

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.38 of 2022

Hareramacharya, son of Late Ramchandra Sharma, Resident of Village-Sharwanichak, Police Station-Masaurhi, District-Patna (wrongly mentioned in the Aadhar Card, Son of Ramchandra Sharma, Village-Hulasganj, Police Station-Hulasganj, District-Jehanabad).

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Human Resources Development, New Delhi.
2. The Vice-Chancellor, Central Sanskrit University, Janakpuri, New Delhi.
3. The Registrar, Central Sanskrit University, Janakpuri, New Delhi.
4. The Managing Committee through its Chairman, Sriswami Parankushacharya Adarsh Sanskrit Mahavidyalaya, Hulasganj (Gaya), at present-Jehanabad, Bihar.
5. The Deputy Secretary, Ministry of Education, Senior Secondary, Education Department, Shastri Bhawan, New Delhi.
6. The Deputy Educational Advisor, Ministry of Human Resources Development (Department of Education), New Delhi.
7. Sri Venkatesh Sharma, son of not known to the petitioner, Incharge Principal, Sriswami Parankushacharya Adarsh Sanskrit Mahavidyalaya, Hulasganj (Gaya), at present-Jehanabad, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Adv.
Mr. Rajesh Kumar, Adv.
For the Respondent/s : Mr. Dr. K. N. Singh (Asg)
For Respondent No.4&7 : Mr. P.K. Shahi, Sr. Adv.
Mr. Mukesh Kumar-I, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
CAV JUDGMENT

Date : 11-01-2023

1. Heard the parties.

2. The brief facts which require to be noticed for adjudication of this case are that the petitioner was appointed as a Principal of Sriswami Parankushacharya Adarsh Sanskrit Mahavidyalaya (hereinafter referred to as the 'Sanskrit College')



on 22nd February, 1990 and presently has been working on the said post. The college receives financial assistance under the scheme for institutions recognized as Adarsh Sanskrit Mahavidyalaya with the Central Sanskrit University is the nodal agency working for the Ministry of Education, Government of India, which provides funds to it.

3. As per Clause 61 of the Revised Adarsh Scheme, 2012, *an employee may, by giving notice of one month, in writing resign from the services of the institution. However, the appointing authority may, at its discretion, waive the condition of one month's notice.*

4. The petitioner submitted an application online vide letter dated 12.11.2021 to the Vice Chancellor of Central Sanskrit University seeking voluntary retirement from the post of Principal. The Vice Chancellor vide his letter no.633 dated 12.11.2021, sent a communication online to the Chairperson of the Managing Committee giving his consent for accepting the request of the VRS and communicated to the management of the college to take steps to appoint senior most teacher on the post of Principal. Accordingly, the Managing Committee held that voluntary retirement of the petitioner was accepted on 12.11.2021 itself and proceeded to appoint respondent no.7 to



the post of Principal and communicated to the petitioner and 13.11.2021 the new incumbent joined on the post of Principal.

5. The petitioner sent a request for withdrawal of his resignation letter on 14.11.2021 to the Vice Chancellor pointing out that the retirement age has been increased to 65 years, and therefore, he would like to continue on the post of Principal. The letter was addressed to the Vice Chancellor and the same was further conveyed to the Management Committee on 16.11.2021. The Deputy Secretary of the Government of India conveyed the letter to the Vice Chancellor to take a decision in view of withdrawal of the letter of voluntary retirement. The petitioner has thereafter preferred writ petition before this Court praying to direct the respondent to accept the withdrawal of earlier request of VRS and he be allowed to function as Principal.

6. Learned counsel for the petitioner submits that the petitioner has been deprived to withdraw the voluntary retirement application and if one month time has been provided for notice in cases relating to resignation, the voluntary retirement application filed by the petitioner could not have been accepted on the same day, when the petitioner has sent it to the Vice Chancellor at Delhi. Learned counsel submits that the



