

Civil Writ Petition No.24419 of 2014

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.24419 of 2014

Date of Decision: May 11, 2015

ASI Sher Mohammad

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.S.N.Yadav, Advocate,
for the petitioner.
Mr.Hitesh Pandit, Addl.A.G.Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the impugned notice dated 22.10.2014 (Annexure P-3), vide which the petitioner has been compulsorily retired from service after three months only on the basis of registration of a criminal case.

Mr.S.N.Yadav, learned counsel appearing for the petitioner submits that as per the instructions issued by the Director General of Police, Haryana, only those Government employees should be allowed to continue in service beyond the age of 55 years who have earned 70% or above good reports and whose integrity is not doubted during the last 10 years. Copy of the instructions dated 14.3.2006 is attached as Annexure P-1. He further submits that the petitioner joined as Constable on 31.7.1985. Thereafter, he was promoted to the level of ASI and had been awarded 32 commendation certificates. He further submits that the petitioner, while he was posted as

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Head Constable, on the basis of an incident occurred on 30.4.2008, was falsely implicated in FIR No.2 dated 28.1.2014, under Section 13(1) Prevention of Corruption Act. Copy of the FIR has been annexed with the petition as Annexure P-2.

The learned counsel for the petitioner further submits that the petitioner was shocked when he received impugned notice of retirement (Annexure P-3), wherein it has been mentioned that he has been placed under suspension and in view of the provisions of Rule 9.18 of Punjab Police Rules, Volume-I read with Rule 5.32(a) of C.S.R. Volume-II, as applicable to the State of Haryana and upon expiry of three months, he had been compulsorily retired. He further submits that the aforementioned FIR did not culminate into presentation of challan as the cancellation report was submitted on 8.5.2015 and the matter is still under consideration.

Mr.Hitesh Pandit, learned Additional Advocate General, Haryana appearing on behalf of the State submits that the enquiry report was received from the Director General of Police, State Vigilance Bureau, Haryana, Panchkula, which revealed that the petitioner had disproportionate assets and had purchased land in the name of his wife and son worth ₹80.00 lacs by way of illegal means and accordingly it was found that the petitioner was not fit to be retained in the service after attaining the age of 55 years and accordingly he was compulsory retired after serving notice.

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

The law with regard to compulsory retirement of a delinquent employee on the basis of registration of criminal proceedings, much less, on

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acquittal is not *res integra*. In support of my above observation, I draw support from the judgment rendered in State of Gujarat Versus Suryakant Chunilal Shah, 1999(1) S.C.T. 208, whereby it has been held that if there is no adverse entry regarding the work and conduct of an employee nor of doubtful integrity in his service record, there could not have been any occasion for the authorities to invoke Rule 9.18 of the Punjab Police Rules, Volume-I as the petitioner has not been served any adverse entry, much less, entry qua integrity and the petitioner has earned 70% or above good reports and his integrity has not been doubted for the last 10 years, and, therefore, the impugned notice dated 22.10.2014 (Annexure P-3) is not sustainable in law, much less, in view of the instructions dated 14.3.2006 issued by the Director General of Police, Haryana.

It is a matter of record that the petitioner has not been communicated any adverse entry and, therefore, presumption has been drawn that he has 70% or above good reports and his integrity has not been doubted for the last 10 years in view of the ratio decidendi culled out in Suryakant Chunilal Shah's case (supra) and as well as the aforementioned facts.

The impugned notice (Annexure P-3) is not sustainable in the eyes of law and being illegal and arbitrary and accordingly is hereby set-aside.

The writ petition is allowed.

May 11, 2015
ramesh

(AMIT RAWAL)
JUDGE