

sub-rule (a) of Rule 16(B)(1) of the rules. Therefore, father-in-law must be included in the definition of expression 'family'. To that extent Rule 6.16-B(1)(a) must be read down to include father-in-law in it in the definition of 'family'.

(13) As a sequel to the above discussion, the writ petition is allowed. The order dated 18th June, 2008 passed by the respondents is hereby quashed. The respondents are directed to make the payment of gratuity to the petitioner within a period of two months from the date of receipt of copy of this order. Keeping in view the difficulty posed by the rule we are not inclined to award any interest or costs in favour of the petitioner.

R.N.R.

Before Ajai Lamba, J

SURINDER SINGH .. Petitioner

versus

**STATE THROUGH PRINCIPAL SECRETARY, PUNJAB AT
CHANDIGARH AND OTHERS .. Respondents**

C.W.P. No. 16058 of 2008

16th September, 2009

Constitution of India, 1950—Art. 226—Punjab Civil Services (Premature Retirement) Rules, 1975—Rl. 3(3)(a)—Request for premature retirement after giving more than 3 months' notice—Under RI.3(3)(a) an employee after completing 20 years of qualifying service is entitled to give notice not less than 3 months in writing to retire from service—RI.3(3)(c) provides that where appropriate authority does not refuse to grant permission for retirement before expiry of period specified in notice, retirement shall become effective from date of expiry of said period—Appropriate authority failing to convey decision on request of petitioner within stipulated time—Premature retirement becoming effective from date specified in notice given by petitioner—Subsequent order of rejection of request for premature retirement passed after date given by petitioner in notice held to be illegal—Petition allowed.

Held, that the petitioner had made request for pre-mature retirement in accordance with the relevant Rule. No decision on the request of the petitioner was conveyed to the petitioner within stipulated time, as is required under the provisions of the Rule. In these facts and circumstances of the case, the present case squarely falls within the domain of sub clause (c) of sub rule (3) of rule 3 of Pre-mature Retirement Rules, 1975. Consequently, it follows that the premature retirement of the petitioner becomes effective from 31st August, 2008 i.e. the date specified in the notice given by the petitioner. Thus, order dated 5th September, 2008 that is subsequent to the date specified in the notice, is rendered illegal and would not have the effect of not accepting the request of the petitioner for premature retirement.

(Paras 13 & 14)

Dharam Pal, Advocate, *for the petitioner*.

Ms. Charu Tuli, Sr. DAG, Punjab.

AJAI LAMBA, J. (ORAL)

(1) This civil writ petition has been filed under Articles 226 and 227 of the Constitution of India praying for issuance of a writ in the nature of certiorari quashing order Annexure P-6 dated 5th September, 2008. *Vide* order Annexure P-6, the petitioner has been conveyed that his request for pre-mature retirement had not been accepted.

(2) It has been pleaded that the petitioner was selected and appointed as a Clerk,—*vide* order dated 4th March, 1983. The petitioner has been working without break and has a clean service record. After completion of 20 years of continuous service, on account of personal reasons and circumstances, the petitioner made a request for pre-mature retirement,—*vide* communication Annexure P-4 dated 19th May, 2008. The communication reads as under:—

“On the subject cited above, it is humbly prayed that at present I am working as Senior Clerk in the office of Tehsildar, Rupnagar. My date of joining the Government Service is 9th March, 1983 and in this way, I have already completed more than 25 years of Government service.

(2) *On account of my family circumstances and due to my ill-health, I cannot preform my Government duty properly and on that account, I am requesting by serving a notice for pre-mature retirement as per rule 3, sub rule 3 (a) of Pre-mature Rules 1975 that I may be allowed to retire voluntarily from the Government service with effect from 31st August, 2008 after noon."*

(3) Learned counsel contends that, in case, before the stipulated date in the request for pre-mature retirement, if the permission is not refused, it has to be construed as having been allowed. The impugned order Annexure P-6 has been passed on 5th September, 2008 i.e. after the date given by the petitioner in the notice i.e. 31st August, 2008 and, therefore, is illegal and in violation of the statutory provision.

(4) Learned counsel for the respondent has drawn the attention of the Court towards Annexure R-3 i.e. the noting sheet maintained in the office. It has been pleaded on behalf of the respondents that Assistant Commissioner,—*vide* note dated 27th May, 2008 had approved that the request of the petitioner be filed in view of the fact "A" and shortage of employees. Action, therefore, was taken by respondents before the date given by the petitioner in his notice i.e. 31st August, 2008. Under the circumstances no illegality has been committed.

(5) The office note on which reliance has been placed by the respondents reads as under:—

"Subject: Application No. 271/BC, Dated 19th May, 2008 from Tehsildar, Rupnagar.