Central Sanskrit University's Vice Chancellor had only given consent to allow voluntary retirement to the petitioner with request to the Chairman of the managing committee to accept the said voluntary retirement. Thus, on 12.11.2021, it can not be said that the Vice Chancellor had accepted the voluntary retirement of the petitioner but had only given his consent with direction to the Chairman to accept it. However, the Chairman on 12.11.2021 itself proceeded to pass a notification declaring that the Vice chancellor has accepted the VRS and proceeded to appoint respondent Venkatesh Sharma as Principal of the college. Learned counsel submits that the order does not mention of accepting voluntary retirement by the Chairman and he has not been relieved from his duty. Learned counsel submits that the order appears to have been back dated as it was not possible as for having passed the order on the same day when the petitioner has moved the application of voluntary retirement. The original record of the management was also called for in the Court and they have not been able to place any letter or facts by which they were conveyed of the decisions of the Vice chancellor on 12.11.2021 itself. Learned counsel submits that the document of taking over charge signed by the new incumbent dated 13.11.2021 is also wrongly dated as the



Chairman has accepted and received the said document only on 14.11.2021 as clearly seen from Annexure- H filed by the respondent in their counter affidavit. On 14.11.2021, the Chairman had already moved an application for withdrawal of his VRS application filed on 12.11.2021. Within two days, the respondents have acted in a hasty manner with the only purpose to remove the petitioner from his post. Learned counsel submits that the Apex Court in the case of **Balram Gupta Vs. Union of India & Anr.** as reported in **AIR 1987 SC 2354** has held that *an employee has a right to withdraw within the notice period his VRS application.* He also relied upon a judgment reported in **2001(1) SCC 158** as **Union of India and Ors. Vs. Wing Commander T. Parthasarthy.** Learned counsel submits that the Central Sanskrit University had written a letter on 02.12.2021 to the Chairman directing him to bring to the notice about the action taken with reference to the letter of withdrawal submitted by the petitioner dated 16.11.2021, and thus, it is apparent that the Central Sanskrit University had no knowledge of what happened with regard to the petition of the petitioner.

6. It is further stated that the VRS has become effective only from the date it was approved i.e. 30.11.2021. Before the approval, the petitioner cannot be treated to have



retired at the intervening period, since has already withdrawn his application, there was no occasion to approve the voluntary retirement application dated 12.11.2021, vide order dated 30.11.2021. Learned counsel submits that the orders dated 12.11.2021 and 30.11.2021, therefore deserve to be quashed.

7. Per contra, learned counsel for the college submits that the college was recognized by the HRD Government of India and as per the revised scheme issued on 29.06.2012, it was to be regulated as per the rules of Rastriya Sanskrit Sansthan, a deemed University under the ministry of Education Department, Government of India. The Managing Committee of the college was to consist of one Chairperson nominated by the Vice Chancellor with rest five members to be nominated by the State Government, University parent body institution and Rastriya Sanskrit Sansthan respectively. It is submitted that the petitioner by his own volition had submitted application seeking voluntary retirement on 12.11.2021 addressed to the Vice Chancellor, Central Sanskrit University. The Vice Chancellor on the same day gave his consent for accepting request of VRS with direction to Chairman to accept the request and further appoint senior most teacher to the post of Principal. On receipt of such communication, the Chairperson



accepted the request of the petitioner on 12.11.2021 and appointed respondent no.7 to the post. Respondent no.7 joined and took charge of the Principal and submitted his joining report on 13.11.2021. It is further stated that the institution received a letter dated 24.11.2021, written by the petitioner, wherein he mentions about an earlier letter of 14.11.2021 and reminder dated 16.11.2021, whereby he has withdrawn his request for voluntary retirement. The Section Officer of the Central Sanskrit University also communicated to the Managing Committee to send a report with regard to withdrawal of the VRS. The respondent has also stated that it is a private institution and run by a private managing committee, and therefore, would not be amenable to writ jurisdiction. Learned counsel has relied upon the judgment reported in **1999(1) PLJR 529, AIR 1976 SC 888, AIR 1987 SC 1422, 1987 PLJR 962** and **2011 (3) PLJR 120** in support of his contentions on the ground of maintainability.

8. Learned counsel also relies on **2003 (3) SCC 393** in **P. Lal Vs. Union of India** to submit that once the application of VRS has been accepted, the retirement becomes effective and the master-servant relationship ceases and it would be no more open to permit employee to withdraw his application. It is further stated that the petitioner was to inform



about acceptance of his VRS application but the same was refused to be acknowledged.

