

Latest HLJ 2025 (HP)(1) 279 In the High Court of Himachal Pradesh, Shimla.

CWP No.13820 of 2024

Constitution of India, 1950 Article 226–Himachal Pradesh Civil Services (Premature Retirement) Rules, 2022 Rule 4(2)(b)&(c)– Service matter–Premature retirement on medical grounds–The petitioner, employed as a Steno-Typist, sought judicial review of the respondent's decision to prematurely retire him–The petitioner, suffering from Phobic Anxiety Disorder aggravated by his workplace environment, initially applied for voluntary retirement on medical grounds, which was rejected–Subsequently, without further consent or notice, the respondent accepted his request under “extreme adverse circumstances” and issued a retirement order, which the petitioner contested as unconstitutional and arbitrary–Held–The petitioner’s application for voluntary retirement was previously rejected without any subsequent appeal or representation by him–The respondents failed to follow the procedural mandate under the relevant rules and principles of natural justice–The retirement order was issued under the guise of “extreme adverse circumstances,” circumventing established procedure for retirement on medical grounds, which undermines fairness and legality–Impugned order is quashed and set aside–Petition allowed. (Paras 4 and 5)

Parties represented by:

For the Petitioner: Mr. V.D. Khidta with Ms. Nitika Khidta, Advocates.

For the Respondents: Ms. Menka Raj Chauhan, Deputy Advocate General.

Jyotsna Rewal Dua, J:- The case

Petitioner’s grievance is to the order dated 04.11.2024 passed by respondent No.2 whereby his application for voluntary/premature retirement has been accepted. Petitioner’s contention is that his application for voluntary/premature retirement had already been considered and rejected by respondent No.2 earlier. Once that was done, his application was not available for further consideration. He had also not made any further request for reconsideration of his application as his circumstances had changed in the interregnum. Therefore, respondent’s subsequent action by considering his already rejected application without even taking him into confidence and retiring him prematurely is an absolutely illegal, arbitrary and unconstitutional act, hence the petition.

2. Facts

2(i) Petitioner participated in a selection process undertaken by the H.P. Subordinate Services Selection Board for appointment to the post of Steno-typist (on contract basis). He emerged successful and was appointed as such on 28.01.2013. He was directed to join the office of respondent No.3. Petitioner worked there till 2015. On 27.11.2015, petitioner was transferred to the office of respondent No.2. Petitioner’s services were regularized on 22.05.2017.

2(ii) CWP No.5003/2023 (Abhyendra Gupta Vs. State of H.P. & Ors.) was instituted in this Court. An order was passed therein on 12.12.2023 directing

the State to make endeavour to post regular Steno-typist and Reader-cum- Assistant on deputation basis in the office of respondent No.3.

2(iii) It is the case of the petitioner that around this time (December 2023 onwards) he started suffering from ailments, which resulted in his frequent faintings, having panic attacks, suffering black-outs, involuntary body movements and frothing from mouth. He remained under treatment for mental illness, of the Doctors of Psychiatric Department Indira Gandhi Medical College (IGMC) Shimla. 2(iv) On 26.12.2023, petitioner was deputed as Stenotypist in the office of respondent No.3 till filling up of post by direct recruitment. Petitioner joined respondent No.3 on 05.01.2024.

2(v) It is further case of the petitioner that he remained under treatment for his mental sickness not only from the Psychiatric Department of IGMC but also of H.P. Hospital of Mental Health and Rehabilitation Shimla for further check up and treatment. Petitioner took leave for this purpose from time to time. On 26.02.2024, he was advised complete rest for a week. Petitioner joined back his office on 05.03.2024. He was asked to submit medical fitness certificate. He submitted the medical fitness certificate issued by H.P. Hospital of Mental Health and Rehabilitation Shimla. He again became sick on 22.03.2024 and had to be hospitalized till 05.04.2024. Doctors of H.P. Hospital of Mental Health and Rehabilitation Shimla recommended his case for constitution of the Medical Board. The Medical Board was accordingly constituted at IGMC Shimla on 05.04.2024. The Medical Board kept the petitioner under observation for 14 days and then on 05.04.2024 submitted its report. The Medical Board opined that the petitioner was suffering from "Phobic Anxiety Disorder Characterized by fear of specific situations allegedly in his current work place." The Medical Board in its report further advised the petitioner "to avoid immediate exposure to the triggering environment and to undergo behavioral therapy on regular basis."

2(vi) Petitioner through proper channel submitted a representation in April 2024 to respondent No.2 in view of report of the Medical Board for his transfer from office of respondent No.3. Petitioner's representation was forwarded by respondent No.3 to respondent No.2 on 09.04.2024. Respondent No.2 on 06.05.2024 sent a request letter to IGMC Shimla for constituting the Medical Board again.

