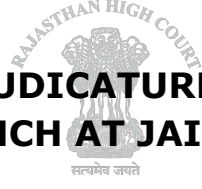




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 16047/2025

Dr. Vinay Malhotra S/o. Shri K.c. Malhotra, Aged About 59 Years,
Resident Of 305, Gali No.6, Valmiki Marg, Rajapark, Jaipur -
302004

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary,
Department Of Medical Education, Rajasthan Secretariat,
Jaipur (Raj.)
2. Principal And Controller, Sms Medical College And
Attached Hospitals, Jln Marg, Jaipur (Raj.)

----Respondents

For Petitioner(s) : Ms. Anita Agarwal
Mr. Laxmikant tailor
Ms. Kalpana
Mr. Vibhanshu Sharma

For Respondent(s) : Mr. Vigyan Shah, AAG with
Mr. Pulkit Bhardwaj

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN
Order

17/10/2025

1. Instant writ petition has been preferred by petitioner with
following prayer:

*"It is therefore, humbly prayed that your
lordships may graciously be pleased to accept
and allow this writ petition and direct the
respondents to allow the petitioner to contest the
bye elections by allowing the application for
voluntary retirement.*

*Pass any other or further order or direction
which this Hon'ble Court may deem just and
proper in the facts and circumstances of the case
in favour of the humble petitioner including the
cost of this writ petition.*



2. Mr. Vigyan Shah, AAG accepts notice on behalf of respondents and we are considering the writ petition for final disposal at this stage only.
3. Learned counsel for petitioner while referring Rule 50 of Rajasthan Civil Serviced (Pension) Rules, 1996 (hereinafter referred as Rules of 1996) submits that petitioner has submitted an application for voluntary retirement as petitioner wants to contest bye election scheduled to be held as per programme announced on 06.10.2025 by the Election Commission of India. She further submits that last date of filing of nomination for contesting as a candidate for Anta Assembly is 21.10.2025 and respondents are under an obligation to accept application filed for voluntary retirement as petitioner has already served more than qualifying service.
4. She further referred the judgment in case of **Dr. Amit Matur Vs. State of Rajasthan (S.B. Civil Writ Petition No.12283/2014 order dated 30.11.2017)** to buttress her arguments. She also referred judgment in case of **State of UP Vs. Achal Singh AIR 2018 SC 3940** and submitted that Rule in Rajasthan is different than Rule 56 of UP Pension Rules.
5. Aforesaid contentions were opposed by learned AAG on the ground that after considering judgment in case of **State of UP Vs. Achal Singh (supra)**, the issue of voluntary retirement is considered by a Co-ordinate Bench of this Hon'ble Court in case of **Dr. Bharat Sapra Vs. State of Rajasthan and Ors. (S.B. Civil Writ Petition**





No.183085/2019 order dated 16.10.2020) and it was held that unless State accept the application for voluntary retirement, the petitioner has no right to seek any remedy from this Hon'ble Court, as petitioner has no statutory right to seek voluntary retirement. He further submitted that the State can refuse to grant permission on application for voluntary retirement, in public interest. He further submitted that presently there is shortage of doctors, particularly super specialist like petitioner and present petitioner is assigned with important role to serve at SMS Hospital and it is not possible to grant him voluntary retirement to contest election. He further placed reliance upon judgment in case of **Vishwanath Pratap Singh Vs. Election Commission of India and Anr. 2022 SCC Online SC 2213** and submitted that right to contest election is not a fundamental right.

6. The matter pertains to consideration of application for voluntary retirement submitted by present petitioner to respondents on ground to contest bye election scheduled to be held on 11.11.2025 and last date of nomination is 21.10.2025 as per schedule announced by the Election Commission of India on 06.10.2025.
7. For ready reference, we are reproducing Rule 50 of the Pension Rules, 1996 and Government decision as under:-

Rule 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.