9. Separate counter affidavit has been filed by the Rastriya Sanskrit Sansthan, which has also taken a preliminary objection regarding maintainability of the writ petition, as against them, it is stated that the Central Sanskrit University is the nodal agency and it is submitted that the application for voluntary retirement was forwarded to the appointing authority by the Vice Chancellor on 12.11.2021. In view of clause- 31 of revised Adarsh scheme, 2012, as the employer of the petitioner was respondent no.4, who was to take a decision in the matter. The University had placed the letter dated 12.11.2021 sent to the college. It is further stated that a email was received on 14.11.2021 withdrawing the VRS application from the petitioner and the same was forwarded on 16.11.2021 to the Chairman by the University to take necessary action as per rules. The ministry of education also conveyed to the University to take decision with regard to withdrawal of VRS and the same request letter was also sent to the college for taking necessary action. The respondent no.4 Chairman has communicated to the University on 03.12.2021 that there are several complaints against the petitioner of financial irregularity and corruption,



and therefore, his application for withdrawal cannot be accepted. The respondent no.4 had given charge of the Principal to respondent no.7 and in its meeting held on 30.11.2021 confirmed the acceptance of the voluntary retirement of the petitioner. The minutes of the meeting dated 30.11.2021 was approved on 21.12.2021.

10. Apart from the aforesaid aspect it has been also pointed out by the respondent University that as per bylaws the retirement age of principal was 62 years and he was duty bound to initiate process of retirement accordingly but he continued to perform his duty illegally and therefore the respondent no.4 accepted his voluntary retirement and application for withdrawal of voluntary retirement cannot be accepted.

11. Supplementary affidavit has also been filed by the respondent no.4 and 7 stating that the petitioner is a non-Ph.D. holder and a non-Ph.D. holder had to retire at the age of 62 years but he was discharging his duty even thereafter and he cannot be continued up to the age of 65 years, therefore, when he has already submitted VRS on 12.11.2021, there was no occasion to allow withdrawal of his VRS. More so, as it had been accepted on the same day. It would be apposite to quote



para-9 and 10 of supplementary affidavit, which are as under:-

“9. That it further transpires that the petitioner again wrote a letter dated 24.11.2021 addressed to the Vice-Chancellor of Central Sanskrit University. On perusal of Letter dated 24.11.2021, it appears that petitioner has tried to develop a concocted story saying that since no decision was taken on his request letter dated 12.11.2021 he withdrew his request on 14.11.2021. He has further mentioned that since no communication was received on his request made on 14.11.2021, he further reminded vide another letter dated 16.11.2021. In his letter dated 24.11.2021 he has made a request to consider his request dated 12.11.2021 as cancelled and permit him to function as principal of the said college. Petitioner also had written a letter to the Hon'ble Minister HRD Govt. of India on 25.11.2021.

10. That it may further be mentioned that none of the Letters dated 14.11.2021, 16.11.2021 and 24.11.2021 were sent to the Chairperson of the Managing Committee of the College.”

12. I have considered the submissions.

13. The question whether the writ petition would be maintainable under law. The question of maintainability of the writ petition as against the respondents is no more res-



integra. A seven judges Bench have passed the judgment in the case of **Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology & Others reported in (2002) 5 SCC 111.**

The question in each case would be whether in the light of cumulative facts has established that the body is financially, functionally and administratively dominated by, or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If the control is merely regulatory whether under Statute or otherwise, it would not serve to make the body within meaning of the State.

14. The aforesaid test, if applied to the present case, this Court finds that the Sanskrit College is affiliated to the Central Sanskrit University and the Adarsh Scheme 2012 lays down the conditions of employment in the Adarsh Sanskrit Colleges. The Scheme has been promulgated by the Central Government and the Ministry of Education which provides the funds.

15. Keeping in view thereto, this Court finds that there is an administrative, financial and overall control on the Sanskrit College by the Union of India through the Central Sanskrit University while individual appointments in colleges may be made by the governing body. However, the Adarsh Sanskrit norms under the Scheme of 2012 had to be followed by



such employees.

16. In view thereof, the writ petition would lie with regard to the relief claimed by the petitioner and the objection regarding non-maintainability of the writ petition is rejected.