2(vii) In the meanwhile, respondent No.2 issued a memo to the petitioner on 06.05.2024 calling upon him to explain his position regarding his non performance of duties in the office of respondent No.3. Petitioner submitted his response to the memo dated 06.05.2024 apprising respondent No.2 about his taking treatment for mental condition. The Medical Board that was constituted on the request of respondent No.3, after examining the petitioner gave its opinion on 22.05.2024 that "the petitioner is presently fit for Government job, however, he is suffering from Phobic Anxiety Disorder and his illness currently in remission with treatment. Further petitioner is advised regular follow up and treatment with the Psychiatrist."

2(viii) On 27.05.2024, petitioner made a representation for withdrawal of order dated 26.12.2023 under which he was deputed in the office of respondent No.3 on account of his mental ill health

and triggering environment of the current work place. Petitioner also brought the Medical Board's opinion to the notice of respondents that he was fit for job and responding to the treatment but had to be away from current work place which was triggering his phobic attacks. Petitioner's representation alongwith Medical Board's report was forwarded by respondent No.3 to respondent No.2. It appears that no further action was taken on the same. 2(ix) Petitioner then filed CWP No.5017/2024 seeking quashing of his deputation order dated 26.12.2023. Notice was issued in the said petition and respondents were directed to file reply within four weeks. The matter was ordered to be listed on 09.08.2024. In the interregnum, respondent No.2 again issued memo/letter directing the petitioner to explain his position with regard to non performance of duties assigned to him. Petitioner responded and explained his health problems. On 11.06.2024, the Doctors of Department of Psychiatry IGMSC Shimla, specifically advised the petitioner to avoid exposure, which triggers and provokes anxiety in him. On 14.06.2024, respondent No.3 called petitioner's explanation about his inefficiency in taking dictation/typing orders. Petitioner responded on 24.06.2024 giving details of his previous work and his current problems because of his mental ailment.

2(x) Respondent No.2 issued a charge-sheet to the petitioner on 05.08.2024 (Annexure P-39) citing grounds of petitioner's misconduct and non performance of duties. Petitioner replied to the charge-sheet denying the allegations and once again requested the respondents to shift him from his current work place to any other place/assignment within the department on account of his mental health condition.

2(xi) In the meanwhile, CWP No. 5017/2024 filed by the petitioner was withdrawn by him in order to pursue his representation dated 27.05.2024. 2(xii) On number of times, petitioner applied for medical leave on account of his deteriorating mental health problems. Medical leave was not sanctioned in his favour. Petitioner was compelled to apply for earned leave to undertake treatment and rest as advised by the doctors.

2(xiii) It is further the case of the petitioner that feeling distressed with apathetic attitude of the authorities, he was compelled to apply for voluntary/premature retirement on 21.08.2024 on 'extreme medical grounds' (Annexure P-41). In his application, petitioner stated about his mental illness, having been diagnosed as case of Phobic anxiety disorder, characterized by fear of specific situation, allegedly in his current work place. Petitioner stated therein that he had requested the concerned authorities to withdraw his deputation order and post him elsewhere for betterment of his health, but no concern whatsoever was shown by the authorities. His health had been deteriorating day by day. The doctors though had advised him to avoid triggering environment, which was his current work place but the respondents did not consider adverse circumstances of the petitioner and continued to post him in the office of respondent No.3. The result was series of show cause notices/memos issued to the petitioner. All this was

becoming vital for petitioner's life, hence, he had no option but to apply for voluntary/premature retirement under 'extreme medical grounds'. 2(xiv) After the issuance of charge-sheet to the petitioner on 05.08.2024, another show cause was issued to him by respondent No.2 on 19.09.2024 (Annexure P-43) alleging misconduct on his part. Petitioner filed his reply on 03.10.2024 (Annexure P-44).

2(xv) On 30.09.2024 petitioner received a letter from respondent No.3 alongwith order dated

26.09.2024 apprising him about the rejection of his application seeking voluntary/premature retirement on 'extreme medical grounds'. The order dated 26.09.2024 (Annexure P-45 colly) stated that petitioner had been issued a charge-sheet and disciplinary proceedings were underway, therefore, he cannot be retired prematurely.

2(xvi) About a month and nine days later, on 04.11.2024 an office order (Annexure P-46) was issued by respondent No.2 accepting petitioner's application for premature retirement under 'extreme adverse circumstances.' Petitioner feels aggrieved against office order dated 04.11.2024 (Annexure P-46) whereby his application for premature retirement has been accepted. He has filed this writ petition assailing the said office order. Substantive reliefs prayed for by the petitioner run as under:-

"(i) That the impugned order dated 04.11.2024 (Annexure P46) may kindly be quashed and set aside with further direction to allow re-instate the petitioner to work as steno-typist in the office of respondent No.2 with all consequential benefits.

