

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 1674 of 1991 (O&M)

Date of decision: 19.12.2015

The State of Punjab

... Appellant

versus

Rattan Kumar

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Nilesh Bhardwaj, Deputy Advocate General, Punjab.

Mr. Gaurav Chopra, Advocate for the respondent.

K.Kannan, J.(ORAL)

The appeal has been admitted several years back without framing any substantial questions of law. I therefore frame the following as:

1. Whether the suit challenging the premature retirement issued through order dated 05.07.1984 instituted on 01.09.1987 not barred by limitation?
2. Whether the non-examination of ACR not irrelevant and not a pre-requisite for premature retirement as contemplated by Punjab Civil Service Premature Retirement Rules of 1975?
3. Whether the premature retirement itself is not a punishment and does not constitute a stigma and hence, the order cannot be challenged without proof of *mala fides* attributed

to any particular officer who was responsible for issuing the order?

4. Whether the order of compulsory retirement passed by an officer who was not competent to issue such order under the relevant rules and hence the nonest and unenforceable?

Both the counsel are prepared to ague the case and hence, I proceed to hear the case on merits. The appeal is by the State challenging the judgment of the Lower Appellate Court decreeing the suit filed by the plaintiff. The suit was for a declaration that the order of compulsory retirement issued by the State through Senior Superintendent of Police by his order dated 05.07.1984 as confirmed by Deputy Advocate General of Police by his order dated 20.09.1984 were null and void. The plaintiff's contention was that there was no basis for compulsory retirement and it was passed by an officer who was not competent to do so. The trial Court dismissed the suit, but, in appeal, the Court held that the State had not filed the ACRs inspite of notice to produce and therefore, an adverse inference must be drawn.

The Lower Appellate Court did not find that there was any objective material on the basis of which a subjective satisfaction could be drawn that the plaintiff was required to be compulsorily retired for public interest.

State is in appeal to contend (i) that the suit was barred by limitation (ii) there is no requirement of production of ACR or warrant for making an adverse inference when the real requirement is merely a

satisfaction that the employee had completed 25 years of qualifying service and that an appropriate authority was of the opinion was it was in public interest to prematurely retire an employee from public service. Adverting to the finding of the Lower Appellate Court that the Senior Superintendent of Police was not competent to compulsorily retire an employee, the State would contend the reliance placed by the Court on Rule 9.18 of the Punjab Civil Services Rules was erroneous and that the said provision is in the context of the entitlement to retiral pension where a person could be compulsorily retired after 10 years of qualifying service. If the compulsory retirement were to be effected on completion of 25 years Rule 9.18 along would operate and the Punjab Police Rules of 1934 (in short 'Rules of 1934') Rule 12.1 designate only Superintendent of Police as an appointing authority and hence the Senior Superintendent of Police was alone competent to issue the order of compulsory retirement.

The issue regarding the competency of the Senior Superintendent of Police could be decided by merely referring to the Rules of 1934 that recognizes him to be competent appointing authority for a person holding the post of Assistant Sub Inspector from which post the plaintiff was compulsorily retired. The Punjab Civil Services (Premature Retirement) Rules, 1975 (in short 'Rules of 1975'), defines an appropriate authority under Rule 2(1) as the person who has the power to make substantive appointment. The Senior Superintendent of Police would, therefore, to be appointing authority and his power

cannot to terminate the service of ASI cannot, therefore, be challenged. The counsel for the respondent himself refers me to a decision of Hon'ble Supreme Court in State of Punjab Vs. Hari Singh in 2008 (11) SCC 85 and held the Senior Superintendent of Police would be competent to issue the order of compulsory retirement. The finding of the court below to assail the order on the ground of competency cannot, therefore, be supported.

On the issue of whether the suit is in time, if the order of compulsory retirement issued on 05.07.1984 were to be taken as a supporting point, the suit instituted on 01.09.1987 ought to fail. The issue of whether there exists a point of limitation even if the order is null and void was considered by the Hon'ble Supreme Court in State of Punjab Vs. Gurdev Singh and Ashok Kumar, AIR 1991 SC 2219, which held that Article 113 would apply and the suit shall be instituted within a period of 3 years from the date of order of dismissal or termination from services. The starting point of limitation according to the State would be the date when the order was issued. The counsel for the respondent would join issue on this to point out the Rules of 1975 were examined in the light of the department instruction No. 6106/2GS-74 dated 27.08.1976 that allowed for a right of consideration through review against order of premature retirement with the following instructions:

“(a) According to the instructions issued, vide Punjab Government letter No. 6936-SII(3)-73 dated the 22nd

October, 1973, Government employees have been allowed to make a representation in any matter connected with their service rights or conditions. A Government employee who has been ordered to be retired prematurely by the appropriate authority under the rules can, therefore, submit a representation against his premature retirement to the next higher authority who shall consider the representation on merits and take appropriate decision”.

