



2026:AHC-LKO:44174-DB

AFR

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**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 5426 of 2020

Vijay Singh

.....Petitioner(s)

Versus

State of U.P. Through Prin. Secy. Irrigation Deptt Lko
Andors

.....Respondent(s)

Counsel for Petitioner(s) : In Person, Amit Kumar
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Respondent(s)

Court No. - 5

**HON'BLE ALOK MATHUR, J.
HON'BLE AMITABH KUMAR RAI, J.**

2. The instant writ petition has been filed seeking quashing of the judgment and order dated 07.03.2019 passed by learned U.P. State Public Service Tribunal, Indira Bhawan, Lucknow (hereinafter referred to as "**Tribunal**") in Claim Petition No.299 of 2016 (Vijay Singh vs. State of U.P. and others) as well as for quashing of the orders dated 29.01.2016 passed by Executive Engineer, Irrigation, Construction Division, Firozabad, Headquarter Shikohabad, to the extent whereby the petitioner has been sanctioned leave without pay for the period 01.02.2015 to 28.02.2015 and for the period 01.04.2015 to 29.01.2016. Further relief has been sought for issuance of a direction to the respondents to pay him salary for the aforesaid period.

3. The brief facts of the case as canvassed by the petitioner are that he was initially appointed on the post of Gaze Reader on 28.08.1989 in work-charged establishment and was posted in the Investigation and Planning (Water Resources) Division, Lucknow. Subsequently, he was appointed as Seenchpal and was posted at Bhoganipur Division, Lower Ganga Canal, Etawah vide office memo dated 24.04.1999 issued by the Superintendent Engineer, Irrigation Works Circle, Etawah. The State Government vide order dated 14.10.2014 merged the Sub-Division Shikohabad under Bhoganipur

petitioner was required to work at Shikohabad and was liable to be transferred thereto. Owing to some physical problem, he was unable to discharge duties on the post of Seenchpal and, therefore, submitted an application dated 16.02.2015 seeking for alternative work and, in case of any legal impediment, requested that he be granted voluntary retirement under Rule 56(c) of the Fundamental Rules contained in Financial Handbook Volume 2, Part II to IV. The petitioner, thereafter submitting a reminder letter dated 16.05.2015 and subsequently filed Claim Petition No.2067 of 2015 before the U.P. State Public Services Tribunal against the inaction of the department in not considering his representation. The said claim petition was disposed of by the Tribunal vide judgment and order dated 04.12.2015 directing the authorities to decide the representation dated 16.02.2015 of the petitioner.

4. In compliance of the order dated 04.12.2015 passed by the Tribunal, the Executive Engineer, Irrigation, Construction Division, Firozabad, Headquarter Shikohabad issued Office Memo No.01/2016 vide letter No.100/सि०नि०ख०फि०सु०शि०/dated 29.01.2016, whereby his absence from duty for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016 was sanctioned as leave without pay under Fundamental Rule 73 contained in Financial Handbook

Memo No.151 dated 09.02.2016 providing that the voluntary retirement of the petitioner would take effect from the afternoon of 31.01.2016 instead of 29.01.2016. The petitioner, being aggrieved by the sanction of leave without pay for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016 filed Claim Petition No.299 of 2016 (Vijay Singh vs. State of U.P. and others), which was dismissed by the learned Tribunal vide judgment and order dated 07.03.2019, which is under challenge in the present writ petition.

5. The petitioner has challenged part of the orders dated 29.01.2016 to the extent of denial of salary for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016 and has alleged violation of Fundamental Rules 56 as well as Rule 73, submitting that Fundamental Rules 56 and 73 do not provide for leave without pay and that, in case the authorities were of the view that the petitioner was illegally absenting from duty, disciplinary proceedings ought to have been initiated against the petitioner for such unauthorized absence. It is further submitted that since no such disciplinary proceedings were initiated against the petitioner, it was not open for the departmental authorities to deny the petitioner salary for the aforesaid period while sanctioning leave.

of fifty-eight years. He may be retained in service after the date of retirement on superannuation, with the sanction of the Government, on public grounds, which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances.

