

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. D- 1430 of 2020

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Date of hearing
& decision:

09.11.2021

Petitioner:

Mst. Touqeer Fatima Shah through Mr. Ayaz Hussain Chandio, Advocate.

Mr. Ayaz Ali Rajpar, Asstt: A.G. along with Muhammad Aslam DEO Primary Badin, Gulshan Aara TEO Primary (E) Matli district Badin & Muhammad Siddique Umrani, Office Superintendent.

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner is seeking direction to the respondents to accept her option of voluntary retirement from service on the premise that she has the requisite length of service in her credit.

2. It is, inter-alia, contended by the petitioner, who is present along with her counsel that she was appointed as Primary School Teachers (BPS-11), at Government Girls Primary School Hot Khan Notkani Taluka Matli, District Badin, in the year 1995. It is urged by her that per Section 13(i) of Sindh Civil Servants Act, 1973 on completion of twenty-five (25) years qualifying service, the competent authority could direct retirement of Civil servant in the public interest; and further under the said section after completion of twenty-five years three months LPR could be allowed, if applied within the time limit stipulated in the retirement order. Petitioner emphasized that she is unable to do the job furthermore, applied for voluntary retirement from service and moved an application to Taluka Education Officer (Female) Primary Matli along with relevant documents, however, due to lethargic attitude on the part of the concerned department her application could not be decided for the reasons best known to them, compelling her to serve them with the

legal notice which has not yet been replied. Petitioner has emphasized that during the intervening period her Ex-husband namely Syed Waqar moved an application to ACE Badin with certain allegations of dual service on the part of the petitioner, which allegations were thoroughly probed and after inquiry said application was also disposed on account of insufficient evidence; that due to above conduct of Taluka Education Officer, Matli the petitioner has filed the instant petition.

3. Arguments of the learned counsel for the parties have been heard and the available record perused.

4. The question is whether a Civil Servant who opts for voluntary retirement for some reasons could be objected to by the parent department.

5. Prima-facie, the Competent Authority shall have absolute discretion either to accept or reject the request of a Civil Servant seeking Voluntary Retirement depending upon the requisite length of service. The reasons for declining the request of an employee seeking voluntary retirement shall be recorded in writing by the competent authority. Acceptance or otherwise of the request of an employee seeking voluntary retirement will be communicated to him/her in writing. Law on the subject is very clear in its terms and pension shall also be granted to the civil servant who opts to retire before attaining the age of superannuation, but after having served for a minimum period of 20 years in terms of Sindh Civil Service Regulations (CSR) with the concurrence of the parent department.

6. In service jurisprudence, the expressions superannuation, voluntary retirement, compulsory retirement, and resignation convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time; but in the case of voluntary retirement, it can only be sought after rendering the prescribed period of qualifying service. Another

fundamental distinction is that in the case of the former, normally retirement benefits are denied but in the case of the latter, the same is not denied. In the case of the former, permission or notice is not mandated, while in the case of the latter, permission of the concerned employer is a requisite condition. On the contrary, as discussed supra, while the Government reserves its right to compulsorily retire a Government/civil servant, even against his/her wish, there is a corresponding right of the Government/civil servant to voluntarily retire from service. Voluntary retirement is a condition of service created by statutory provision. Having discussed the issue we have noticed that in the present case, the petitioner has opted for voluntary retirement from service based on requisite length of service i.e. 27 years, which application is still pending before the competent authority for decision. This Court vide order dated 18.3.2021 directed the Education Officer (Primary Badin) to decide the said application under the law and produce before this Court the decision of the application, however, nothing has been brought on record.

7. The learned A.A.G. Sindh submits that the petitioner's application for voluntary retirement has been decided vide order dated 2.11.2021, pending an inquiry against her by the Anti-Corruption Establishment on the allegation that she was doing two jobs, the other one with the Punjab Education Department. However, the enquiry report of the Anti-corruption Establishment placed on the record dated 23.10.2020 is not conclusive and it only recommends that the matter be placed before the Director School Education Primary, Hyderabad for necessary action i.e. for departmental proceedings. The enquiry report denotes that there is evidence to show that the petitioner was serving continuously in Sindh from 2005 to 2018. The petitioner contends that the enquiry was at the behest of her estranged ex-husband who provided fabricated documents to the ACE. Be that as it may, the record shown to us today reflect that disciplinary action has been initiated against the petitioner vide decision dated 2.11.2021 and further show that show-cause notice has been issued to her; and, disciplinary proceedings is in process. Apparently the petitioner is required to be heard before

taking any adverse action against her on the plea taken by the department, therefore we have no option but to direct the Secretary Education Government of Sindh to look into the matter of the petitioner for opting voluntary retirement from service; and, if the department finds nothing adverse against the petitioner, she may be allowed to retire from government service under the law. The said exercise shall be undertaken within one month from the date of receipt of this order after providing meaningful hearing to the petitioner.

8. This petition stands disposed of along with pending application(s) in the above terms.

JUDGE

JUDGE