17. Record was called for and perused by this Court. From the averments above, it is apparent that the petitioner had applied seeking voluntary retirement vide his letter dated 12.11.2021. The same was sent to the Vice Chancellor, Central Sanskrit Sansthan, Janakpuri, New Delhi. The University has received the said letter. The in-charge of the University has conveyed vide letter dated 12.11.2021 to the Chairman informing that the Vice Chancellor of the University has agreed to the voluntary retirement application submitted by the petitioner and has further directed the Chairman to consider the voluntary retirement application and sanctioned the same in terms of para 31 of the regulations. The said letter does not seem to have been sent by the email or by a fax. The original record also does not reflect the letter having been sent by mail or fax to the college. But the Chairman has issued a letter on 12.11.2021 mentioning of Vice Chancellor having accepted the VRS application. The letter of withdrawal of voluntary



retirement has been sent on 14.11.2021 by the petitioner, which has been duly received by mail and noticed on 15.11.2021 by the office of the University. On 16.11.2021, the in-charge has sent another letter to the Chairman with the copy to the petitioner to take decision and further action on the application seeking withdrawal of VRS. The acceptance of voluntary retirement was approved by the managing committee in its meeting held on 30.11.2021. In the said meeting the withdrawal application moved by the petitioner was not placed by the Chairman and the minutes of the meeting dated 30.11.2021 were placed for approval before the managing committee on 21.12.2021. However, from the perusal of the minutes of the meeting of the managing committee dated 21.12.2021, it appears that the agenda placed before the managing committee only refers to appointment of Venkatesh Sharma as Principal on the voluntary retirement submitted by the erstwhile principal namely the petitioner. As per the agenda- 6, the voluntary retirement application was accepted by the managing committee but it does not mention about the petitioner having withdrawn his voluntary retirement application dated 12.11.2021 on 14.11.2021. It also does not refer to the subsequent communication made by the Central Sanskrit University to the



Chairman. Be that as it may, this court finds that the approval of voluntary retirement of the petitioner has been made only on 21.12.2021. The managing committee had initially approved the same on 30.11.2021. Before these two dates namely, 30.11.2021 and 21.12.2021 the petitioner had already withdrawn his voluntary retirement application on 14.11.2021. It would be apposite to quote the notification dated 12.11.2021 issued by the Chairman:-

अध्यक्ष
प्रबन्ध समिति,
श्री स्वामी पराडगशाचार्य
आदर्श संस्कृत महाविद्यालय, हुलासगंज, गया,बिहार।

अधिसूचना

श्री हरेराम शर्मा, प्राचार्य, आदर्श संस्कृत महाविद्यालय, हुलासगंज, गया ने 12.11.2021 तिथि को अपने पत्र में केन्द्रीय विश्वविद्यालय, नई दिल्ली, के कुलपति से अपनी स्वैच्छिक सेवानिवृत्ति के लिए निवेदन किया है, जिसे माननीय कुलपति महोदय ने आदर्श संस्कृत महाविद्यालय की नियमावली की कंडिका 31 के अन्तर्गत विचार करते हुए स्वीकार कर लिया है।

अतः उपर्युक्त महाविद्यालय के विरिष्ठतम प्राध्यापक श्री वेंकटेश शर्मा को सश्रम पदाधिकारी के निर्देशानुसार प्राचार्य पद पर नियुक्त किया जाता है।

(प्रो० राम विलास चौधरी)
अध्यक्ष, प्रबन्ध समिति
श्री स्वामी पराडगशाचार्य आदर्श संस्कृत
महाविद्यालय, हुलासगंज, गया,बिहार

प्रतिलिपि प्रेषित

1. केन्द्रीय संस्कृत विश्वविद्यालय
नई दिल्ली
2. श्री वेंकटेश शर्मा
विरिष्ठतम प्राध्यापक
श्री स्वामी पराडगशाचार्य आदर्श संस्कृत
महाविद्यालय, हुलासगंज, गया,बिहार
3. श्री हरेराम शर्मा, प्राचार्य,



