

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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**RSA No. 313 of 2011 (O&M)**

Date of decision : 28.4.2015

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State of Haryana and another

.....Appellants

Versus

Chander Pal

.....Respondent

\* \* \* \* \*

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

\* \* \* \* \*

Present: Mr. Siddharth Sanwaria, DAG, Haryana.

Mr. Sanjay Verma, Advocate for the respondent.

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1. *Whether Reporters of Local Newspapers 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?*

**RITU BAHRI, J**

State of Haryana has come up in this regular second appeal against the judgment dated 3.6.2010 passed by the Additional District Judge, Kaithal whereby the appeal against the judgment and decree dated 4.5.2009 was allowed. Vide the trial court Judgment, suit of the plaintiff for declaration and mandatory injunction was dismissed.

Vide order dated 13.6.2006 passed by the Director General of Police, Haryana communicated to the plaintiff-respondent (hereinafter referred to as `the plaintiff') on 15.6.2006, the plaintiff was compulsorily retired from service. The plaintiff was serving in

Haryana Police as Sub Inspector. Plaintiff was recruited as Constable on 7.2.1972 with Haryana Police as he was qualified up to 9<sup>th</sup> standard. The plaintiff was to attain the age of 58 years on 31.1.2012. He was confirmed as Head Constable on 31.1.1985 and was promoted as Sub Inspector (ad hoc) out of turn in 1993. The plaintiff had been awarded various appreciation letters and cash prizes. His name was placed in promotion list F-1 prepared on 14.8.2005 as per Ex. P-1. There was no adverse record against the plaintiff.

The plaintiff was served a show cause notice on 14.3.2006 proposing to retire him from service compulsorily under the provisions of Sub-Rule (2) of Rule 9.18(2) of Punjab Police Rules 1934 as amended by the Haryana Government Rules 1973 on the grounds attached with notice. The plaintiff was given an opportunity to make a representation. The material, on the basis of which the plaintiff was proposed to be compulsorily retired was that he had earned adverse remarks in his ACR during 1.4.1999 to 10.10.1999 pertaining to FIR No. 449 dated 18.12.1998 under Section 363/366 IPC at Police Station Sadar Kaithal, in which the subordinate ASI of the plaintiff committed delay in arresting the accused.

The plaintiff gave his written reply Ex. PW/3 to the show cause notice dated 14.3.2006 and it was submitted that the right to retire compulsorily has to be exercised only if it is in public interest or the officer is having record of inefficiency, dishonesty, corruption or infamous conduct. The attention of Director General of Police was

drawn even towards the entire service record of the plaintiff. The representation was considered by the Director General of Police and vide order dated 13.6.2006, the plaintiff stood compulsorily retired w.e.f 1.6.2006. The trial Court framed the following issues:-

1. Whether the plaintiff is entitled for a decree of mandatory injunction as prayed for ? OPP.
2. Whether the plaintiff is entitled for a decree of mandatory injunction as prayed for ? OPP
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether this court has no jurisdiction to entertain and try this suit? OPD.
6. Whether the plaintiff has not properly valued the suit for purpose of court fees? OPD.

Suit of the plaintiff was dismissed by the trial Court. It was observed that the plaintiff filed his representation against the adverse remarks recorded in his ACR for the period 1.4.1999 to 10.10.1999 and his representation was considered and was rejected vide Ex. PW-8/10. Even his representation petition was also rejected by Director General of Police, Haryana vide Ex. PW-8/11. Apart from the above said ACRs, the plaintiff had been warned to be careful in future in the performance of his service vide Ex. PW 8/14 and Ex. PW8/15. There were in all 12 instances of punishment/warnings

issued by the competent authority to the plaintiff. After examining the entire service of the plaintiff coupled with adverse remarks in the ACR for the period 1.4.1999 to 10.10.1999, the competent authority has taken a subjective decision to compulsorily retire him from service which require no interference by the civil Courts.

However, the appellate Court on appeal proceeded to examine the adverse remark in the ACR for the period 1.4.1999 to 10.10.1999 pertaining to delay by Subordinate ASI in arresting the accused. Appellate Court observed that DW-1, ASI Balkar Singh appeared and stated in his cross-examination that the enquiry which was pending against the plaintiff regarding these allegations was filed by S.P Kurukshetra on 2.6.2000. Even the order passed by S.P Kurukshetra is available on the records of the case at page 409 of the file and the same reveals that the plaintiff was merely warned to be careful in future. Moreover, the subordinate, ASI Hem Chander, who was responsible for the delay in arresting the accused in FIR No. 449 dated 18.12.1998 under Sections 363/366 IPC too was merely warned in the departmental proceedings. From the record it was further revealed that ASI Hem Chander who had faced enquiry along with the plaintiff was confirmed as Sub Inspector and promoted as Sub Inspector vide Ex. P/14. Once the subordinate who was responsible for the delay had been promoted as Sub Inspector and a conscious decision had been taken by the Department to place the name of the plaintiff on the promoted list F in the year 2005 after the issuance of warning, the adverse remarks recorded in the ACR for

