

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 7778 of 2012

DATE OF DECISION: 13.8.2015

Baljit Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present:- Mr. R.N. Lohan, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

DAYA CHAUDHARY, J.

The present 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 adverse entry in the ACR for the period 1.4.2009 to 31.3.2010 and order dated 13.10.2010 (Annexure P-15), vide which, the representation of the petitioner was rejected as well as order dated 20.2.2012 (Annexure P-20), vide which, the petitioner has been ordered to be retired after giving three months prior notice.

Petitioner-Baljit Singh was initially appointed as Constable on 15.7.1977 and thereafter he was promoted as Head Constable on 6.8.2001

and as ASI on 28.11.2007. In the ACR for the period from 1.4.2009 to 31.3.2010 adverse remarks were recorded by the Superintendent of Police, Jind. The petitioner made representation but the same was rejected on 13.10.2010. Thereafter the second representation was made which was also rejected and vide order dated 20.2.2012 (Annexure P-20), he was ordered to be retired after giving three months prior notice.

Learned counsel for the petitioner contends that the adverse remarks were not only malafide but contrary to fact as the petitioner was rewarded by respondent No.4 in the month of May, 2009 and January, 2010. During this period he was also deputed to Haryana Armed Police, Madhuban for the Intermediate Course and remained there w.e.f. 1.6.2009 to 16.11.2009 i.e. for more than five months. The adverse remarks have been recorded contrary to instructions dated 14.12.1951, 4.10.1956, 15.7.1959 and 12.12.1985. Whole service record of the petitioner has remained meritorious and no complaint whatsoever was ever conveyed to him but only due to adverse entry in the ACR for the aforesaid period, he was ordered to be retired compulsorily.

Learned State counsel submits that the case of the petitioner was to be considered for allowing him to continue beyond the age of 55 years but he was not found fit as his integrity was recorded doubtful in the ACR for the period from 1.4.2009 to 31.3.2010. The reasons for recording adverse remarks were also conveyed to the petitioner. He was also awarded punishment of stoppage of two annual increments with permanent effect vide order dated 17.11.2009 but the same was modified to stoppage of one annual increment with temporary effect by the Inspector General of Police, Hisar Range-Appellate Authority vide order dated 28.12.2010. It is also the argument of learned State counsel that Regular Departmental Inquiry was also conducted against the petitioner for certain omissions and

commissions in the investigation of case, FIR No. 571 dated 6.10.2008 registered under Sections 498-A, 506 IPC at Police Station City Jind, in which, he was found guilty of the charges levelled against him.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

The details of the ACRs of the petitioner for the year 2001-02 to 2008-09 are on record, wherein, he has been shown to be Good, Disciplined and Reliable but in the ACR for the period from 1.4.2009 to 31.3.2010, the integrity has been recorded to be doubtful with the remarks that he is unreliable and in column of general remarks he has been assessed as 'Average'. It is also an admitted fact that the punishment of stoppage of two annual increments with permanent effect was awarded by the competent authority but the same was modified to stoppage of one increment with temporary effect. Learned counsel for the respondent-State has not been in a position to show any material on record as to on what whose basis the adverse remarks in the ACR for the period from 1.4.2009 to 31.3.2010 has been recorded. As per the instructions issued by Government of Haryana on 14.12.1951, there should be some material for recording "integrity" as doubtful. The relevant portion from the aforesaid instructions reads as under:-

“(b) An officer should not at any time be kept ignorant of the Reporting Officer opinion where his service is not considered satisfactory, criticism should be communicated promptly and should indicate in suitable language the nature of defects in question.

(d) The reporting officer should specifically state whether the defects reported have already been brought in any other communication to the notice of officer concerned.

Similarly in para no. (ii) of letter no. C.S. Pb. No. 2679-GI-59/8249 dated 15.7.1959 it has been held that the reporting officer while mentioning any defects in the report should as far as possible also give indication of what efforts have been made by way of guidance, admonition etc. to get the defects removed and with results.

In para no. 4 of consolidation instructions as issued by the Punjab Government vide no. 8588/GC-56/11533/GI (s)/56/73580 dated 4.10.1956 and Haryana Government letter No. 61/20/85/S(I) dated 12.12.1985 it has been held that 'Report Regarding Integrity' a special mention should invariably be made regarding the integrity of the officer in which government attach the greatest importance. It should be clearly stated if the officer is suspected or is believed to be corrupt and this opinion should generally be fortified by the reasons, which may be in the possession of the reporting officer. Any ill considered remarks in this respect may do a lot of mischief and harm. On the other hand, reporting officer must be quite honest and frank."

Rule 3.26 (a) and (d) of CSR volume 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 in case it is in the public interest other than class IV employee and that too by giving him a notice in writing of not less than three months or three months' pay in lieu thereof.

It is a settled proposition of law as has been laid down in

various judgments of this Court as well as of Hon'ble the Apex Court that compulsory/premature retirement is not a punishment as it does not leave any stain or stigma. On perusal of remarks recorded in the ACRs, the petitioner has been assessed to be Very Good, Disciplined and Reliable. Only in the ACR for the period from 1.4.2009 to 31.3.2010, the integrity of the petitioner was recorded to be doubtful. He was also remarked to be unreliable and in the column of general remarks, he has been assessed as 'Average'. The punishment of stoppage of two increments with permanent effect awarded to the petitioner by the competent authority was modified to stoppage of one increment with temporary effect by the Appellate Authority. No material whatsoever has been placed on record by learned counsel for the respondent to show as to how the integrity of the petitioner was recorded to be doubtful. Moreover, report regarding integrity is a special mention which should invariably be made and accordingly a great importance is to be given. In case the officer is suspected or believed to be corrupt, under such circumstances, certain reasons are to be recorded in the ACR. In the present case, the petitioner was to be considered so as to let him serve beyond the age of 55 years and accordingly vide impugned order, he has been ordered to be retired compulsory after giving three months prior notice. Moreover, the petitioner was due to retire in February, 2015. Had he been in service he could have been retired on 28.2.2015.

"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 is 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 Rule 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 the case in hand, while passing the order of retiring the petitioner compulsorily, the material with regard to utility outlived by the petitioner or retiring the petitioner for not maintaining an efficient administration or an objective view of over all performance has not been collected.

Keeping in view the facts and circumstances of the case, there is a merit in the contentions raised by learned counsel for the petitioner and the impugned order of retiring the petitioner compulsorily is not based on any material evidence.

Accordingly, the present petition is allowed and the impugned orders dated 13.10.2010 (Annexure P-15) and order dated 20.2.2012 (Annexure P-20) are set aside. Since the petitioner was to retire in the month of February, 2015, therefore, he is held entitled for all the benefits as would have been granted to him on attaining the age of superannuation. He is also held entitled to all the monetary benefits from the date of passing of impugned order till his notional retirement i.e. on attaining the age of

superannuation. However, the petitioner will not be entitled for salary for the period he did not work. The respondents are also directed to grant all the benefits arising after his retirement by considering it as deemed date of retirement.

13.8.2015
pooja

(DAYA CHAUDHARY)
JUDGE