

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 14080 of 1994
Reserved on : 8.4.2015
Date of decision: 30.4.2015

OP Siwach

Petitioner

v.

State of Haryana and Anr.

Respondents

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Harsh Aggarwal, Advocate for the petitioner
Mr. Saurabh Mohunta, DAG, Haryana

...

JITENDRA CHAUHAN, J

1. The prayer in the instant petition is for the quashing of the order dated 12.9.1994, (Annexure P-1) whereby the petitioner, a Sub Divisional Officer, Public Works Department (Irrigation Branch) Haryana, was ordered to be retired, in the public interest.

2. The brief facts of the case are that the petitioner had joined the service of respondent No.2 as Junior Engineer on 21.12.1960 in the Joint Punjab through Subordinate Service Selection Board, Punjab. His services were allocated to the State of Haryana as Junior Engineer. He was promoted as Sub Divisional Officer on 29.12.1979. Petitioner had completed 55 years of age on 31.10.1993. On the basis of the record, the petitioner was given extension in service till the age of his superannuation. Vide Annexure P-1, dated 12.9.1994, petitioner was ordered to be retired prematurely in public interest.

3. Aggrieved against the said order, the petitioner had filed this writ petition, which was admitted on 21.2.1995.

4. It is contended that on completion of 55 years of the age by the petitioner, the case of the petitioner was examined for extension and on 31.10.1993, it was found that the petitioner has earned throughout a good record and there was no warning, censure or memo on his record. Consequently, the petitioner was granted extension in service till the age of his superannuation. It is further contended that the impugned order Annexure P-1, allegedly passed in the public interest is against the record, as the reasons for retiring the petitioner have not been spelled out and the petitioner believed that all his ACRs were good. The order, Annexure P-1 was passed with malafide intention after the petitioner was found suitable for retention in service. The order Annexure P-1 being stigmatic, a show-cause notice ought to have been issued to the petitioner. Learned counsel cites D.B judgment rendered in Gulab Singh v. State of Haryana, CWP No. 815 of 1995 decided on 8.11.1995 and contends that the average entry could not be treated to be an adverse entry for the purpose of prematurely retiring a government servant.

5. On the other hand, the learned counsel for the State refers to Annexures R/1 to R/3 and submits that the petitioner has earned poor report during the year 1990-91, average report during 1991-92 and below average during the period 1992-93. The petitioner, during the period 1.8.1983 to 21.5.1984, committed various acts of omissions and commissions including the employment of work charged labourers for running the work without the prior approval of the competent authority. He manipulated the attendance roll of the labourers vide order dated 26.4.1984, which was contrary to the

original roll. The petitioner was further chargesheeted on the allegations that when inspected by the Deputy Commissioner of Police/Vigilance on 1.9.1993, it was found that 85 Nos. cement bags stored under his charge at Azadgarh were lying in set condition. It was his responsibility as Sub Divisional Officer Incharge to check the store, make an entry in the log book and report the matter regarding the set cement to the higher authorities. But he did not take either of the actions and caused a loss of Rs. 3922.73.

6. I have heard the rival contentions of learned counsel for the parties and perused the record with their able assistance.

7. Rule 3.26 (a) and (d) of the Punjab Civil Services Rules Volume I, as applicable in the State of Haryana reads as under:-

“3.26 COMPULSORY RETIREMENT

(a) Except as otherwise provided in other clauses of this rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He must not be retained in service after the age of compulsory retirement, except in exceptional circumstances with the sanction of the competent authority in public interest, which must be recorded in writing.

xxx xxxx xxx

(d) The appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government employee, other than Class IV Government employee by giving him notice of not less than three months in writing or three months' pay and allowances in

lieu of such notice:-

(i) If he is in class I or class II Service or post and had entered Government service, before attaining the age of thirty-five years, after he has attained the age of fifty-years; and

(ii) (a) If he is in class III Service or post, or

(b) If he is class I or class II service or post and entered Government service after attaining the age of thirty-five years; after he has attained the age of fifty-five years.

The Government employee would stand retired immediately on payment of three months' pay and allowances in lieu of the notice period and will not be in service thereafter.

(e) A Government employee, other than a class IV Government employee, may be giving a notice of not less than three months in writing to the appointing authority, retire from service.

(i) If he is in class I or II service or post and had entered Government service before attaining the age of thirty-five years after he has attained the age of fifty years; and

(ii)(a) if he is in class III service post; or

(b) If he is in class I or class II service or post and entered Government service after attaining the age of fifty five years'

Provided that it shall be open to the appointing authority to withhold permission to a Government employee under suspension who seeks to retire under this clause."