आदर्श संस्कृत महाविद्यालय, हुलासगंज, गया
4. अध्यक्ष
मातृसंस्था

18. From perusal of the order passed by the Chairman, it is apparent that the Chairman has not himself accepted the VRS application but only mentions that the Vice Chancellor has accepted the VRS application in terms of para-31 of the regulation. Whereas the Vice Chancellor had forwarded the application dated 12.11.2021 to the Chairman for taking decision at his own level. The letter, therefore, cannot be treated to be an acceptance by the Chairman of the managing committee and since specific stand has been taken by the Central Sanskrit University that the Vice Chancellor will not be the authority to accept the voluntary retirement application. The notification issued by the Chairman holding the acceptance of the petitioner's voluntary retirement by the Vice Chancellor is found to be erroneous and vitiated the law. This Court further agrees with the contentions of the petitioner that the VRS application was a ruse to remove the petitioner as it has come on record the Chairman has refused to consider the withdrawal of the VRS application on the ground that there are allegations against the petitioner. This court has a firm view that withdrawal of VRS application cannot be rejected on such grounds. In case of **Union of India Vs. Gopal Chandra Mishra** reported in



1978(2) SCC 301, Constitution Bench held as under:-

50. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217(1) has a unilateral right, or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti, the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such Writing chooses to resign from a future date, the act resigning office is not complete because it does not terminate his tenure before such date and the Judge. can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the



Constitution does not bar such withdrawal.

19. Thus, a premature retirement would become effective only from the date the competent authority accepts the same. As has come on record, the Chairman has not himself accepted the VRS application but only mentions about the Vice Chancellor having accepted it, who was not a competent authority. In view thereof, a presumption cannot be drawn that the VRS application was accepted by the Chairman.

20. Further, the managing committee has accepted the voluntary retirement only on 30.11.2021 in its meeting held on 30.11.2021 and approval of its minutes has been made on 21.12.2021. Before the said dates, the petitioner had the locus poenitentiae to withdraw his VRS application. In case of **Union of India Vs. Wing Commander T. Parthasarthi**, reported in **(2001) 1 SCC 158**, the Supreme court was seen with a similar issue and he gave a finding as under:-

8. So far as the case in hand is concerned, nothing in the form of any statutory rules or any provision of any Act has been brought to our notice which could be said to impede or deny this right of the appellants. On the other hand, not only the acceptance of the request by the headquarters, the appropriate authority, was said to have been made only on 20-2-1986, a day after the respondent



withdrew his request for premature retirement but even such acceptance in this case was to be effective from a future date namely 31-8-1986. Consequently, it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the Department and the respondent at any rate before 31-8-1986. While that be the position inevitably the respondent had a right and was entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective.

21. Similar view has been taken by the Supreme Court in case of **J. N. Srivastava Vs. UOI & Anr.** reported in **(1998) 9 SCC 559.**

22. In case of **State Bank of India Vs. P. Chakravorthy** reported in **AIR 1999 SC 2282**, the Apex Court has held as under:-

2. While allowing the writ appeal filed by the respondent the High Court passed the following order:

“In the result, we dispose of this appeal by directing that the Deputy Managing Director (Personnel), Central Office, State Bank of India will take decisions on the voluntary retirement of the appellant and his promotion and his salary and allowances keeping in mind the observations made in this judgment as well as the notice dated 27-6-1994 of the



appellant revoking his notice to retire voluntarily from service. The said decisions will be taken by the said competent authority within two months from today and the amounts paid to the appellant pursuant to interim orders passed by this Court will be adjusted against the salary or terminal benefits of the appellant, as the case may be.”

3. Taking all the facts and circumstances into consideration we do not think that it is appropriate in this case to interfere with the judgment of the High Court in exercise of our jurisdiction under Article 136 of the Constitution.

23. In State of Haryana & Ors. Vs. S. K. Singhal reported in **1999 (4) SCC 293**, the Apex Court has held as **under:-**

9. The employment of government servants is governed by rules. These rules provide a particular age as the age of superannuation. Nonetheless, the rules confer a right on the Government to compulsorily retire an employee before the age of superannuation provided the employee has reached a particular age or has completed a particular number of years of qualifying service in case it is found that his service has not been found to be satisfactory. The rules also provide that an employee who has completed the said number of years in his age or who has