the period 1.4.1999 to 10.10.1999 should have been reviewed. After the imposition of punishment of warning and placing his name on the promotion list F, adverse remark in the ACR lost its value and could not be used against the plaintiff. The Department instead of promoting him by placing him on list F chose to retire him compulsorily before he attained the age of retirement. Apart from this ACR, 12 instances on which punishments/warnings were awarded to the plaintiff are as under:

1. He was awarded a punishment of Censure for not issuing Stranger Roll after 9.2.1997 vide SP / PKL's Order No. 13.66-69 dated 06.05.1997.
2. He was awarded punishment of Censure for showing the name of One Tula Ram son of Dil Bahadur in the list of bail Jumper while posted as SHO P.S Raipur Rani inspite of his name removed from said list by DC / Ambala vide his letter No. 3107/PA dated 11.09.1995 by SP /PKL vide OB No. 173/97.
3. He was warned to be careful in future for not investigating properly case FIR No. 194 dated 03.07.1998 u/s 379 IPC by SP/KKR vide OB No. 90/2001.
4. He was warned for not submitting his explanation in time by SP/KKR vide order No. 16549-51 dated 03.05.2001.
5. He was awarded a punishment of censure for not

- deputing properly night patrolling and naka duty on the night of 24/25.07.2001 while posted as SHO P.S. Shahabad by SP/KKR vide OB NO. 319/01.
6. He was awarded a punishment of Censure for showing negligence in the investigation of case FIR No. 105/01 u/s 457 /380 IPC P.S. Sadar, Thanesar by SP/KKR vide order No. 10111-14 dated 04.03.2002.
  7. He was awarded a punishment of Censure for not deputing required force at Shahabad on 08.05.2002, while posted as SHO P.S. Ladwa, by SP/KKR vide OB No.209/02.
  8. He was awarded punishment of Censure in DE by SP/KKR on account of not complying the detention order No, 673/01 dated 25.01.2002 in respect of Rajnish Kumar r/o Ladwa received from Govt .of India (COFE-POSA SECTION) vide order No. 24031-34 dated 12.06.2003 was enhanced into stoppage of one increment with permanent effect vide IGP/Ambala Range order No. 28776/A-4 dated 04.11.2003.
  9. He was awarded a punishment of stoppage of one annual increment with temporary effect in a D.E by SP/KKR vide order No, 50090-94 dated 21.11.2003 on account of verifying the passport enquiry report of Angrej Gogna r/o Ladwa and also attested his photo affixed on the passport from whereas during this period

he was in USA himself during the posting as SHO P.S. Ladwa.

10. He was awarded a punishment of Censure by SP/KKR vide order No, 19195-98 dated 23.04.2004 that while he was posted as I/C Prosecution Cell on 17.02.2004, the register maintained in the Cell were checked by register maintained in the Cell were checked by the S.P. Himself and was asked to explain about various entries made in the register but he could not give satisfactory reply and tried to mitigate by a Constable. For this negligence and disinterest towards official duties, he was awarded above punishment.
11. He was awarded a punishment of stoppage of one annual increment with permanent effect by SP/KKR vide order No, 19793-96 dated 26.04.2004, while he was posted as I/C Traffic Aid Centre, Samalkha in Haryana Patrol and Road Safety at Karnal on 03.10.2003, an unknown person stolen and caused loss of Motorcycle . Hence this punishment.
12. He was warned as result of D.E. Y SP/KTL vide order No. 92/ST dated 13.08.2005 for not taking interest in his duty during the visit of late Sh, O.P. Jindal , Electricity Minister, Haryana State, while he was posted as Addl.SHO P.S City Yamunanagar on 28.03.2005.

A perusal of the above said punishments/warnings shows that none of the punishments were with regard to his integrity and honesty. Warnings were issued to enable him to perform his duties better. The adverse remarks in the ACR for the period 1.4.1999 to 10.10.1999 did not carry any weight once in departmental proceedings as admitted by DW-1 ASI, Balkar that the plaintiff had merely been warned to be careful in future by SP Kurukshetra. The subordinate ASI Hem Chander who has faced the enquiry was promoted thereafter and the plaintiff at the same time was compulsorily retired without having any adverse record in the entire service w.e.f 1972. The lower appellate Court in the above facts of the case, allowed the appeal filed by the plaintiff and the judgment and decree of the trial Court was set aside.

