

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

CWP No.11231 of 2014 (O&M)

Date of decision: 20.01.2015

Randhir Singh

... Petitioner

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Brij Bhushan Kaushik, Advocate for the petitioner.

.....

TEJINDER SINGH DHINDSA, J.

The petitioner who was serving as Conductor with the Haryana Roadways has filed the instant writ petitioner assailing the action of the respondent/authorities in having compulsorily retired him from service in terms of impugned order dated 05.08.2013 at Annexure P-1.

Brief facts that would to be discernible from the pleadings on record are that departmental proceedings were initiated against the petitioner under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 in the year 2004 by framing the following articles of charge:

“On 9.10.2004 you were on duty on Bus No.HR69/477 which was going from Sonipat to Gwalior. The Bus was checked near Gwalior. After checking it was found that 21 passengers were travelling without tickets from Muraina to Gwalior, from whom you have charged Rs.420/- as fare at the rate of Rs.20/- per passenger and did not issue them tickets. Thus you have committed an embezzlement of Rs.420/- by doing so.”

The petitioner was also placed under suspension w.e.f. 21.10.2004. Reply to the charge sheet having been submitted, Traffic Manager, Sonapat was appointed as the Inquiry Officer. The petitioner was reinstated on 22.02.2005 pending the outcome of the regular inquiry. Findings having been recorded against the petitioner by the Inquiry Officer, the competent authority issued a show cause notice dated 01.06.2005 contemplating the imposition of major penalty of dismissal from service as also for restricting the suspension period from 21.10.2004 to 22.02.2005 to subsistence allowance only. After having considered the reply furnished to the show cause notice and having afforded an opportunity of personal hearing, a lenient view was taken in the matter keeping in view the difficult family circumstances of the petitioner and vide order dated 02.08.2005, punishment was imposed restricting the petitioner for a period of 5 years on fresh time scale and further recovery of Rs.21,000/- was imposed i.e. 50 times the amount of proven embezzlement of Rs.420/-. Thereafter, vide order dated 05.08.2013 passed by the General Manager, Haryana Roadways, Sonapat at Annexure P-1, a decision has been taken in public interest not to retain the petitioner in service having attained the age of 55 years.

Counsel for the petitioner has vehemently argued that the impugned order of compulsory retirement cannot sustain as the petitioner has been punished twice over for the same very misconduct. It has been argued that towards misconduct of embezzlement of Rs.420/-, regular inquiry had been conducted and the same had culminated in imposition of punishment of restricting the petitioner to a fresh time scale for a period of 5 years coupled with a recovery of Rs.21,000/- and as such, based on the same very misconduct, the petitioner could not have been compulsorily retired as

it would amount to double jeopardy and violation of Article 20 of the Constitution of India. Reliance in support of such contention has been placed upon a Division Bench judgment of this Court in ***Jamal Masih Vs. State of Punjab, 1996 (3) SCT 798.***

It would be apposite to notice that after the filing of the instant writ petition, Civil Miscellaneous Application No.15705 of 2014 was also filed seeking amendment in the head note as also prayer clause of the petition seeking quashing of the order dated 02.08.2005 at Annexure P-6, whereby, penalty had been imposed in pursuance to the regular inquiry proceedings. In such regard, counsel would submit that the very initiation of departmental proceedings was bad inasmuch as the allegation of embezzlement of Rs.420/- was totally false and the checking staff at the time of checking of the bus had made a departure from the settled norm of not having checked the cash in possession of the petitioner and had not even recorded the statement of the passengers.

Counsel has been heard at length.

This Court is of the considered view that an order of punishment passed in the year 2005, cannot be permitted to be assailed by way of instant writ petition filed in the year 2014. Even otherwise, the order of punishment dated 02.08.2005 at Annexure P-6 was passed after following due procedure under the Punishment and Appeal Rules and having afforded requisite opportunity to the petitioner at all stages of the inquiry process as also thereafter, by the Punishing Authority, while agreeing with the findings recorded by the Inquiry Officer. Attempt by the petitioner to raise a challenge to the order of punishment dated 02.08.2005 at Annexure P-6 at such belated stage, is rejected.