completed the prescribed number of years of qualifying service could give notice of, say, three months that he would voluntarily retire on the expiry of the said period of three months. Some rules are couched in language which results in an automatic retirement of the employee upon the expiry of the period specified in the employee's notice. On the other hand, certain rules in some other departments are couched in language which makes it clear that even upon expiry of the period specified in the notice, the retirement is not automatic and an express order granting permission is required and has to be communicated. The relationship of master and servant in the latter type of rules continues after the period specified in the notice till such acceptance is communicated; refusal of permission could also be communicated after 3 months and the employee continues to be in service. Cases like Dinesh Chandra Sangma v. State of Assam [(1977) 4 SCC 441 : 1978 SCC (L&S) 7] , B.J. Shelat v. State of Gujarat [(1978) 2 SCC 202 : 1978 SCC (L&S) 208] and Union of India v. Sayed Muzaffar Mir [1995 Supp (1) SCC 76 : 1995 SCC (L&S) 256] belong to the former category where it is held that upon the expiry of the period, the voluntary retirement takes effect automatically as no order of refusal is passed within the notice period. On the other hand H.P. Horticultural Produce Marketing & Processing Corpn.



Ltd. v. Suman Behari Sharma [(1996) 4 SCC 584 : 1996 SCC (L&S) 1056] belongs to the second category where the bye-laws were interpreted as not giving an option “to retire” but only provided a limited right to “seek” retirement thereby implying the need for a consent of the employer even if the period of the notice has elapsed. We shall refer to these two categories in some detail.

13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case [(1977) 4 SCC 441 : 1978 SCC (L&S) 7] by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelat case [(1978) 2 SCC 202 : 1978 SCC (L&S) 208] and as in Sayed Muzaffar Mir case [1995 Supp (1) SCC 76 : 1995 SCC (L&S) 256] the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the



expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelat case [(1978) 2 SCC 202 : 1978 SCC (L&S) 208] and in Sayed Muzaffar Mir case [1995 Supp (1) SCC 76 : 1995 SCC (L&S) 256] before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.

24. In **Srikantha S.M. Vs. Bharat Earth Movers Ltd.** reported in **2005 (8) SCC 314**, the employee resigned and sought to be relieved as per rules. The company granted him casual leave informing that he would be relieved at the close of the day immediately next to the day of expiry of the said casual leave period. Before that day, the employee had sent a letter to the company withdrawing his resignation. The Apex Court held that he would be treated to have remained in service and therefore he had a right to withdraw his resignation before that day.

25. In **New Victoria Mills & Ors Vs. Shrikant**



Arya, reported in **2021 SCC online SC 808**, the Apex Court was examining the case where the company had floated a voluntary retirement scheme. The respondent had availed the opportunity under the scheme requesting him to accept resignation of the applicant by making sure that payment of all benefits of service period be provided to the applicant.

31. We have examined the factual contours of the current controversy in the conspectus of the legal position set forth aforesaid. In fact, if one looks to the different judgments cited from both sides, there are actually factual nuances which have led to one result or the other. The factual nuances have to be most importantly examined in the context of the scheme which applies, as the present case is not one of resignation per se but that of exercising an option available under the MVRs.

26. Thus, from the discussions in the latest judgment passed by the Apex Court, it is apparent that the case has to be examined on its own fact.

27. In the present case, there is one other aspect which is also required to be noticed and i.e. the effect of superannuation does not deny that the petitioner is a non-Ph.D. and as per UGC rules, he attains superannuation on completing 62 years of age. The Supreme Court in case of **Balbir Singh Negi Vs. Union of India & Others** reported in **1996(8) SCC 283** examined the concept of superannuation as under:-



1. The SLP is filed against the order of the Central Administrative Tribunal, Chandigarh Bench, Circuit at Shimla made on 17-11-1995 in OA No. 758/HP/91. The petitioner, admittedly, after completing his 33 years of qualifying service submitted, on 18-2-1991, an application for voluntary retirement under Section 48-A of Pension Rules which came to be accepted on 2-5-1991 w.e.f. 30-6-1991 as requested by him. After the receipt of this letter and acceptance on the even date, namely, 2-5-1991 and of another letter dated 23-5-1991, he sought to withdraw his application for voluntary retirement which he had submitted but was not accepted by the authorities. Thereafter, he filed OA in the Tribunal contending that he is entitled to withdraw his application before the relationship of master and servant becomes operative, i.e., 1-7-1991. Acceptance of his resignation before that date, i.e., 30-6-1991 is not valid in law. Under Rule 48-A of the Pension Rules, a government servant, on completion of the required period of service, is entitled to make a request for voluntary retirement. Admittedly, that request was acceded to and resignation was accepted. The learned counsel for the petitioner sought to rely upon the judgment of this Court in Balram Gupta v. Union of India [1987 Supp SCC 228 : 1988 SCC (L&S) 126 : (1987) 5 ATC 246] in which this Court had held that a government servant after making the application but before it becomes effective and the relationship of master and servant ceases to operate, is entitled to withdraw the resignation. In that case, on the facts and circumstances, it was held that he was pressurised in the first instance to voluntarily retire. With a view to get it over he had submitted his application for voluntary retirement. Subsequently, he reconciled. The entitlement to withdraw the application for voluntary retirement was accepted by this Court. It is seen that in this case, admittedly, the petitioner has stated that he was on leave for one year prior to the date of seeking voluntary retirement on



