

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 8966 of 2010
Date of decision July 30, 2015

Ram Singh Forester

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Hitesh Pandit, Additional Advocate
General, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J (ORAL).

The challenge in the present petition is to the order dated 6.5.2010 (Annexure P-10) whereby the petitioner has been ordered to compulsory retire from service on attaining the age of 55 years. In essence, the petitioner has not been found fit to continue in service after attaining the age of 55 years.

Learned counsel for the petitioner submits that the ACRs of the petitioner for the last 10 years, more than 70% were good and therefore, the impugned order of compulsory retirement is not in consonance with the Government's own instructions and rules, much less even three months notice. There has been no compliance

of rule 3.26 (d) of the Punjab Civil Service Rules Vol-I Part-I as applicable to Haryana.

Learned counsel for the State submits that there has been compliance of provisions of Rule 3.26 (d) of the the Rules *ibid* as the aforementioned rules also pertain to Class III employees. The relevant rule is extracted hereinbelow:-

3.26(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 allowance in lieu of such notices:-

(i) if he is in Class I and 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 I or Class II 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.*

Provided that in the case of a member of the Judicial Service, if he had entered Government service before or after attaining the age of thirty five years, his case for retention in service beyond the age of fifty-eight years, shall be considered before he attains such age.

Provided that in the case of member of Judicial Service, he shall have the option to retire at the age of fifty-eight years, which should be exercised by him in writing before he attains the

age of fifty-seven years. A member who does not exercise such option before he attains the age of fifty seven years, would be deemed to have opted for continuing in service till the superannuation age of sixty years with the liability to compulsory retirement at the age of fifty-eight years;" The Govt. employee would stand retire immediately on payment of three months pay and allowance 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 by giving a notice of not less than three months in writing to the appointing authority, retire from service:-

i) if he is 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 or post; or

(b) if he is in 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;"

There is no bar for the Management to compulsory retire the petitioner even if he had attained the age of 55 years. He further submits that ACRs of the petitioner are not up to the mark and the impugned order had rightly been passed by the competent authority.

I have heard learned counsel for the parties and appraised the paper book.

The Management has filed an affidavit in pursuance to the order passed by this Court on 6.9.2013. The summary of the ACRs of the petitioner shows that it was for the last 10 years that the petitioner had been given 56.67% good/very good and 43.33% are average. The argument that the petitioner had more than 70% of the good ACRs does not cut an ice as no document contrary to the aforementioned has been placed on record. Even there was no estoppel to compulsorily retire a person even if he had attained the age of 57 years. Rule 3.26 (d) of Punjab Civil Service Rules Vol-I Part-I as applicable to Haryana envisages that after attaining the age of 55 years, it is not mandatory for the State to issue three months notice as the words used are 'may' and not 'shall'.

There is no illegality and perversity in the impugned order compulsorily retiring the petitioner. The argument thus, is devoid of merit. Resultantly, the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

July 30, 2015
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