GOVERNMENT OF RAJASTHAN'S DECISION

Guidelines for acceptance of notice. - A notice of voluntary retirement given after completion of 2"fifteen years" qualifying service will require acceptance by the appointing authority. Such acceptance may be generally given in all cases except that the Appointing Authority shall withhold permission to retire a Government servant:

- (i) who is under suspension;
- (ii) in whose case the disciplinary proceedings are pending or contemplated for the imposition of a major penalty and the disciplinary authority having regard to the circumstances of the case, is of the view that such disciplinary proceedings might result in imposition of the penalty of removal or dismissal from service;
- (iii) in whose case prosecution is contemplated or may have been launched in a court of law.

In such cases, if it is proposed to accept the notice of voluntary retirement approval of the Government should be obtained. Even where the notice of voluntary retirement given by the Government servant requires acceptance by the appointing authority, the Government servant giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of notice.

(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 will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months.

GOVERNMENT OF RAJASTHAN'S DECISION

In case a Government servant seeks voluntary retirement under rule 50 (1) of Rajasthan Civil Services (Pension) Rules, 1996, with a view to contest any election to Parliament/State Assembly/Municipalities/Panchayati Raj Institutions, he may be retired by the competent authority under rule 50 of RCS (Pension) Rules immediately without prejudice to the right of Government going into the genuineness of the reasons and





verification of the qualifying service rendered, and the period of notice prescribed under rule 50 (1) of Rajasthan Civil Service (Pension) Rules shall in such cases be deemed to have been waived as a matter of course.

[(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. The application for withdrawal of notice of voluntary retirement shall be presented to the appointing authority, before issue of the order of acceptance of voluntary retirement;

Provided that once the request of a Government servant for voluntary retirement has been accepted and communicated to him in writing by the appointing authority, it shall not be open to the Government servant to withdraw the request of voluntary retirement.]

(5) The pension and retirement gratuity of the Government servant retiring under this rule shall be based on the emoluments as defined under Rule 45 of Rajasthan Civil Services (Pension) Rules, 1996 which the Government Servant was receiving immediately before the date of retirement, and the increase not exceeding five years in his qualifying service under rule 51 shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(6) This rule shall not apply to a Government servant who retires from Government service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

EXPLANATION: For the purpose of this rule, the expression "**appointing authority**" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement.

(7) If a Government servant seeks retirement under this rule while he is on leave not due, without returning to duty the retirement, shall take effect from the date of commencement of the leave not due and the leave salary paid in respect of such leave shall be recovered from him.

[(8) A Government servant who gives notice of voluntary retirement under sub-rule (1) of rule 50 shall satisfy himself by means of a reference to the appointing authority who is competent to retire him to the effect that he has, in fact, completed 15 years qualifying service for pension.]





8. In case of **State of UP and Ors. Vs. Achal Singh (Supra)** Hon'ble Supreme Court has observed that right to retire is not supreme than right to life particularly when services are required in view of public interest, and denial of voluntary retirement is permissible. A voluntary retirement is not automatic and it requires an order of acceptance by the State.
9. Based on the judgment in case of **State of UP VS. Achal Singh (supra)**, a Co-ordinate Bench of this Court in case of **Dr. Bharat Sapra Vs. State of Rajasthan (Supra)** has dismissed the application denying the voluntary retirement on ground of scarcity of medical doctors.
10. The legal position about voluntary retirement is considered by a three Judge Bench of Hon'ble Supreme Court in case of **Dinesh Chand Sangma Vs. State of Assam (1977) 4 SCC 441** is further considered in case of **State of Haryana and Ors. Vs. S.K. Singhal (1999) 4 SCC 293** by a two-Judge Bench of Hon'ble Supreme Court.
11. In case of **State of Haryana and Ors. Vs. S.K. Singhal (supra)** Hon'ble Supreme Court has referred two judgments decided by a three-Judge Bench of Hon'ble Supreme Court; firstly in case of **Dinesh Chand Sangma Vs. State of Assam (supra)** and secondly in case of **B.J. Shelat Vs. State of Gujarat (1978) 2 SCC 202** and followed in case of **Union of India Vs. Sayed Muzaffar Mir 1995 Supp. (1) SCC 76**. In case of **Dr. Baljit Singh Vs. State of Haryana : (1997) 1 SCC 754**, a two Judge Bench of Hon'ble Supreme Court held that when serious offences are