(b) A Government servant in inferior service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. He must not be retained in service after that date, except in very special circumstances and with sanction of the Government.

(c) Notwithstanding anything contained in clause (a) or clause (b), the appointing authority may, at any time, by notice to any Government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may, by notice to the appointing authority, voluntarily retire at any time after attaining the age of forty-five years or after he has completed qualifying service of twenty years.

(d) The period of such notice shall be three months:

Provided that-

(i) any such Government servant may by order of the appointing authority, without such notice or by a shorter notice, be retired forthwith at any time after attaining the age of fifty years, and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of

(ii) it shall be open to the appointing authority to allow a Government servant to retire without any notice or by a shorter notice without requiring the Government servant to pay any penalty in lieu of notice:

Provided further that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated, shall be effective only if it is accepted by the appointing authority, provided that in the case of a contemplated disciplinary proceeding the Government servant shall be informed before the expiry of his notice that it has not been accepted:

Provided also that the notice once given by a Government servant under clause (c) seeking voluntary retirement shall not be withdrawn by him except with the permission of the appointing authority.

(e) A retiring pension shall be payable and other retirement benefits, if any, shall be available in accordance with and subject to the provisions of the relevant rules to every Government servant who retires or is required or allowed to retire under this rule.

Provided that where a Government servant who voluntarily retires or is allowed voluntarily to retire under this rule the appointing authority may allow him, for the purposes of pension and gratuity, if any, the benefit of additional service of five years or of such period as he would have served if he had continued till the ordinary date of his superannuation, whichever be less;

Explanation - (1) The decision of the appointing

in the order of such decision having been taken in the public interest.

(2) In order to be satisfied whether it will be in the public interest to require a Government servant to retire under clause (c) the appointing authority may take into consideration any material relating to the Government servant and nothing herein contained shall be construed to exclude from consideration-

(a) any entries relating to any period before such Government servant was allowed to cross any efficiency bar or before he was promoted to any post in an officiating or substantive capacity or on an ad-hoc basis; or

(b) any entry against which a representation is pending, provided that the representation is also taken into consideration along with the entry; or

(c) any report of the Vigilance Establishment constituted under the Uttar Pradesh Vigilance Establishment Act, 1965.

(2-A) Every such decision shall be deemed to have been taken in the public interest.

(3) The expression "appointing authority" means the authority which for the time being has the power to make substantive appointments to the post or service from which the Government servant is required or wants to retire; and the expression "qualifying service" shall have the same meaning as in the relevant rules relating to retiring pension.

(4) Every order of the appointing authority requiring a Government servant to retire forthwith

valid notwithstanding the fact of his having earlier retired.

Note- (1) (Deleted)

Note- (2) The grant, under rule 86, of leave extending beyond the date on which a government servant must compulsorily retire, or beyond the date upto which a government servant has been permitted to remain in service, shall not be treated as sanctioning an extension of service, and the government servant shall not be permitted to retain a lien on his permanent post or any other post during the period of such leave.

(This shall come into force with effect from April 1, 1965).

Note- (3) A government servant whose date of birth is the first day of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of fifty-eight or sixty years, as the case may be."

7. Section 56(c) of the U.P. Fundamental Rules provides for voluntary retirement after attaining the age of 45 years and completing 20 years of qualifying service, for which the period of notice is three months as provided under sub-rule (d). The first proviso to sub-rule (d)(ii) provides that in case disciplinary proceedings are pending or contemplated, the voluntary retirement shall be effective only if it is accepted by the appointing authority, and in case of contemplated disciplinary proceedings, the

contemplated against the government servant, except with the approval of the appointing authority.

8. The Fundamental Rule 73 reads as hereunder :

"73. A Government servant who remains absent after the end of his leave is entitled to no leave-salary for the period of such absence, and that period will be debited against his leave account as though it were leave on half average pay, unless his leave is extended by the Government. Wilful absence from duty after the expiry of leave may be treated as misbehaviour for the purpose of Rule 15.

