

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

**CWP No.13094 of 2012
Date of decision: 07.05.2015.**

Yagpal

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Aman Pal, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondents – State.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order/notice dated 27.12.2011 (Annexure P-6), vide which, the petitioner has been informed that his services are no longer required after the age of 55 years and also order dated 01.12.2011 (Annexure P-5), vide which, the representation made by the petitioner against the adverse remarks recorded in his annual confidential report for the period from 01.09.2009 to 22.02.2010 has been rejected.

The petitioner was enrolled as Constable on 07.05.1980.

He was promoted to the post of Head Constable in the month of December, 1995 and thereafter as an Assistant Sub Inspector by way of promotion on the basis of criteria of selection in the month of October/November, 2003. He was again assigned the rank of Exempted Sub Inspector. The date of birth of the petitioner is 08.02.1957 and was to be in service upto 07.02.2015 as he was to attain the age of superannuation on that day.

Learned counsel for the petitioner submits that during the whole of the service, the petitioner was never conveyed any adverse remarks as all his annual confidential reports were good. Only the remarks recorded in the annual confidential report for the period from 01.09.2009 to 22.02.2010 were conveyed to him on 14.07.2010 whereby, his assessment was recorded as "Average". Learned counsel further submits that the petitioner made a representation against said report but without giving any personal hearing, the claim of the petitioner has been rejected. Learned counsel also submits that without conveying any adverse remarks, the respondents have decided not to extend the service period of the petitioner after the age of 55 years. The petitioner also filed **CWP No.3634 of 2012** titled as '**Yag Pal Singh vs. State of Haryana and others**' challenging the order/notice dated 27.12.2011, vide which, the petitioner was informed that his services were no longer required after the age of 55 years. He was asked to place on record the synopsis of the annual confidential reports obtained by him during the last 10 years of his service prior to

the date of his premature retirement but the same could not be placed on record as the same were not conveyed to him by the department. The aforesaid writ petition was dismissed on 08.05.2012 with liberty to file a fresh petition as and when the information is collected by the petitioner and accordingly, the present writ petition has been filed.

Learned State counsel submits that the present writ petition is liable to be dismissed on the ground of non joinder of necessary parties. The ACR recording adverse remarks by Commandant, 1st Battalion, Haryana Armed Police, Ambala City and the notice dated 27.12.2011 issued by Commandant, 3rd Battalion, Haryana Armed Police, Hisar have not been impleaded as party-respondents in the present writ petition. Learned State counsel also submits that the writ petition earlier filed by the petitioner was dismissed as withdrawn without having any liberty to file fresh one. The petitioner was involved in a criminal case i.e., FIR No.27 dated 24.03.2009, under Section 68/1/14 of the Excise Act registered at Police Station Bahal, District Bhiwani resulting in the issuance of a show cause notice to the petitioner for dismissal from service. The same was challenged by him by way of filing CWP No.7076 of 2010 but the said writ petition was dismissed on 17.11.2010 by this Court and thereafter, a departmental inquiry was filed. Another FIR No.166 dated 03.10.2011 under Section 61/1/14 of Punjab Excise Act was also registered at Police Station Siwani, District Bhiwani against the petitioner and he was arrested on the allegation that he misbehaved

with public under influence of liquor. He was also placed under suspension and after conducting regular inquiry, his five increments were stopped with cumulative effect. Learned State counsel also submits that the petitioner was a habitual absentee as he remained absent from his duties without any leave or intimation. He was also awarded punishment of censure twice for remaining absent from his duties. Learned State counsel has also brought to the notice of this Court that the report of the petitioner is not good/satisfactory as he remained absent 18 times and was also awarded punishment during that period. In the annual confidential report for the period 2009-2010, **the integrity of the petitioner was also found to be doubtful.**

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned orders and other documents on the file.

