REPORTABLE

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

Judgment reserved on: 23/09/2026

Judgment delivered on: 03/10/2026

Judgment (Full) uploaded on: 03/10/2026

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(1) D.B. Special Appeal Writ No. 212/2017
CNR: RJHC020832612017 | URN: SAW / 356U / 2017

H. K. Meena Son Of Late Ram Pratap Meena, aged about 59 years, R/o 154, Nandpuri, Malviya Nagar, Jaipur Rajasthan

----Appellant

Versus

1. State Of Rajasthan Through Its Principal Secretary (Finance), Government Secretariat, C-Scheme, Jaipur
2. The Commissioner, Commercial Taxes, Karbhawan-Prithviraj Road, Jaipur - Rajasthan

----Respondents

Connected With

(2)D.B. Civil Special Appeal Writ No. 279/2017
CNR: RJHC020832772017 | URN: SAW / 496U / 2017

1. The State Of Rajasthan Represented Through Principal Secretary (Finance), Government Of Rajasthan, Government Secretariat, Jaipur
2. The Commissioner, Commercial Taxes, Kar Bhawan, Prathviraj Road, Jaipur.

----Appellants

Versus

H. K. Meena Son Of Late Ram Pratap Meena, aged about 60 years, R/o 154, Nandpuri, Malviya Nagar, Jaipur Rajasthan

----Respondent

For Appellant(s) : Mr. Ajatshatru Mina with
Mr. Himanshu Kala,
Mr. Movil Jeenwal, Mr. Nrip Raj Singh,
Mr. Rajat Choudhary &

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Mr. Rhytham Shrimal in DBSAW No.212/2017
Mr. Vigyan Shah, AAG assisted by Ms. Monisha Agarwal & Mr. Pulkit Bhardwaj in DBSAW No.279/2017

For Respondent(s) : Mr. Vigyan Shah, AAG assisted by Ms. Monisha Agarwal & Mr. Pulkit Bhardwaj in DBSAW No.212/2017
Mr. Ajatshatru Mina with Mr. Himanshu Kala, Mr Movil Jeenwal, Mr. Nrip Raj Singh, Mr. Rajat Choudhary & Mr. Rhytham Shrimal in DBSAW No.279/2017

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DIVISION BENCH

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE INDERJEET SINGH

C.A.V. JUDGMENT

Sanjay K. Agrawal, CJ:

1. Since, the above said two appeals arise out of a common order dated 25.01.2017 and involve common & interconnected questions concerning the validity of voluntary retirement and directions for reinstatement and consequential benefits, they have been clubbed together, heard together and are being disposed of by this common order, as the writ petitioner and the State of Rajasthan, both have questioned the legality, validity and correctness of the impugned order dated 25.01.2017.

2. The aforesaid challenge has been made on the following factual background:

(i) The original writ petitioner H.K. Meena was initially appointed on the post of Assistant Commercial Taxes Officer in the Commercial Taxes Department, Government of Rajasthan. In the

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natural course of service, the writ petitioner would have superannuated on 31.07.2017, however on 17.10.2013, he applied for voluntary retirement pursuant to Rule 50(1) of the Rajasthan Civil Services (Pension) Rules, 1996 (hereinafter called as 'the Rules of 1996') on account of ill health, to be effective from 14.01.2014.

(ii) The respondent forwarded the application of the writ petitioner to the concerned department. The writ petitioner was informed that no departmental enquiry is pending against him, however his application seeking voluntary retirement was rejected by the State Government on 13.01.2014 on the ground that it did not complete the mandatory 90 days notice period.

(iii) Thereafter, on 09.04.2014 the writ petitioner again submitted an application seeking voluntary retirement, to be effective from 31.07.2014, to which the respondent-State Government informed the writ petitioner on 28.04.2014 that a minor penalty in an enquiry under Rule 17 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter called as 'the Rules of 1958') is pending against him.

(iv) On 23.07.2014, the writ petitioner submitted an application seeking extension of the date of his intended voluntary retirement from 31.07.2014 to 31.10.2014. The said application came to be accepted by the respondents extending the services of the writ petitioner upto 31.10.2014.

(v) On 29.10.2014, the writ petitioner again moved an application with a request to extend the date of voluntary retirement by six months on account of constant improvement in

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his health, however no action was taken by the respondents on the said application and ultimately on 30.10.2014, the State Government passed an order rejecting the application of the writ petitioner dated 29.10.2014 seeking extension of the date of voluntary retirement and retired the writ petitioner voluntarily with effect from the afternoon of 31.10.2014.

(vi) On 31.10.2014, the writ petitioner filed another application seeking withdrawal of the order of voluntary retirement, however the State Government did not decide the said application leading to filing of S.B. Civil Writ Petition No.12546/2014 before this Court questioning the order dated 30.10.2014.

