booty. Acceptance of such contention would lead to serious repercussions and consequences flowing therefrom would be disastrous to maintain discipline in service. Under these circumstances, until the acceptance or rejection of request for voluntary retirement is communicated to the petitioner, the petitioner is required to remain in office and his handing over the charge without any order of the competent authority and acceptance of his request for voluntary retirement have no result.

The Special Leave Petition is accordingly dismissed.

T.N.A.

Petition dismissed.