Admittedly, the petitioner was working as Assistant Sub Inspector and thereafter, he was also assigned the rank of Exempted Sub Inspector. It is also not disputed that as per date of birth of the petitioner, he was to retire on 07.02.2015 on attaining the age of superannuation. On perusal of original record produced in the Court, the annual reports of the petitioner are good and above good but his integrity has been found to be doubtful as recorded in the ACR for the period from 01.09.2009 to 22.02.2010. Learned State counsel has also furnished the details of the punishment awarded to the petitioner on various occasions, which are as under: -

- “1.On 24-02-2000 absence period treated as 1 day leave without pay vide order book No.168/2001.*
- 2.On 19-09-2002 absence period treated as 1 day leave without pay vide order book No.1083/02.*
- 3.On 18-02-2003 absence period treated as 1 day leave without pay vide order book No.203/03.*
- 4.On 23-06-2002 to 30-06-2002 absence period 8 days vide order book No.808/02 treated leave without pay.*
- 5.Dated 02-05-2003 to 04-05-2003, 06-06-2003 to 11-06-2003, 15-06-2003 to 16-06-2003 absence period 8 days treated leave without pay vide order book No.908/03.*
- 6.Dated 16-09-2003 to 17-09-2003 absence period 1 day treated as leave without pay vide order book No.1248/03.*
- 7.Dated 24-01-2004 to 25-01-2004, absence period one day treated as leave without pay vide order book No.118/04.*
- 8.On dated 22-02-2004 absence period one day treated as leave without pay vide order book No.273/04.*
- 9.Dated 02-03-2004 to 02-03-2004, 10-04-04 to 12-04-04, 20-04-04 to 22-04-04 one day, three day, two day absence period treated as leave without pay vide order book No.538/04.*
- 10.Dated 07-09-2005 to 10-09-2005 absence period three days treated as leave without pay vide order book No.12-III/06.*

- 11.*Dated 13-09-2005 to 15-09-2005 absence period two days treated as leave without pay vide order book No.12-III/06.*
- 12.*Dated 16.01.2010 to 18-01-2010 absence period two days treated as leave without pay vide order book No.78/10.*
- 13.*He was placed under suspension for his willful absence from duty with the excuse of attending the office of DSP/Luharu in connection with his private complaint w.e.f. 17.06.07 vide No.6101-05 dated 31.08.2007. The departmental Enquiry against petitioner for his absence from 12-06-07 to 28-08-07 (77 days) has been finalized and the period of his absence has been treated as leave without pay vide order No.6996-99 dated 04-10-07. The above order have been overruled by the IGP/CPT & R, Bhondsi vide his office memo No.2279/A-1 dated 07-04-09 and the said period has been ordered to be treated as spent on duty.*
- 14.*Absence period from 16-08-09 to 17-08-09 one day treated as leave of kind due vide order book No.598/09.*
- 15.*Absence period from 14-12-09 to 14-12-09 one day treated as leave of kind due vide order book No.68/2010.*
- 16.*Vide office order endst. No.137-42/steno dated 26-03-2012 awarded to the petitioner a punishment of stoppage of five future annual increment with permanent effect and period of his suspension will not be treated on duty for*

all intents and purpose.

17.On absence period dated 18-06-04 to 19-06-04 awarded punishment as censure vide order book No.1269/04.

18.On absence period dated 17-01-04 to 18-01-04 awarded punishment as censure vide order book No.1269/04.”

Rule 3.26(a) and (d) of CSR Vol.I, Part-I provides that every Government employee shall retire from service on the last day of the month on attaining the age of 58 years. An exception to this rule has also been provided in Sub clause 9(d) under which the appointing authority has the absolute right that in case it is in the public interest in doing so other than Class IV employee by giving him a notice, which will not be less than three months in writing or three months' pay in lieu thereof.

Undisputedly, the compulsory/premature retirement is not punishment as it does not leave any stain or stigma. It is not disputed that a notice was issued to the petitioner for compulsory retirement, to which, his reply was sought. The petitioner submitted reply to the notice and thereafter, after considering the service record of the petitioner, the claim of the petitioner was rejected.

Earlier the petitioner filed CWP No.3634 of 2012 before this Court and he was asked to place on record the relevant record on the basis of which assessment could be made as to whether order of premature retirement of the petitioner is in accordance with law or not. The petition was dismissed with liberty to the petitioner to file fresh

petition as and when the information is collected vide order dated 08.05.2012 as the petitioner could not place on record the relevant record. On perusal of remarks recorded in the ACR, the petitioner has been assessed as good as well as average but in the confidential report of the period 2009-2010, his integrity has been found doubtful as against the column of honesty, it has been recorded that he is not honest. In that report, not only he has been assessed “average” but “irresponsible in discharge of official duties” also.