(vii) The learned Single Judge vide its order dated 25.01.2017, quashed the impugned order dated 30.10.2014 voluntarily retiring the writ petitioner and directed for his reinstatement within four weeks, however the salary, annual grade increments and seniority benefits for the period from 30.10.2014 to 25.01.2017 were confined solely for the purpose of pension, denying notional benefits, continuity in service and other consequential monetary benefits to the writ petitioner.

(viii) Feeling aggrieved by the order dated 25.01.2017 passed by the learned Single Judge, the writ petitioner and the State Government both have filed separate appeals before this Court.

3. Mr. Ajatshatru Mina, learned counsel appearing for the writ petitioner (now the appellant) would submit as under:

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(i) That the rules of 1996 permits extension of an application for voluntary retirement after its submission. The earlier acceptance dated 23.07.2014 created a legitimate expectation in favour of the writ petitioner that his subsequent request for extension would also be considered in accordance with the same Rules and on the same principles and the respondents could not have taken a contrary stand in respect of the subsequent application without assigning any valid reason or distinguishing the circumstance of the two applications.

(ii) He further submitted that principle of consistency required the respondents to consider the subsequent application dated 29.10.2014 in light of their own earlier decision, by which the request of the writ petitioner for extension had already been accepted.

(iii) He would rely upon the decision of the Supreme Court in the matter of **Union of India etc. Vs. Gopal Chandra Misra and others, etc.[1],** to submit that after reinstatement the writ petitioner is liable to be continued in service with all consequential benefits including salary, annual grade increments and seniority.

(iv) A prayer has, therefore, been made to direct the respondent-State to treat the period in question as continuous service for all purposes including salary, annual grade increments, seniority, promotion and all consequential service and monetary benefits by treating the order dated 30.10.2014 as non-existent for such purposes.

1 AIR 1978 SC 694

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4. On the other hand, Mr. Vigyan Shah, learned Additional Advocate General appearing for the State, while opposing the prayer made by the writ petitioner, would submit as under:

(i) That in the writ petition, the only prayer has been made for setting aside the order dated 30.10.2014 and the relief, not claimed in the writ petition, cannot be granted in the appeal.

(ii) He would rely upon the decisions of the Supreme Court in the matters of **Bharat Amaratlal Kothari & Anr. Vs. Dosukhan Samadkhan Sindhi & Ors.[2],** and **Union Public Service Commission and Anr. Vs. Naseer-Ud-Din Wani and Ors.[3],** to contend that the relief, not sought in the writ petition, cannot be granted in the appeal.

5. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

6. It is not in dispute that the writ petitioner had earlier submitted an application for voluntary retirement and the date of voluntary retirement was fixed as 31.07.2014. However before the said date, the writ petitioner submitted an application on 23.07.2014 (Annexure 7 to the writ petition) seeking extension of the date of voluntary retirement from 31.07.2014 to 31.10.2014. The said application was duly considered and accepted by the respondent-State and the writ petitioner was permitted to continue in service till 31.10.2014.

2 (2010) 1 SCC 234
3 (2011) 14 SC 142

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7. When the writ petitioner subsequently submitted the application dated 29.10.2014 seeking further extension of the date of voluntary retirement, this time the State Government rejected his application for extension of date of voluntary retirement and retired the writ petitioner with effect from the afternoon of 31.10.2014. The writ petitioner challenged the rejection of his application by way of filing a writ petition and the learned Single Judge vide its order dated 25.01.2017, set aside the order dated 30.10.2014, which is sought to be challenged by both the parties by way of present appeals.

8. At this stage, it would be appropriate to reproduce Rule 50 under Chapter V of the Rules of 1996, which provides for retirement on completion of 15 years qualifying service as under:

> "**50. Retirement on completion of 15 years' qualifying Service**
>
> (1) At any time after a Government servant has completed fifteen years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service."
>
> (2) The notice of voluntary retirement given under sub rule (1) shall require acceptance by the appointing authority:
>
> Provided that where 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 shall automatically become effective from the date of expiry of the said period.
>
> (3) (a) A Government servant referred to in sub rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons thereof;
>
> (b) On receipt of a request under clause (a), the appointing authority subject to the provisions of sub rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice

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> will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months.
>
> (4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:
>
> Provided that the request for withdrawal shall be made before the intended date of his retirement."

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9. A careful perusal of the aforesaid Rules would show that a government servant who has completed 15 years of qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service. The notice of voluntary retirement given under sub-Rule (1) of Rule 15 shall require acceptance by the appointing authority and sub-Rule (3) (a) requires that a government servant referred to in sub Rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons thereof. Sub-Rule (4) of Rule 50 provides that a government servant who has elected to retire under this Rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority. The proviso to sub-Rule (4) states that the request for withdrawal shall be made before the intended date of his retirement.