The counsel for the respondent would contend that the order of compulsory retirement was challenged before the Inspector General of Police and he had even called for comments from the Senior Superintendent of Police and he passed an order confirming the decision on 20.09.1984. The suit challenges not merely the order of Senior Superintendent of Police but also the order of the higher authority and the point of limitation must be taken only from the date when the representation for review of the decision was considered by the authority recognized by the Government through its instructions. I must observe that the issue of limitation was itself given up at the time of trial and not pressed. At the Appellate Court also, the point had not been taken and the issue was, however, argued before me and therefore I must hold that under Section 3 of the Limitation Act the issue of limitation will be considered by the Court whether an objection regarding limitation was taken or not. Even if a party, therefore, gives up such a plea, the court's duty to examine the issue will still subsist.

To my mind, if there was a recognition through a Government order right of representation to higher authority, then it is the decision rendered by the higher authority that will be the starting point of limitation. So reckoned, the suit will be seen to be in time.

On the subject of whether there were objective materials available for the decision, we must turn to Rule 3 of the Rules 1975. The opinion shall be taken by appropriate authority that it is in public interest to do so. What constitutes public interest is surely a subjective opinion, but, it must be based on recognizable objective criteria. The subject is much a treaded field through judicial discourses. Oft repeated pronouncements in this area are Baikuntha Nath Das Vs. Chief District Medical Officer, Baripada AIR 1992 SC 1020 and the decision in State of Gujarat Vs. UmedBhai M. Patel, in 2001 3 SCC 314. The former is the 3 Member Bench of the Hon'ble Supreme Court that laid down 5 principles as emerging from the discussion that the Hon'ble Supreme Court was undertaking and to our purpose it would necessary to produce Principle No. (iv):

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire records of service before taking a decision in the matter-of course attaching more important to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a

Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, of the promotion is based upon merit (selection) and not upon seniority.

These principles were reiterated by the latter judgment in Umed Bhai case (Supra) and it stated in paragraph 11 that adverse entries in the confidential report shall be taken due notice and given due weightage during passing such order. These observations become relevant if we examine the approach undertaken by the Lower Appellate Court in the light of the evidence adduced before it. While the plaintiff would challenge the decision to compulsory retire as not based on adequate materials, the State would explain its stand on 3 instances of punishment given to the employee in the year 1981, 1982 and 1983: stoppage of increments respectively for 3 years in 1981, punishments in the years 1982, one of which was censure and another was denial of two years services and the last one was in the year 1981, denial of one year service. The Court recorded that there had been a laxity in investigation FIR for the punishment of the year 1981. For the rest of the years, there are no reasons given. At the stage of appeal before the Inspector General of Police, he has called for report from the Senior Superintendent of Police. There had been a reference made also to some punishments soon after joining the service in the year 1954 and it also recorded that the plaintiff had drawn 11 commendations in his service.

The counsel for the State would argue that the punishments entered against the plaintiff for the years immediately prior to the order of compulsory retirement would assume enormous significance and the rule requirement itself does not make reference anywhere that ACR must also be examined. While the rule itself does not talk about it and makes reference only that termination would be in the public interest, it will subserve public interest and to be understood only in the light of how the Courts have approached the issue. The public interest is a wide generic expression that may give itself to several meanings and if we must look for any guidance of what will subserve such purpose, it shall inevitably be driven by the Hon'ble Supreme Court's two decisions referred to above, the relevant portions of which we have extracted above. The Lower Appellate Court was surely justified in holding that the State did not give the benefit of application of mind of the officer that issued such an order and whether he had taken into reckoning the whole of the service or whether it might be termed to be an aberration towards last few years before when the order of compulsory retirement was issued. The judgment in State of Gujarat Vs. UmedBhai as well as in Baikuntha Nath Das Vs. Chief District Medical Officer, Baripada specifically laid down that the entire record of service to be taken note of before taking a decision shall be examined. The counsel for the respondent would argue that there is no material placed before the Court as to why even the punishments that were recorded against the plaintiff for the years 1982 and 1983 were passed and what were the

imputations made against the plaintiffs during those years. The best occasion for the State to explain, even if the orders did not refer to reasons were when the orders were put to challenge before the Civil Court. Normally, the order must be supported by what reasoning it contains and cannot be bolstered by clever pleadings in suit or intelligent answers in the cross-examination. If there was even a fallibility that the order of compulsory retirement did not give any reasons, as indeed it is not required to do except to state that it is in public interest to compulsory retire, it became imperative that the State opened its chest to disclose the materials on the basis of which it took the said action. If there was an attempt by the plaintiff to produce the ACR and if the suit was not prepared to oblige the Court they are surely justified in drawing an adverse inference. The requirement of public interest ought to be seen as not merely a lofty expression that an officer who passed an order applied his mind but such an expression must be rooted on objective materials. Even the cause of punishment of whether it has any bearing to issues of integrity of the official would have meant a lot of difference. An officer in uniform service cannot have an integrity issue clouding his credentials. If the State was not prepared to give reasons for meting out the punishment it had imposed for the years 1981 to 1983, then I would hold that there had been no objective consideration of what served the public interest before the impugned order was issued.

Under the circumstances, I will find no reason to interfere

with the decision already taken and dismiss the appeal by the State with cost assessed at Rs. 5,000/- against the respondent. The Court has already awarded all the consequential benefits to be given and the counsel argues that no work no pay principle must be applied. If the order was bad, employee would secure what he would have got, if he had been in service. I decline to make any intervention in that regard also.

The regular second appeal is dismissed with costs.

19.12.2015

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(K.KANNAN)
JUDGE