8. As per the statutory provisions contained in Rule 5.32 of Punjab

C.S.R Vol.II read with rule 3.26 (d) of the Punjab C.S.R , Vol.I, Part-I, the competent authority retains an absolute right to retire any Govt. servant except a Class-IV Govt. servant on or after he has attained the age of 55 years, without assigning any reason. The Chief Secretary, Haryana vide order dated 6.8.1983 issued instructions that retention beyond 55 years be granted to the officers having 70% or above good record during the last ten years. For the ready reference, the chart of the ACRs viz-a-viz the petitioner is reproduced below:-

Sr. No.	Period	Grade	Remarks
1	1.04.01983 to 31.3.1984	B+ (By Reviewing and Accepting Authority)	Reporting Authority graded very Poor C for the period 6.7.1983 to 31.3.1984
2	1.4.1984 to 21.8.1984 26.5.1984 to 31.3.1985	Short Period Very Good	
3	1.4.1985 to 13.5.1985 14.5.1985 to 31.3.1986	Short Period B+	
4	1.4.1986 to 31.3.1987	Average	
5	1.4.1987 to 8.5.1987 9.5.1987 to 31.3.1988	Short Period Satisfactory	
6	1.4.1988 to 23.10.1988 24.10.1988 to 31.3.1989	Very Good Good	Remarks of Reviewing Authority
7	1.4.1989 to 22.1.1990 21.1.1990 to 31.3.1990	Good Short Period	
8	1.4.1990 to 8.11.1990 9.11.1990 to 31.3.1991	Good Poor	
9	1.4.1991 to 25.8.1991 26.8.1991 to 31.3.1992	Good Average	Remarks of Reviewing Authority
10	1.4.1992 to 8.9.1992 9.9.1992 to 31.3.1993	Below Average Good	

9. From the perusal of the Chart, it is clear that the petitioner secured 62% good reports as against the 70% benchmark set up by the Govt.

of Haryana during the relevant period.

10. The petitioner has assailed the impugned order solely on the ground that once he was found eligible for extension and in fact had been granted extension till the age of superannuation, the order Annexure P-1 was passed with malafide intention and the same cannot be said to be in the public interest. When the ACRs and the conduct of the petitioner are examined in the light of the rules 5.32 A C of the Punjab Civil Services Volume II read with rule 3.26 (d) of the Punjab Civil Services Rules, V.I Part I, it emerges that the petitioner does not qualify the bench mark prescribed for extension. No circumstance has been indicated by the petitioner at whose instance, order Annexure P-1 was passed to victimize the petitioner.

11. This Court, while dealing with similar proposition of law, in **Daya Nand v. State of Haryana, 1995(2) RSJ 55 (Full Bench)** observed as under:-

“21. When the entire service record of an officer is considered, especially the record of the later years, the impact/impression of all the entries therein is to be gathered and it is only from such record that the Appointing Authority is to decide whether it would be in the public interest to compulsorily retire a Government servant. Opinion expressed by the Courts with respect to attaching degree of weight to one or few entries of "average" recorded in the service record cannot be held to be a "Rule of Law" which could be followed as such in subsequent cases. The purpose of communicating adverse remarks is to give an opportunity to a Government

Officer to improve in his conduct and functioning as such Officer. If the State Government decides as a policy that "average" reports which are communicated are to be treated as adverse and taken into consideration at the time of deciding the question of compulsory retirement of Government officers, no fault can be found with such instructions. Such remarks would be treated as adverse though ordinarily, literally speaking they may not be extremely bad. When K.K. Vaid's case was decided Haryana Government instructions regarding communication of adverse remarks of "average" to the Government Officers were not in existence. Now when such a question is to be examined in the light of such instructions the Rule of Law laid down in K.K. Vaid's case cannot be followed. Even otherwise the decision in K.K. Vaid's case, that instructions of the State Government to retain in service only Government Officers possessing more than 70% "good" reports is contrary to the spirit of Rule 3.26 cannot be held to be good law. Under Rule 3.26 (a), as reproduced above, the Government servant is to retire on attaining the age of 58 years and beyond that he can be retained in service only in exceptional circumstances with the sanction of the competent authority in public interest. While interpreting Rule 3.26 (d) the public interest is to be seen in the context of allowing a person to continue in service beyond the age of 55 years and obviously not only average but persons with meritorious record are to be allowed extension