medical grounds and he was unable to discharge the duties and that, therefore, he had sought to voluntarily retire from service. It would appear that when he was transferred from Shimla to Faridabad, he had submitted his application in a huff for voluntary retirement and that thereafter he came forward with the application for withdrawal. It is true that the petitioner was entitled to withdraw the resignation. But in view of the fact that he has already attained the superannuation in normal circumstances on 28-2-1994, no useful purpose will be served by giving direction to permit him to withdraw his application.

28. Having noticed the law as above, if examined the factual aspect this court finds that the petitioner's application for withdrawal of VRS was not considered by the managing committee before approving his VRS application. This Court has already noticed that the Chairman has not accepted the voluntary retirement himself. He has just handed over the charge of the principal to respondent no.7 assuming that the Vice Chancellor has accepted the VRS application. Since the Vice Chancellor had no power to appoint or remove or to accept the VRS application of the petitioner, it cannot be said that the petitioner's VRS application dated 12.11.2021 was accepted on the same day. It has of-course been accepted on the day when the meeting was held i.e. on 30.11.2021 and approved on 21.12.2021. Before the date of acceptance he had already moved an application for withdrawal of VRS application, and



therefore, in terms of the judgments (supra) his VRS application could not have been accepted and approved. The action of the respondents, is therefore, bad in law and deserves to be set aside.

29. However, question arises whether the relief can be granted to the petitioner of reinstatement and continuity. By operation of law, a benefit cannot be extended to a person who may not be entitled to the same. Admittedly the petitioner had attained the superannuation age much prior to November, 2021 and he was working as principal although he had crossed 62 years of age. As per UGC regulations, following provision exists for superannuation and reemployment of teachers:-

16.0.0 superannuation and re-employment of teachers

16.1.0. Teachers will retire at the age of 62. However, it is open to a University or a college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC up to the age of 65 years.

16.2.0 Age of retirement of Registrars, Librarians, Physical Education personnel, Controllers of Examinations, Finance Officers and such other University employees who are being treated at par with the teachers and whose age of superannuation was 60 years, would be 62 years. No re-employment facility is recommended for the Registrars,



Librarians and Directors of Physical Education.

17.0.0 Superannuation Benefits :

17.1.0 The benefit in service, up to a maximum 3 years, should be provided for the teachers who have acquired Ph.D. degree at the time of entry, so that, almost all teachers get full retirement benefits which are available after 33 years of service, subject to the overall age of superannuation.

17.2.0 other conditions with respect to Superannuation Benefits may be given as per Central/State Government Rules.

30. As there is no reemployment granted to the petitioner nor he possess Ph.D. degree, he cannot be allowed to continue after 62 years of age. At best, he has to continue up to the date when he submitted his VRS application. He therefore, has to be treated to have retired as on the date and he would be entitled to the salary up to the date he has worked.

31. Keeping in view Balbir Singh Negi (supra) therefore, even though this court concludes that the VRS application could not have been accepted by the respondents as the same stood already withdrawn, the petitioner will have to be treated as retired from the day he was relieved and charge was handed over to the respondent no.7 since he had already attained the age of 62 years and would be treated to have superannuated.



32. In view of above discussions, the petitioner is not entitled to any relief as prayed for.

33. The writ petition is disposed of with direction to the respondent to release the retiral benefit of the petitioner, if any. No cost.

(Sanjeev Prakash Sharma, J)

amit/-

AFR/NAFR	AFR
CAV DATE	22.12.2022
Uploading Date	
Transmission Date	