Note - In the case of a Government servant governed by leave rules laid down in Fundamental Rule 81-B and Subsidiary Rule 157-A, who remains absent after the end of his leave, the period of such overstayal of leave should, unless the leave is extended by the competent authority, be treated as follows:

(a) If the Government servant is in superior service and holds a lien on a permanent post-

(i) as leave on private affairs to the extent such leave is due, unless the overstayal is supported by a medical certificate,

(ii) as leave on medical certificate to the extent such leave is due, if the overstayal is supported by a medical certificate,

(iii) as extraordinary leave to the extent the period of leave on private affairs and/or on

inferior service, as in (a) (ii) and (iii) above mutatis mutandis.

The period of overstayal of leave will be debited as leave taken but no leave salary will be paid for such period unless it is covered by an extension of leave granted by the competent authority."

9. A bare perusal of Fundamental Rule 73 reveals that it applies to cases where a Government servant remains absent after the end of his leave and provides that he is not entitled to leave salary for such period, which is to be debited against his leave account, unless his leave is extended by the competent authority. The petitioner has not disclosed whether his absence from duty for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016 was preceded by sanctioned leave. The records available with the writ petition also do not disclose whether the petitioner was on leave prior to his absence for the aforesaid periods.

10. The Regulation 420 of the U.P. Civil Services Regulations provides that an interruption in the service of a Government Officer entails forfeiture of his past service, except in certain circumstances. The Regulation 420 is reproduced hereinbelow :

"420. An interruption in the service of an officer entails forfeiture of his past service, except in the following cases :

office is substantively filled the past service of the absentee is forfeited.

(c) suspension immediately followed by reinstatement which need not be to the same office.

(d) abolition of office or loss of appointment owing to reduction of establishment.

(e) transfer to non-qualifying service in an establishment under government control, the transfer must be made by competent authority; and officer who voluntarily resigns qualifying service cannot claim the benefit of this exception. Transfer to a grant-in-aid school entails forfeiture.

(f) Not printed.

(g) time occupied in transit from the one appointment to another provided that the officer is transferred under the orders of competent authority, or if he is a non-gazetted officer with the consent of the head of his old office. "

11. The effect of forfeiture of past service is that the services rendered prior to interruption will not be considered for the service benefits of the Government Servant, which also include pensionary benefits.

12. The petitioner's absence from duty for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016 was unauthorized and was not

for grant of service benefits, and it could also have resulted in denial of voluntary retirement of the petitioner. Thus, the departmental authorities, accepting the request of the petitioner for grant of voluntary retirement as made through his letter dated 16.02.2015, took a lenient view and regularized the service of the petitioner by sanctioning leave for the period of unauthorized absence. It appears that the departmental authorities, taking into consideration the long services of the petitioner and the facts and circumstances disclosed by him in his letter dated 16.02.2015, proceeded to grant him voluntary retirement; otherwise, the authorities could have also initiated disciplinary proceedings against the petitioner for his unauthorized absence from duty.

13. Fundamental Rule 73 is attracted in cases where a Government servant remains absent after the end of his leave. However, in the present case, we find that the petitioner was not on leave prior to his absence for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016. Thus, Fundamental Rule 73 would not apply in the case of the petitioner and the leave has been sanctioned to him for the purpose of regularizing his services so as to entitle him to voluntary retirement as sought by him by his letter dated 16.02.2015.

"85. (a) Extraordinary leave may be granted in Special circumstances (1) when no other leave is by rule admissible, or (2) when, other leave being admissible, the Government servant concerned applies in writing for the grant of extraordinary leave. Such leave is not debited against the leave account. No leave salary is admissible during such leave.

(b) The authority which has the power to sanction leave may grant extraordinary leave as in clause (a) in combination with, or in continuation of, any leave that is admissible and may commute retrospectively periods of absence without leave into extraordinary leave.

Orders of the Governor regarding Rule 85 (b)

The power of commuting retrospectively periods of absence without leave into extraordinary leave is absolute and not subject to the conditions mentioned in clause (a) of the rule; in other words, such commutation is permissible even when other leave was admissible to the Government servant concerned at the time his absence without leave commenced.