pending trial, it is open to appropriate Government to decide whether or not the delinquent should be permitted to retire voluntarily or as such disciplinary action as is available should be taken under the law. Herein also the judgment in case of **State of UP Vs. Achal Singh (supra)** is again a judgment by a two-Judge Bench of Hon'ble Supreme Court, but the deemed approval of voluntary retirement is approved in 02 cases by three Judges Bench of Hon'ble Supreme Court.

12. After considering the judgment in case of **Dinesh Chand Sangma Vs. State of Assam (supra)**, Hon'ble Supreme Court has considered the Rule 56 of UP Rules in case of **State of UP Vs. Achal Singh (supra)** and held that notice of voluntary retirement does not come into effect automatically on expiry of 3 months period. It was held that appointing authority has to accept or reject the notice of voluntary retirement on permissible grounds. It was further held that the judgment is not for unsettling law rather it is only for application of law.

13. Herein this case, the Rule 50 clearly provides that if no decision has been taken within a period of notice of three months as prescribed under the Rule 50(1), then the voluntary retirement will be automatic and in such a situation, the judgment in case of **State of UP Vs. Achal Singh (supra)** is not applicable, rather judgments in case of **Dinesh Chand Sangma Vs. State of Assam (supra)**, **B.J. Shelat Vs. State of Gujarat (supra)** and **Union of India Vs. Sayed Muzaffar Mir (supra)** are applicable.





14. The Decision of Government of Rajasthan in relation to Rule 50 as referred hereiabove clearly indicated that with a view to contest election to Parliament or State Assembly, an application for voluntary retirement filed by any Government servant may be accepted by competent authority immediately without prejudice to the right of the Government going into the genuineness of the reasons and verification of the qualifying service rendered. The decision also favours the case of petitioner which enhances the scope of rule, therefore, the application of petitioner is liable to be considered in accordance with rule and decision by the State Government.

15. The guidelines prescribed for acceptance of notice indicate that only under three circumstances, an application for voluntary retirement can be refused and except these three reasons no other reason is mentioned for denial of voluntary retirement. These three reasons were already mentioned by us in aforesaid paragraph and same is sufficient to consider the case of present petitioner. Any administrative inconvenience is not a ground to deny anyone from seeking voluntary retirement, if he is contesting any election, as mentioned in the example.

16. Since, an application is filed only on 07.10.2025 by the petitioner for voluntary retirement in very plain language and further a reminder is sent on 13.10.2025 in simple words, therefore, these applications have to be considered in accordance with the rules by the respondents. The petitioner has not prayed for immediate acceptance of his application





after waiver of period of notice of three months, therefore, the writ petition is liable to be allowed partly for only for directions to the respondents but for any other relief, petitioner is not entitled as he has not prayed in any specific manner to the respondents for waiver of notice period of three months.

17. Learned AAG has placed reliance upon judgment in case of **Vishwanath Pratap Singh Vs. Election Commission of India and Anr. (supra)** wherein Hon'ble Supreme Court after considering legal position has held that right to contest election is not a fundamental right and same is subject to certain restrictions.
18. In view of the discussion made hereinabove, instant writ petition is partly allowed against the respondents with direction to consider the application for voluntary retirement (annexure-5) dated 07.10.2025 and 13.10.2025 in accordance with Rule 50 of the Rules of 1996 and Government's Decision as referred hereinabove and take decision before 6.00 P.M. on 20.10.2025 and further communicate to the petitioner till late evening of 20.10.2025. The request for provisional permission is declined.
19. Accordingly, the civil writ petition stands disposed of. Misc. application, if any, stands disposed of.
20. No order as to cost.

(ASHOK KUMAR JAIN),J

