

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

**C.M. No.3579 of 2014 in/and
C.W.P. No.5491 of 2013
Date of Decision : 19.03.2015**

Shri Momen Ram

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Kanwardeep Singh, Advocate
for the non-applicant-petitioner.

Mr. Raman B. Garg, Advocate
for the applicants-respondents No.2 to 4

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?

AJAY TEWARI, J. (Oral)

This is an application for vacation of stay which has been pending since 26.03.2014. In this case, on 22.08.2014 the following order was passed:-

“In the aforesaid “Admitted” petition the respondents have moved the aforesaid application seeking vacation of the interim stay in the light of covered judgments (Annexures R-2/1 and R-2/2.

Upon notice, non-applicant/petitioner has filed reply.

At the time of hearing none has appeared on behalf of

the petitioner, therefore, the hearing is deferred to 10.09.2014.

Registry is directed to list the main case for hearing on the said date.”

It was pursuant to that order that this petition has also been taken up for hearing.

By this petition the petitioner has challenged the order whereby he has been compulsorily retired being not able to discharge the duties of Clerk efficiently. The petitioner joined as Chowkidar/Watchman on 25.03.1983. On 08.02.1985 he was promoted as Peon. In the year 1992, the petitioner passed the Matriculation Examination after taking due permission and consequently he was recommended for promotion and was in fact promoted as Clerk on 08.04.1993. In para 3 of his promotion order (Annexure P-2) a condition had been imposed that he would have to pass type test in Hindi and English at the speed of 25 W.P.M. and 30 W.P.M. respectively within one year from the date of joining as Clerk, failing which, he shall not be allowed annual increments. It is not disputed that the petitioner did not pass the type test and continued to work without earning any increments. By the impugned order dated 21.01.2013 he has been compulsorily retired at the age of 55 on the ground that he did not make any efforts to pass the type test as per the condition of his promotion order.

Learned counsel for the petitioner has sought to argue that having deprived the petitioner of his increments this order of compulsorily retirement would subject him to double punishment. He has further argued that the department had to assess the entire service record of the petitioner before declaring him as dead wood as his ACRs are above average during

the last 10 years. He has relied upon the judgment of this Court passed in CWP No.14702 of 2004 titled as ***Wassan Singh vs. State of Haryana and others***, decided on 12.09.2012, where a Single Judge quashed the order of compulsory retirement of an employee and, as per the learned counsel for the petitioner the present case is covered by that case. I however find that the aforesaid case is distinguishable. In that case, the person was sought to be compulsory retired on the ground that there was no work for him and it was in those circumstances that this Court held as follows:-

“I have considered the submissions made by counsel for the parties and with their assistance have gone through the record of the case.

Although Rule 3.26(d) of the Punjab Civil Service Rules do confer an absolute right on the employer to dispense with the services of an employee on attaining the age of 55 years but the same cannot be exercised in an arbitrary manner, especially when scope and ambit of the said rule is further qualified by the instructions dated 19.11.1991 issued by the State of Haryana in the light of fact that the said instructions were issued in exercise of the powers conferred on the Government. According to these instructions, the compulsory retirement of a Government employee can be made if he is a dead wood and for that parameters have been laid down. The Annual Confidential Reports have been held to be parameters to assess the competence of an employee. In the present case, it has not been disputed that the work and conduct of the petitioner was very good and, therefore, action of the respondents merely on the ground that there is no work available with them, cannot be accepted.”

Learned counsel for the petitioner has further relied upon the

judgment passed by a Division Bench of this Court in CWP No.5566 of 1999 titled as ***Prithvi Raj vs. The State of Haryana and others***, decided on 03.09.2001 to contend that in that case also a person who was not able to pass the type test was deprived of his increments and this Court allowed the writ petition. I however find that even the facts of that case are also different because in that case the condition to pass the type test was only for appointment by direct recruitment and not for promotion.

On the other hand, the learned counsel for the applicants-respondents No.2 to 4 has relied upon LPA No.972 of 2011 titled as ***Kulwant Singh vs. State of Haryana and another***, decided on 28.04.2011, wherein a Division Bench of this Court held as follows:-

“Having heard learned counsel we are of the considered view that once the appellant has continuously remained unsuccessful in passing of the type test then his professional utility as a Clerk is considerably reduced and no fault can be found if he has been compulsorily retired. After all the basic object of Rule 3.26(d) of the Punjab Civil Services Volume-I Part-I, which are applicable to the appellant, is only one i.e. to weed out the inefficient and corrupt who have lost their utility. Accordingly, we are of the view that the learned Single Judge has correctly applied the principle emanating from the judgment of Hon'ble the Supreme Court rendered in the cases of Baikuntha Nath Das Baikuntha Nath Das v. Chief District Medical Officer, Baripada, AIR 1992 SC 1020. The appeal does not merit admission and the same is accordingly dismissed.”

Faced with this judgment, learned counsel for the petitioner has argued that if the petitioner was not able to pass the type test at worst he

could have been reverted but he could not be compulsorily retired at the age of 55.

In my opinion, this argument has no weight because the impugned order has not been passed by way of punishment. Had it been by way of punishment it may have been said that it could be appropriate to revert the petitioner but in the present case neither the impugned order is stigmatic nor has it been passed as a result of measure of punishment. The Government has a right to weed out those officials who have lost their utility.

In the circumstances, the writ petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 19, 2015

ashish

**(AJAY TEWARI)
JUDGE**