Insofar as the principles governing compulsory retirement are concerned, the same are by now well settled. The order of retiring an employee upon completion of 55 years of age is not by way of punishment and it does not imply any stigma. The competent authority has the discretion to retire an employee after he attains a particular age or completes a particular period of service. The High Court, while examining an order of compulsory retirement is not to act as an Appellate Court but would interfere only if the order is found to be vitiated by malafides or is passed on no evidence or is arbitrary to the extent that no prudent person could form the requisite opinion to compulsorily retire on the basis of the given material. A reference in regard to such settled principles may be made to the celebrated judgment of the Hon'ble Supreme Court in ***Baikuntha Nath Das & another Vs. Chief District Medical Officer, Baripada and another, 1992 (2) SCT 92.***

Scope of the judicial scrutiny in matters of compulsory retirement also came up for consideration before the Hon'ble Supreme Court in ***National Aviation Company of India Ltd. Vs. S.M.K. Khan, 2009 (2) SCT 442*** and it was observed in the following terms:

“When an order of compulsory retirement purports to be one under the rule/regulation providing for such premature retirement, the proper approach of the Court would be to consider whether the order is sustainable with reference to the requirements of the relevant rule, rather than examining whether the order would also be construed as a punishment for misconduct.”

Adverting back to the facts of the present case, it would be seen that the respondent/department has considered the entire service record of the petitioner. Regular inquiry was conducted against the petitioner on the

charge of embezzlement of funds. Such charge stood duly proved and punishment of restricting the petitioner for 5 years on a fresh time scale and recovery of Rs.21,000/- i.e. 50 times the embezzled amount was directed. It is also the conceded position of fact that the petitioner was conveyed adverse remarks pertaining to the ACR for the year 2004-05 vide memo dated 22.11.2005 at Annexure P-3, which adversely reflected on his integrity. The petitioner has not raised any allegation of malafides or as regards the competency of the authority, who has passed the impugned order. The impugned order cannot be termed as perverse as a view has been formed by the Competent Authority on the basis and backdrop of material relating to unsatisfactory service. It is not a case of an order of compulsory retirement having been passed without any material on record. This Court would not sit in appeal over the opinion formed by the Competent Authority and cannot also substitute its own view with that of the Competent Authority. The respondent/department has adopted a course which was legally permissible under the service rules and as such, the impugned order of compulsory retirement would not call for any interference.

Reliance placed by the counsel upon the decision in ***Jamal Masih's case (supra)*** is wholly misplaced. In the facts of such case, Conductors of Punjab Roadways were imposed fines on the spot at the time of checking of the Inspectors for having permitted various passengers to travel in their buses without tickets. The fines imposed had been duly paid by the erring Conductors. Thereafter, on the same very allegations, departmental proceedings were sought to be initiated by serving charge sheets. Such action was struck down by this Court holding it to be a case of double jeopardy and in violation of the guarantee under Article 20 of the

Constitution of India on the basis that the Inspectors had already exercised the executive powers to take disciplinary action and the petitioners therein having already been imposed fines and punished for their misconduct could not subsequently be subjected to the rigors of disciplinary action on the basis of same very misconduct. In the present case, the contention raised by the counsel proceeds on a fallacious premise that the impugned order of compulsory retirement amounts to punishment. That is not the case. The impugned order of compulsory retirement passed against the petitioner is upon an opinion having been formed by the competent authority in public interest to not retain the petitioner in service after having attained the age of 55 years as was permissible under the relevant rules. Such opinion has been formed after evaluating his entire service record which include even the adverse report of doubtful integrity. The impugned order of compulsory retirement cannot be construed as punitive in nature and the judgment of the Division Bench in ***Jamal Masih's case (supra)*** would have not applicability in the present case.

For the reasons recorded above, there is no merit in the instant writ petition and the same is dismissed.

20.01.2015*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

Note: Whether referred to the Reporter?

Yes