Once the Department had issued only a warning to the plaintiff to be careful in nature, the entire service record of the plaintiff cannot be read to be of a nature to compulsorily retire the plaintiff specially keeping in view that ASI Hem Chander had been promoted and confirmed as Sub Inspector after the enquiry. The action of the Department to promote ASI, Hem Chander and compulsorily retire the plaintiff was discriminatory. Reference can be made to a judgment of the Andhra Pradesh High Court in the case of **S. Shankarappa vs. President, Grama Swarajya Sangham as reported in 1993(3) SCT-619**, wherein it has been held that the action would be discriminatory if similarly situated employees are promoted to continue till the age of superannuation. The ratio of this

judgment is fully applicable to the facts of the case in hand.

As per the details of the 12 warning/punishments given to the plaintiff they were minor punishments and those punishments were not sufficient to lead to a conclusion that it would be in public interest to compulsorily retire such an employee. A perusal of the ACR of the period 1.4.1999 to 10.10.1999 shows that there is no adverse entry regarding his integrity and honesty, the only entry against him is that he was facing criminal proceedings in FIR on the allegation that his subordinate had delayed the arrest of an accused. A perusal of the order dated 13.6.2006 shows that all the 12 punishments in which none of the punishments were major was not taken into consideration. While passing the above said order, it was the adverse remark in his ACR during his service for the period 1.4.1999 to 10.10.1999 which was taken into consideration against him. The details of the other punishments were considered along with the adverse ACR by the lower appellate Court. Once in departmental enquiry he had been issued only a warning, the said adverse remarks could not be considered against him for compulsorily retiring him. Once the plaintiff's name had been brought on list -F for promotion, all the punishments lost the sting and a adverse remark in the ACR for the period 1.4.1999 to 10.10.1999 could not be taken into consideration for issuing him notice of compulsory retirement. In the present case any adverse remark made against an employee would lose its significance once he is promoted. A Division Bench of this court in the case of **Punjab State**

**Electricity Board Chandigarh vs. Punjab State Electricity Board**

**and another** has held in paragraph 5 as under:

*“5. In view of the authoritative pronouncement of the highest Court of the land, we hold that any adverse record prior to 12<sup>th</sup> January, 1990 when the petitioner was promoted as Chief Engineer by way of selection cannot be taken into consideration at all for the purposes of premature retirement.”*

Thereafter the Division Bench of this Court in the case of **Om Parkash Mahajan vs. State of Punjab and another, 1993 (4) RSJ 685** while examining the case of premature retirement while setting aside the order of compulsory retirement held that adverse remarks prior to the promotion to a higher post, particularly, where it is based upon merit and not seniority alone, would lose their significance and such promotion would take away the sting of adverse remarks against the Government servant concerned.

In the case of **Baikuntha Nath Das vs. Chief District Medical Officer, Baripada 1992(2) SCT 92**, the following principles emerged from para 32 of the judgment of the Hon'ble Supreme Court of India

*(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.*

*(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 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 favourable 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.*

Applying the ratio of the above said judgment on the facts of the present case, the only adverse remark against the petitioner was recorded in the ACR for the period 1.4.1999 to 10.10.1999 which subsequently lost its sting as in the departmental enquiry, the plaintiff was given a warning to be careful. After that in the year 2005, his name was brought to list F for promotion to the higher post. After the enquiry and after placing his name on List F in 2005, the adverse remarks in the ACR for the period 1.4.1999 to 10.10.1999 could not be used against the petitioner for compulsorily retiring him. The Department in the present case took the discriminatory attitude towards the plaintiff inasmuch as it went ahead to promote ASI Hem Chander against whom the allegation were that he had delayed the arrest of the accused in the FIR No. 449 dated 18.12.1998 under Section 363/366 IPC at Police Station Sadar Kaithal being Subordinate to the plaintiff, whereas the plaintiff was shown the door by making an order of compulsory retirement against him. After the enquiry was conducted and his name was placed on List F in promotion, adverse remarks lost its significance in view of the judgment in **Punjab State Electricity Board, Chandigarh (supra)**.

Hence, the lower appellate Court has rightly set aside the order of compulsory retirement of the plaintiff. The order of the appellate Court does not require any interference.

In view of all that has been discussed above, there is no illegality or infirmity in the order of the appellate Court and the same is hereby upheld. The present regular second appeal is dismissed.

**28.4.2015**

*ritu*

**( RITU BAHRI )  
JUDGE**