

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 2136 of 2012

Date of decision : April 07, 2015

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Kashmiri Lal

.....Appellant

Versus

State of Haryana and another

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Deepak Sharma, Advocate
for the applicant-appellant.

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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

Plaintiff had come up in regular second appeal against the judgment and decree dated 30.9.2010 passed by Civil Judge (Junior Division) Ambala, whereby the suit of the appellant-plaintiff Kashmiri Lal was dismissed and judgment and decree dated 3.9.2011 passed by Additional District Judge, Ambala, whereby the appeal filed by the plaintiff-appellant was dismissed.

The suit has been filed by the plaintiff against the notice bearing memo No. 5398/ECC dated 21.6.2004 issued to the plaintiff retiring him from service and consequent order dated 17.11.2004 whereby the plaintiff was compulsorily retired from service.

The plaintiff attained the age of 55 years on 3.1.2004 and

he was given a notice for compulsory retirement on 21.6.2004 by the Financial Commissioner Transport (FTC). Before issuing him notice, his case was put up before the committee on 30.4.2004 for appropriate decision and vide memo No. 9/137/2003-2 Cond. (ii) dated 30.4.2004 issued by the Secretary to Government Transport Department, Haryana, the decision of the Committee with regard to the retention of plaintiff in the service was communicated. On the basis of the recommendations of the said committee, a show cause notice in terms of Rule 3.26 (d) Punjab Civil Services Rules Vol. I, Part-II and Rule 5.32 (a)(c) Punjab Civil Services Rules Vol. II was issued to the plaintiff for compulsory retirement. The service record for the last ten years was not found to be satisfactory and his honesty was doubtful and the decision was taken not to retain him in the service beyond the age of 55 years.

The plaintiff had joined the service in the year 1972 and completed the age of 25 years of service in the year 1997. As per Ex. D-3 ACR of the plaintiff for the year 1997-98 indicated that integrity of the petitioner was found doubtful and he was termed as an average employee. The adverse remarks were communicated to him on 27.4.1998 and as per the respondents, the plaintiff did not file any appeal against the adverse remarks of the ACR for the year 1997-98.

In view of the above facts, the suit of the plaintiff was dismissed by the trial Court. Appeal against the judgment of the trial Court was also dismissed by the appellate Court.

Reliance was placed upon the judgment of the Hon'ble Supreme Court in **Baikuntha Nath Das versus Chief District Medical Officer, Baripada 1992(2) SCC 299**, wherein the following guidelines have been laid while considering the order of compulsory retirement:

(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 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 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. That circumstance by itself cannot be a basis for interference.

Thereafter the Supreme Court has been consistently holding that the order of compulsory retirement is not a punishment and the object is to remove the dead wood from the service. Supreme Court of India in the case of **Union of India and others vs. P. Gunasekaran, 2015 AIR (SC) 545**, upheld the finding of the Central Administrative Tribunal that the punishment of compulsory retirement is not outrageous or shocking to its conscience. In

paragraph 24 of the judgment, it was observed as under:

24. The Central Administrative Tribunal, in the order dated 01.02.2001 in O.A No.521 of 2000 after elaborately discussing the factual as well as the legal position has come to the conclusion that the punishment of compulsory retirement is not outrageous or shocking to its conscience, it was not open to the High Court to interfere with the disciplinary proceedings from stage one and direct reinstatement of the respondent with back wages.

In **Rajashtan State Road Transport Corp. and others vs. Babu Lal Jangir 2013 (4) SCT 438** , it was held by Hon'ble the Supreme Court of India that the order of compulsory retirement is neither punitive nor stigmatic. It is based on subjective satisfaction of the employer and a very limited scope of judicial review is available in such cases. Interference is permissible only on the ground of non-application of mind, mala fide, perverse or arbitrary or if there is non-compliance of statutory duty by the statutory authority. Power to retire compulsorily, government servant in terms of service rules is absolute provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest.

In view of all that has been discussed above, there is no infirmity or illegality in the judgments passed by the Court below. No substantial question of law arises for consideration in this regular

second appeal. Hence the same is dismissed.

April 07, 2015
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(RITU BAHRI)
JUDGE