“What is public interest?” was explained by Hon'ble the Apex Court in **Union of India vs. Col. J.N. Sinha and another, 1970 (2) SCC 458**, wherein it was pointed out that the object of premature retirement of a Government servant was to weed out the inefficient, corrupt, dishonest employees from the Government service. The observation made by Hon'ble the Apex Court is as under: -

"Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facts of the pleasure doctrine embodied in Article 310 of the constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient

but the appropriate authority may prefer to have more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in Government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56 (j) holds the interests of the public. While a minimum service is guaranteed to the Government, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest....." It is true that a compulsory retirement is bound to have some adverse effect on the Government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired Government servant does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment. In our opinion, the High Court erred in thinking that the compulsory retirement involves civil consequences."

Same view has been taken by Hon'ble the Apex Court in

H.C. Gargi vs. State of Haryana, 1986(4) SCC 158.

Similar observation has also been made by Hon'ble the

Apex Court in **Gian Singh Mann vs. High Court of Punjab & Haryana and another, 1980(4) SCC 266, Kailash Chandra Agarwal vs. State of M.P. and another, 1987(3) SCC 513, Union of India vs. M.E. Reddy and another, 1980(2) SCC 15.**

Similarly, a three Judge Bench of Hon'ble the Apex Court in **Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another, 1992(2) SCT 92 (SC)**, has laid down the following five principles: -

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the

entire record of service before taking a decision in the matter of course attaching more importance 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 favorable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v)An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis of interference."

This decision was reiterated by another three Judges Bench of Hon'ble the Apex Court in **Posts & Telegraphs Board & Ors. vs. C.S.N. Murthy, (1992) 2 SCC 317**, wherein it was held as under: -

"An order of compulsory retirement is not an order of punishment. F.R. 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service, if in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature

of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record."

In **K. Kandaswamy vs. Union of India, 1995(6) SCC 162,**

Hon'ble the Apex Court observed that:-

"While exercising the power under Rule 56(j) of the Fundamental Rules, the appropriate authority has to weigh several circumstances in arriving at the conclusion that the employee requires to be compulsorily retired in public interest. The Government is given power to energise its machinery by weeding out dead wood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them from service. When the appropriate authority forms bona fide opinion that compulsory retirement of the government employee is in the public interest, court would not interfere with the order."

In **S.R. Venkataraman vs. Union of India, (1979) 2 SCC**

491, Hon'ble the Apex Court has held the order of compulsory retirement as a gross abuse of power as there was nothing on the record to justify and support the order.

In **Baldeo Raj Chaddha vs. Union of India, (1980) 4**

SCC 321, it was held by Hon'ble the Apex Court that although the

purpose of FR 56 was to weed out worthless employees without punitive extremes, if, under the guise of "public interest", an order of premature retirement is made for any other purpose, it would be the surest menace to public interest and the order must fail for unreasonableness, arbitrariness and "disguised dismissal".

Baikuntha Nath's case (supra) was also considered by Hon'ble the Apex Court in **M.S. Bindra vs. Union of India & Ors., JT 1998 (6) SC 34** and it was laid down as under:

"Judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion the same can be obviated on the assumption that other materials alone need be looked into."

It was further observed as under :

"While viewing this case from the next angle for judicial scrutiny, i.e. want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials no reasonable man would reach such a conclusion."

In view of the facts and law position as explained above, it is to be seen whether any Government servant has outlived his utility

and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that government servant has to be taken before deciding, after he had attained the age of 50/55 years, by giving him three months' notice or pay in lieu thereof.

The performance of a Government servant is reflected in the annual confidential reports which, projects his efficiency, honesty or integrity.

In the present case, the petitioner has challenged the advance notice of three months as well as rejection order of the representation submitted by him. The petitioner also submitted reply to the notice, which has been considered and the same has been rejected. Moreover, keeping in view the date of birth of the petitioner, he was to retire on 07.02.2015 as per his date of birth and accordingly after considering the integrity, which is doubtful, the claim has rightly been rejected.

Accordingly, there is no merit in the submissions made by learned counsel for the petitioner and the present writ petition being devoid of any merit is hereby dismissed.

07.05.2015
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(DAYA CHAUDHARY)
JUDGE