

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Special Appeal Writ No. 1369/2025

State Of Rajasthan, Through Principle Secretary To The Government, Department Of Information Technology And Communication, Rajasthan, Jaipur.

-----Appellant

Versus

Sanjay Kumar Verma S/o Shri Ramprakash Verma, Aged About 43 Years, R/o D-66, Prem Nagar, Jhotwara, Jaipur Rajasthan

-----Respondent

For Appellant(s)	:	Mr. B.S. Chhaba, AAG with Mr. Hardik Singh
For Respondent(s)	:	Mr. Prateek Mathur

HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA

HON'BLE MRS. JUSTICE SHUBHA MEHTA

Order

25/03/2026

1. This appeal assails the order passed by the learned Single Judge dated 21.08.2025 whereby, the learned Single Judge quashed and set aside the order dated 13.02.2012 whereby, the State Government had withdrawn its earlier order dated 10.01.2008 and treated the petitioner to be voluntary retired with effect from 31.12.2007.
2. Learned counsel appearing for the appellant submits that during the hearing of the writ petition on 13.09.2017, the State was asked to file an affidavit to explain the issuance of the impugned order before the next date. He has invited our attention to the affidavit filed on behalf of the State dated 26.10.2017 wherein the concerned respondent has mentioned that the order

of 10.01.2008 was passed sanctioning extraordinary leave (hereinafter to be referred as 'EOL') of six months but the petitioner did not resume duties thereafter and letters were issued asking him to join duties on 15.07.2008 and 07.08.2008. However, the petitioner applied afresh for voluntary retirement on 18.08.2008 which was sanctioned by the Department vide order dated 08.09.2008. It is further stated that the Pension Department raised objections regarding the period of leave from 31.12.2007 up to 08.09.2008 resulting in the State Government issuing an order on 13.02.2012 treating the petitioner to have retired on 31.12.2007 instead on 08.09.2008. Learned counsel submits that even otherwise, the petitioner in the present writ petition has only challenged the orders relating to retrospective voluntary retirement, however, there is no prayer made by the petitioner for setting aside the voluntary retirement order dated 08.09.2008. In the circumstances, he submits that the learned Single Judge could not have granted relief more than prayed for and could not have directed the writ petitioner to be allowed to superannuate at the ordinary age and grant benefits accordingly.

3. Per contra, learned counsel appearing for the respondent submits that consciously petitioner had not challenged the order dated 08.09.2008 as the order of voluntary retirement was sought by the petitioner on 18.08.2008 afresh. He, therefore, had rightly been allowed voluntary retirement from 08.09.2008. The occasion arose for the petitioner to approach this Court only because the voluntary retirement was shifted from 08.09.2008 to 31.12.2007 by the impugned order.

4. Having noticed the submissions advanced at par, we find that the petitioner was on the post of Computer Operator working in the Department of Information Technology and Communication with effect from 01.12.1989 and thereafter, he was again selected on the post of Programmer in the year 1996 and in the year 2007 he was appointed as Management Information System expert in Asian Development Bank ('hereinafter to be referred as 'ADB') by way of deputation as his services were sought to be extended by the ADB. He applied for seeking extension of service by granting him EOL. In the alternative, another application was filed where the petitioner sought for granting voluntary retirement. The State Government firstly granted voluntary retirement to the petitioner with effect from 03.12.2007. However, upon request, his voluntary retirement was withdrawn and he was granted EOL for a period of six months vide order dated 10.01.2008. The petitioner thereafter, moved another application seeking voluntary retirement with effect from 08.09.2008 on completion of six months EOL vide his application dated 18.08.2008. The said application was allowed and the State Government granted him voluntary retirement from 08.09.2008.

5. It appears that the Pension Department raised objections with regard to the grant of pension with effect from 08.09.2008 considering the law that for a period of EOL, the pension cannot be granted in order to resolve this issue. The State Government passed the impugned order on 13.02.2012 treating the petitioner to have retired on 31.12.2007 and virtually canceling its earlier order of granting of EOL.

6. We find that the orders passed for changing the date of voluntary retirement from 08.09.2008 to 31.12.2007 was erroneous as there was no prayer for seeking voluntary retirement from 31.12.2007 alive as the State Government had already withdrawn its earlier order of voluntary retirement with effect from 31.12.2007 by its order dated 10.01.2008. The order dated 10.01.2008 was not subject matter of dispute and the writ petitioner availed the EOL of six months. Thereafter, he had moved the voluntary retirement application again which was sanctioned with effect from 08.09.2008.

7. In the circumstances, objections raised by the Pension Department, voluntary retirement date could not have been shifted from 08.09.2008 to 31.12.2007. As regards the aspect of EOL, we find that the writ petitioner never challenged the grant of EOL. We find that the learned Single Judge did not address to the validity of the order dated 10.01.2008.

8. In our opinion, once the order of voluntary retirement was withdrawn there was no occasion for granting EOL for the same period as the voluntary retirement has been granted from 08.09.2008, the petitioner would be treated to be in service up to 08.09.2008 and his service shall be counted upto 08.09.2008 for the purpose of grant of pension.

9. We therefore, set aside the order dated 10.01.2008. However, we hold that the learned Single Judge has erred in allowing the petitioner to be treated to be in continuous service even after 08.09.2008 and the directions for granting the pension up to the age of superannuation notionally is also not warranted. We therefore, set aside that part of the order passed by the

learned Single Judge and give *aequitas* to the dispute, directing as under. The writ petitioner would be treated to have retired with effect from 08.09.2008. He would get consequential benefits of retirement with effect from 08.09.2008 alone and no other benefits shall be available to him from thereafter.

10. The appeal is partly allowed accordingly.

11. The order passed by the learned Single Judge is modified accordingly.

12. Pending application, if any, stand disposed off.

(SHUBHA MEHTA),J

(SANJEEV PRAKASH SHARMA),ACTING CJ

LAKSHYA SHARMA /3