and that would serve the public interest. Normally meritorious persons are not to be denied promotion in the garb of allowing extension to such officers who are good officers or meritorious officers. It is only an exception that for reasons to be recorded and in exceptional circumstances that extension in service is to be allowed. The phraseology used in Rule 3.26 (d) is entirely different though the element of public interest is prominent therein also. An absolute right has been given to the Government if it is of the opinion, in the public interest to retire an officer who completes the age of 55 years in class I and class II service or after completing service of 35 years of service to compulsory retire the Government servant. This opinion is subjective but formed on data, i.e. on appraisal of the entire service record especially service record of the later years. The use of the word "absolute right" is significant that no Government servant can claim that he must be retained in service beyond the prescribed time as mentioned therein upto the age of 58 years only when the action of the State Government is considered arbitrary or mala fide that the same can be questioned in the Court of law. Since the State has absolute right to retire any Government employee, it is taken that the State Government can issue instructions on this subject which would be in the nature of guidelines for the Competent Authority to be kept in view while passing orders under this Rule. The instructions of the Government issued in 1983 that

retention beyond 55 years be granted to officers having 70% or above good record in the last ten years do not infringe Rule 3.26(a) or (d). The approach of the Division Bench in K.K. Vaid's case that the instructions of 1983 aforesaid were against the letter and spirit of Rule 3.26(a) as mentioned in para 9 of the judgment, cannot be accepted as laying down good law. The concept of 'weeding out dead wood' as embedded in Rule 3.26(a) or (d), is inherent but that is not the only ground available therein to pass order. The same is to be read along with the other grounds as mentioned in J.N. Sinha's case and Baikunth Nath's case i.e. the object of these rules is also to maintain high standard of efficiency and initiative in the State services. There should be spirit of dedication and dynamism in the working of the State services. Officers who are lax, corrupt, inefficient or not upto the mark and have outlived utility should be weeded out. Thus the view expressed that Rule 3.26 will be attracted only to chop off dead wood is not correct. There may be varied reasons to be taken into consideration, that would constitute public interest that an order as required under Rule 3.26 (d) can be passed as briefly noticed above.

22. Haryana Government issued instructions on the subject of conveying overall average reports. All these instructions were issued after the decision of K.K. Vaid's case. On August 16, 1983, instructions were issued that if the work is assessed and graded as "average" then the report along with its grading

should be communicated, even if the report did not contain any adverse remarks. On April 30, 1987 instructions were issued that overall assessment of the work of an officer/official as "average" without any other qualifying word or phrase would be communicated. These instructions were to be applicable to the reports for the year 1986-87 and for the previous years. If such reports were not communicated the same to be conveyed for the previous years 1982 to 1986. On August 14, 1987 instructions were issued to entertain representations against communication of adverse remarks if filed within 45 days from the date of receipt of the letter communicating such remarks. The same could be entertained on the expiry of said period, if the authority was satisfied that there was sufficient cause for not submitting the representation in time. On June 6, 1989, further instructions were issued that representations against adverse remarks were also to be applicable to representations against "average" reports. Decision was to be applicable to annual confidential reports for the year 1988-89. The aforesaid instructions leave no manner of doubt that "average" reports with or without qualifying word or phrase were to be communicated to the officer or the official concerned who could make a representation against the same. The purpose of communicating such reports and the qualifying words or phrases which are used in recording annual confidential

reports is that they would from part of the service record to be taken into consideration at different stages of the service-career such as making promotions; crossing efficiency bar, retention in service or compulsory retirement. Thus ratio of the decision in K.K. Vaid's and Suraj Mal Hooda's cases loses relevance in view of the instructions aforesaid.”

12. The case law, D.B judgment in Gulab Singh's case (supra) cited by the learned counsel for the petitioner will not come to the rescue of the petitioner as it is based on the D.B.Judgment passed in K.KVaid vs. State of Haryana, 1990(1) RSJ 193. In Daya Nand's case (supra), the correctness of the view taken by the Division Bench in KK Vaid's case was doubted. After consideration, it was held that KK Vaid's case, does not lay down good law. It has been further held in Full Bench judgement that the instructions dated 13.8.1983, issued by the State of Haryana to the effect that the extension beyond the age of 55 years be granted to those officials/officers who have secured 70% good ACRs during the last ten years and these instructions are not contrary to Rule 3.26 (a) or (d) of the rules.

13. In view of the entire service record and the ACRs of last ten years, which have been shown to this Court, the order dated 12.9.1993, Annexure P-1 compulsory retiring the petitioner cannot be termed as arbitrary or illegal. The impugned order Annexure P1 has been passed in the public interest. No specific allegations of personal malafide, what to talk of legal, has been asserted in the writ petition filed by the petitioner.

14. In view of the fact that the petitioner does not fulfil the

condition of securing 70% good ACRs during the last ten years, for the purpose of extension in service, therefore, in the considered opinion of this Court, order Annexure P-1, does not suffer from any illegality or perversity. Dismissed. No costs.

(JITENDRA CHAUHAN)
JUDGE

30th April, 20
5
MS

Note: Whether to be referred to Reporter? Yes.