(ii) That the writ in the nature of mandamus may be issued directing the respondents to shift the petitioner from the present work place (where the petitioner is working on Deputation) i.e. the Labour Court Shimla to any other place in his parent department keeping in view the mental health illness of the petitioner."

3. Submissions

3. Learned counsel for the petitioner mainly contended that the petitioner though had requested for voluntary/premature retirement on medical grounds but the respondents had turned it down. Petitioner accepted the aforesaid rejection and did not request again for voluntary retirement as petitioner's circumstances had also undergone change in the interregnum. Petitioner was responding to the medication and had shown improvement. The Medical Board had also found the petitioner fit for continuing on the job though had advised his shifting from the environment that triggers his disease. Having rejected petitioner's representation for voluntary/premature retirement on medical grounds, respondents could not have been accepted it later on a different ground and that too without complying with principles of natural justice.

Learned Deputy Advocate General highlighted the work and conduct of the petitioner, numerous show cause notices/memos given to him about his dereliction of duties & misconduct and defended respondents' order of accepting petitioner's application for voluntary/premature retirement on 'extreme adverse circumstances'.

4. Consideration

4(i) Respondents have not disputed that:- • With effect from December 2023, petitioner had been suffering from mental ailment and had been under treatment of different hospitals from time to time including Psychiatric Department of Indira Gandhi Medical College (IGMC) Shimla and H.P. Hospital of Mental Health and Rehabilitation Shimla. The petitioner had remained hospitalized in different spells for his mental health problems.

• The Medical Board constituted on 05.04.2024 had opined that the petitioner was suffering

from 'Phobic Anxiety Disorder Characterized by fear of specific situations allegedly in his current work place'. That the petitioner shown mild improvement with treatment with treatment. The Medical Board had advised the petitioner to avoid immediate exposure to the triggering environment. The petitioner was also advised behavioral therapy on regular basis.

- The Medical Board constituted on 22.05.2024 at the request of respondent No.2 had reported that the petitioner was suffering from Phobic Anxiety Disorder, but his illness was currently in remission with treatment, therefore, he was fit for the Government job but was advised regular follow up treatment with a Psychiatrist.

4(ii) Petitioner had been issued show cause notices/memos for negligence in performing duties in office of respondent No.3 as also for his alleged misconduct etc. This was despite the fact that the petitioner had been repeatedly requesting the respondents to shift him from his current work place (office of respondent No.3) due to his mental health condition. Respondents did not shift him. Charge-sheet was issued to the petitioner by respondent No.2 on 05.08.2024 primarily on the ground that the petitioner had failed to discharge his primary duties of taking dictation and typing.

4(iii) Petitioner had requested for premature retirement on 21.08.2024 under Voluntary Retirement Scheme (VRS) on 'extreme medical grounds'. It would be appropriate to extract the reasons from this application for which the petitioner had requested for premature retirement on 'extreme medical grounds':- "I Presently I am working as steno typist in Industrial tribunal cum-labour Court shimla but is suffering with some mental/ Psychiatric health problem for which I am under treatment from the department of Psychiatric IGM

shimla from December 2023 and Dr. has opined that I am suffering with Phobic anxiety disorder characterized by fear due to which I feel extreme fear and anxiety while working and the efficiency and effectiveness in performance of duty is also not optimum at present due to my health condition. I had represented many time earlier to the authority for withdrawing my deputation order from Labour Court and to post me elsewhere for the betterment of my health but since the authority had not paid any heat to my request hence have decided to take the premature retirement under the Volunteer retirement scheme of Govt. of H.P. on extreme medical ground because the Doctors had advised me to avoid the triggering environment otherwise it may be fatal for me. I tried many time to over come, from disease but I failed. Instead of recovery I am losing my memory day by day and not in a position to memorise the things. I had been working since January 2013 and till today my total tenure of service become 11 years 8 months which is exceeding the qualifying service of ten years for pre-mature retirement. Hence, I am entitled for pre-mature retirement with all consequential benefits like Pension, Gratuity, leave encashment etc. I have also opted for the OPS and had also given my option under the Shila Devi case for counting of my contractual service for pensioner benefits. Therefore, on the above mentioned grounds it is requested to grant me pre-mature retirement on extreme medical grounds. I shall be highly thankful."

Respondents rejected petitioner's request on 26.09.2024 on the ground that 'charge-sheet had already been issued against him and disciplinary proceedings were underway, therefore, petitioner cannot be retired voluntarily more particularly in view of following Rule 2(d) of the H.P. Civil Services (Premature Retirement) Rules 2022 notified on 19.01.2022':-

“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.”