Audit instructions regarding Rule 85

1. Extraordinary leave without pay granted under the rules of the Civil Service Regulations will not also be debited against the leave account under note 2 to Rule 78.

2. "Leave not due" applied for by a Government servant with or without medical certificate is "leave admissible under rule" and in cases where "leave not due" can be granted, the grant of extraordinary leave under Fundamental Rule

retrospectively and to commute absence without leave into extraordinary leave.

16. The Fundamental Rule 81-B vide sub-rule (5), provides that a Government servant may be granted extraordinary leave in accordance with provisions of Fundamental Rule 85 read with Fundamental Rule 18, which could be for a maximum period of five years.

17. It is not the case of the petitioner that he had applied for leave for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016, nor is it shown that he was entitled to any other kind of leave in his leave account. It is an undisputed fact that the petitioner remained unauthorizedly absent for the aforesaid period. In order to enable him to be considered for voluntary retirement, the competent authority sanctioned leave without pay, though it has been wrongly mentioned as leave sanctioned under Fundamental Rule 73. Such leave is, in substance, referable to Fundamental Rule 85 of the U.P. Fundamental Rules as contained in Financial Handbook Volume II, Part II to IV.

18. The incorrect mention of Fundamental Rule 73 instead of extraordinary leave under Fundamental Rule 85 does not *ipso facto* render the Office Memo No.100 dated 29.01.2016 invalid. In fact, if it is held that the

circumstances, it would amount to interruption in service resulting in forfeiture of his past service, thereby denying him qualifying service and other service benefits, including the benefit of voluntary retirement which he sought vide his letter dated 16.02.2015.

19. It is ironic that the petitioner has challenged the Office Memo No.100 dated 29.01.2016 relating to sanctioning of leave for the period 01.02.2015 to 28.02.2015 and thereafter from 01.04.2015 to 29.01.2016 before the learned Tribunal as well as before this Court, though the same were issued to enable him to obtain voluntary retirement by regularizing his service for his unauthorized absence. The petitioner, on the one hand, has availed the benefit of grant of voluntary retirement based on regularization of his services by sanction of leave without pay for his unauthorized absence, while on the other hand he has challenged the sanction of leave on the ground that salary could not have been denied for the said period. The petitioner has nowhere pleaded, nor does the record suggest, that he had ever applied for any leave admissible to him. In such circumstances, the authorities had no option but to regularize the period of absence by sanctioning leave, treating it as extraordinary leave under Fundamental Rule 85, though wrongly mentioned as Fundamental Rule 73.

The conduct of the petitioner amounts to availing the benefit of voluntary retirement arising out of the same set of facts, while simultaneously challenging the denial of salary for the period of absence. Such conduct cannot be appreciated and is hit by the doctrine of approbate and reprobate. The petitioner cannot claim the benefit arising out of the Office Memo No.100/सि०नि०ख०फि०सु०शि०/dated 29.01.2016 and Office Memo No.102/सि०नि०ख०फि०सु०शि०/dated 29.01.2016 on the one hand and repudiate it on the other hand denying him salary for the period of absence. The Hon'ble Supreme Court in the case of **Union of India and others vs. N. Murugesan and others** reported in **(2022) 2 SCC 25**, observed in paragraph 26 as follows :

"26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a

and his presumption of knowledge while confirming an offer through his acceptance unconditionally.”

21. The petitioner cannot be allowed to claim the benefit of voluntary retirement on one hand and on the other hand challenge the denial of salary for the period of his unauthorized absence from duty as it would not have been possible to grant him voluntary retirement without regularization of his unauthorized absence from duty by sanctioning of leave. No one can claim the benefit of a transaction at one time claiming that he is entitled to it and later to challenge it for another advantage, as it does not suit his interest. It is a fit case where the cost ought to be imposed upon the petitioner for abusing the process of law; however, taking into consideration that the petitioner had retired way back in the year 2016, we restraint ourselves from imposing any costs.

22. The writ petition stands **dismissed**.

(Amitabh Kumar Rai, J.) (Alok Mathur, J.)

July 08, 2026

Shubhankar