10. As such, voluntary retirement is an option given to a government servant to retire from service on fulfilment of the specified terms and conditions and accordingly, the voluntary retirement is a condition of service which gives an option in

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absolute terms to a public servant to voluntarily retire after giving the requisite notice and after he has reached the qualifying age or rendered the qualifying service, as the case may be. (See **Dinesh Chandra Sangma Vs. State of Assam & Ors.[4])**

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11. Since the Rule requires acceptance of voluntary retirement by the competent authority, therefore, the government servant is entitled to withdraw it before the date it is actually accepted by the competent authority.

12. In the matter of **Tek Chand Vs. Dile Ram**[5], followed in the matter of **Ashok Kumar Sahu Vs. Union of India & Ors**[6], a three Judge Bench of the Supreme Court catalogued three categories rules relating to voluntary retirement namely;

> "(a) Where voluntary retirement automatically comes into force on expiry of notice period;
>
> (b) Where retirement comes into force unless an order is passed during the notice period withholding permission to retire;
>
> (c) Voluntary retirement does not come into force unless permission to this effect is granted by the competent authority."

13. The Constitution Bench of the Supreme Court in the matter of **Gopal Chandra Misra,** (supra) clearly held that if a person by writing chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the person can at any time before the arrival of that prospective date on which it is intended to be effective,

4 (1977) 4 SCC 441
5 (2001) 3 SCC 290
6 (2006) 6 SCC 704

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withdraw it because the Constitution does not bar such withdrawal. It has been held in paragraph 51 as under:

> "**51.** 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 appli- cable 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 praesanti, 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."

14. As such, in the absence of any legal, contractual or constitutional bar, where an employee intends his resignation to take effect from a future date, such resignation does not terminate his service before the said prospective date and can be withdrawn before the date on which it is intended to become effective.

15. In the instant case, the writ petitioner submitted the application for withdrawal of the voluntary retirement on 29.10.2014 before the date fixed for his voluntary retirement, i.e.,

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31.10.2014. Therefore, the learned Single Judge has rightly held that the State Government could not have passed the order retiring the writ petitioner w.e.f. 31.10.2014.

16. It is appropriate to mention here that the Rules of 1996 admittedly does not provide for a procedure for extension, but merely because there is no provision permitting specific extension, it doesn't mean that such a request is prohibited, particularly when the voluntary retirement has not taken effect and the writ petitioner had submitted subsequent request before the prospective date of his retirement. Furthermore, merely because the writ petitioner has not used the specific term "withdrawal", the communication made by him seeking extension of his date of voluntary retirement could not have been ignored when he clearly conveyed that he does not want his earlier retirement to take effect on the previously fixed date.

17. In the instant case, the writ petitioner has clearly sought extension of the date of voluntary retirement before the extended date itself and thus, the intention of the writ petitioner to continue in service was clearly communicated to the respondents before the voluntary retirement could take effect.

18. As such, the learned Single Judge has rightly set aside the order dated 30.10.2014, retiring the petitioner without considering his application dated 29.10.2014, proposing to withdraw his prospective date of voluntary retirement w.e.f. 31.10.2014.

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19. Now the writ petitioner has claimed that the intervening period is liable to be treated as continuous service for all consequential service benefits and the State Government has questioned that reinstatement could not have been granted, if such relief has not been prayed for.

20. Admittedly and undisputedly, the writ petitioner has only claimed that the order dated 30.10.2014 be set aside and the respondent-State be directed to allow the application submitted by the writ petitioner and he did not claim any relief of reinstatement.

21. In this regard, the decision rendered by the Supreme Court in the matter of **Bharat Amaratlal Kothari** (supra) may be noticed herein, in which the Supreme Court has held that relief not prayed for, cannot be granted, observing in para 29 as under:

> "29. The approach of the High Court in granting relief not prayed for cannot be approved by this Court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled to or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished."

22. Similarly in the matter of **Naseer-Ud-Din Wani** (supra), the Supreme Court has held that the Constitutional Court should not go beyond the prayer and grant relief, which has not been prayed for and as such, the order of reinstatement could not have been passed by the learned Single Judge, which has specifically not been prayed for by the writ petitioner. It is set aside to that extent

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however, the writ petitioner would be entitled for the benefits except reinstatement flowing from setting aside the order dated 30.10.2014.

23. Consequently, the impugned order dated 25.01.2017, passed by learned Single Judge is modified to the extent, as indicated hereinabove, leaving the parties to bear their own cost(s).

24. With the above observations, both the appeals stand disposed of. Pending application, if any, also stand disposed of.

25. A copy of this judgment be placed in the connected file.

(INDERJEET SINGH),J (SANJAY K. AGRAWAL),CJ

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