As far as respondents are concerned, there was no change in the circumstances for them even after 26.09.2024 as charge-sheet issued against the petitioner on 05.08.2024 was still pending and disciplinary proceedings were going on. Yet about 1 1/2 months after rejecting petitioner's request for voluntary retirement on 'extreme medical grounds', respondent No.2 issued the impugned office order on 04.11.2024 (Annexure P-46) dropping the memorandum of charges dated 05.08.2024, and accepting premature retirement of the petitioner on 'extreme adverse circumstances'.

4(iv) The impugned office order was issued purportedly in the best interest of the petitioner taking sympathetic view of his case as well as for effective functioning of the office of respondent No.3. Relevant portion of impugned office order are as follows:-

“It is further underscored that the consecutive Presiding Judges have time and again complained about his behaviour, conduct and work. That though this office has not accepted his VRS/PreMature Retirement earlier due to pending enquiry, it can be very clearly seen that non-acceptance of his VRS/Pre-Mature Retirement will further affect the mental condition of Sh. Rajesh Thakur.

FINAL ORDER/DECISION:

1. Sympathetic View: The Department has taken a sympathetic view towards Sh. Rajesh Thakur's medical condition and has considered the potential long-term effects of continuing his service on both his health and the work atmosphere at the Labour Court. Hence the required three months' notice period for availing VRS/Pre-Mature Retirement is hereby waived off. Further, the letter dated 26.09.2024 (about not considering his VRS/Pre-Mature Retirement request) issued by this office is hereby withdrawn.

2. Charge sheet Dropped: Taking a sympathetic view in the matter, the charge sheet issued to Sh. Rajesh Thakur under Rule 14 of CCS (Classification, Control, and Appeal) Rules, 1965, is hereby dropped due to the significant deterioration in his mental health, as evidenced by medical records and repeated complaints about his inability to perform his duties effectively as well as his admission about the same.

3. Acceptance of Voluntary Retirement from service (VRS/Pre- Mature Retirement): The Himachal Pradesh Civil Services (Premature

Retirement) Rules, 2022 under its definition clause Section 3 (IV) defines the term 'Extreme

adverse circumstances' which mean adverse health/ medical condition, personal hardship, compelling family circumstances, domestic or social obligations etc. It has provided under first proviso to Section 4 of the Rules supra that in case of premature retirement of Government servant as under:- "Provided that the notice of premature retirement given under this sub-rule shall require acceptance by the Appropriate Authority" In the instant case and owing to extreme adverse circumstances, the latest reply dated 03.10.2024 submitted by Shri Rajesh Thakur vide letter no.LC/IT/PFRT/2012 dated 03.10.2024 in response to Show cause notice issued vide letter ?? Shram(Prastha)1/2023/RT/PF dated 19.09.2024 is construed to be an implied notice and this Authority after completely satisfying itself that withdrawal of resignation at a later stage is not going to serve the Interest of the Department as well as Shri Rajesh

Thakur and in view of his medical condition and the adverse impact his presence in the Court is having on both his health and the work environment of the Labour Court, Shimla, the undersigned being the Appointing Authority hereby accepts the request for Voluntary Retirement (VRS/Pre-Mature Retirement) submitted by Sh. Rajesh Thakur..... Hence in view of all above facts, the VRS/PreMature Retirement application of Sh. Rajesh Thakur is hereby accepted and the 3 months' notice period is waived off with immediate effect.

This order is being issued in the best interest of Sh. Rajesh

Thakur's health, as well as the effective functioning of the Labour Court- cum-Industrial Tribunal, Shimla and the Labour, Employment and

Overseas Department."

4(v) At this juncture, it would be appropriate to refer to the Himachal Civil Services (Premature Retirement) Rules 2022 notified on 19.01.2022. Rule 4 thereof being relevant is extracted hereinafter:-

"4. Premature Retirement of Government servant-(I) The Appropriate Authority may, if it is of the opinion that it is in the public interest to do so, retire any Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice,-

(a) on completion of 30 years of qualifying service; or

(b) on attaining the age of-

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

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

Provided that where at least three months notice is not given or notice for a period less than three months is given, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay and allowances at the same rates at which he was drawing immediately before the date of retirement for a period of three months or, as the case may be, for the period

by which such notice falls short of three months: Provided further that the Appropriate Authority may at any time before the expiry of the notice period substitute for the whole or part of the unexpired period of notice, pay in lieu thereof and retire the Government servant forthwith on making such payment.

Provided further that if on a review of the case either on a representation from the Government servant retired prematurely or otherwise, it is decided to reinstate the Government servant in service, the authority ordering reinstatement may regulate the intervening period

between the date of premature retirement and the date of reinstatement by grant of leave of the kind due and admissible, including extra ordinary leave depending upon the facts and circumstances of the case.

(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; or

(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-I, 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 category 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 effective 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