A letter under mention which is under consideration has been received through Tehsildar; Rupnagar. The applicant Surinder Singh, Senior Assistant, Tehsil Officer, Rupnagar requested that he has joined on 9th March, 1983 and completed his government Service of 25 years. He has requested that his domestic problems and health is not well and he is unable to do his government duty properly. So after giving him the notice for voluntary retirement Rules 3 Sub Rules (URA) of Punjab Civil Services (Premature Retirement) Rules 1975. It is requested that he be ordered to be retired prematurely from his Government Service on 31st August, 2008 afternoon.

The Employee had earlier also requested for voluntary retirement and he again made the request for voluntary retirement. After considering the application the employee's problem proper order is requested.

(Sd.) . . . ,

EC-1, on 23/5/2008

Establishment Assistant

Surinder Singh, Senior Assistant, Tehsil Officer, Rupnagar has given the application for premature retirement to the effect that he be voluntary retired from his government Service from 31st August, 2008 afternoon. This employee had also given an application earlier for voluntary retirement as per noting on page No. 52, on which the Hon'ble Deputy Commissioner heard the employee personally after consideration for order, it is submitted.

(Sd.) . . . ,

EA on 27/05/2008

AC(G)

May File in view of "A" and shortage of employees.

(Sd.) . . . ,

AC(G) on 27/05/2008"

(6) I have heard the learned counsel for the parties and have considered the issue involved.

(7) Before proceeding further, Rule relevant for consideration of the issue is required to be noticed. Rule 3(3)(a) of Pre-mature Retirement Rules reads as under :—

Rule 3(3)(a) of Pre-mature Retirement Rules, 1975 read as under:—

"Rule 3(3)(a) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than three months in writing to the appropriate authority, retire from service.

(b) The notice of voluntary retirement given under this sub-rule shall require acceptance by the appropriate authority.

(c) *Where the appropriate authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement, shall become effective from the date of expiry of the said period."*

(8) As per the provisions of Rule applicable to the facts, an employee after completing 20 years of qualifying service is entitled to give notice of not less than three months in writing to the appropriate authority to retire from service. However, where the appropriate authority does not refuse to grant the permission for retirement before expiry of the period specified in the said notice, it has been provided that retirement shall become effective from the date of expiry of the said period.

(9) In the case in hand, the petitioner made a request to the appropriate authority for pre-mature retirement,—*vide* communication/notice dated 19th May, 2008 with the stipulation that it should be made effective from 31st August, 2008. It is thus clear that the petitioner in accordance with the relevant Rule extracted above, gave more than three months' notice.

(10) If the appropriate authority was not to accept the request for pre-mature retirement, it was required to convey to the petitioner before the period specified in the notice i.e. before 31st August, 2008.

(11) Stand of the respondents is that a perusal of noting sheet extracted above indicates that the authority had considered the request and had taken a decision "may file in view of "A" and shortage of employees".

(12) Learned counsel for the respondent has not been able to show that the decision taken by the appropriate authority in not accepting the request of the petitioner for pre-mature retirement had been conveyed to the petitioner before 31st August, 2008. The decision admittedly was conveyed,—*vide* the impugned order Annexure P-6 dated 5th September, 2008. In view of the fact that the decision taken by the respondent had not been conveyed to the petitioner, the respondents cannot take advantage of the noting sheet which is intra authority and intra department communication. It would not form an order till it is duly conveyed to the petitioner.

(13) Considering the facts and circumstances of the case, I find that petitioner had made request for pre-mature retirement in accordance with the relevant Rule. No decision on the request of the petitioner was conveyed to the petitioner within stipulated time as is required under the provisions

of the Rule. In these facts and circumstances of the case, the present case squarely falls within the domain of sub clause (c) of sub rule (3) of rule 3 of Pre-mature Retirement Rules, 1975. Consequently, it follows that the pre-mature retirement of the petitioner becomes effective from 31st August, 2008 i.e. date specified in the notice given by the petitioner.

(14) In view of the above, order Annexure P-6 dated 5th September, 2008, that is subsequent to the date specified in the notice, is rendered illegal and would not have the effect of not accepting the request of the petitioner for pre-mature retirement.

(15) The petition is accordingly allowed. Order Annexure P-6 is set aside. The respondents are required to consider the petitioner as having voluntarily retired in accordance with the notice served by the petitioner Annexure P-4.

(16) There shall be no order as to costs.

R.N.R.

Before Permod Kohli, J

**DR. BHIM RAO AMBEDKAR EDUCATION SOCIETY
(REGD.), KHERI MARKANDA, KURUKSHETRA THROUGH
ITS PRESIDENT—*Petitioner***

versus

**KURUKSHETRA UNIVERSITY, KURUKSHETRA
AND OTHERS,—*Respondents***

C.W.P. No. 10761 of 2009
& other connected petitions

7th October, 2009

Constitution of India, 1950—Art. 226—High Court directing Colleges to make admissions and to submit lists of admitted students to University—High Court fixing cut-off date for making admissions—No direction given for Colleges to submit lists also by that cut-off date—No allegation except non-filing of lists by cut-off date against Colleges for making admissions beyond cut-off date