

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

RSA No.1799 of 2014 (O&M)

Date of decision: 17.07.2015

Ram Kanwar

.....Appellant

Versus

**Haryana Land Reclamation and Development Corporation Ltd. &
others**

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Karamveer Singh Banyana, Advocate,
for the appellant.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgments of concurrent findings of facts dated 17.02.2012 and 10.12.2013 passed by the Civil Judge (Junior Division), Karnal and the District Judge, Karnal respectively, whereby his suit challenging the order of compulsory retirement dated 22.07.2009 from the defendant-corporation, has been dismissed.

Ram Kanwar-plaintiff (appellant herein) was appointed as peon on 17.12.1980 in Haryana Land Reclamation and Development Corporation Ltd. (herein after referred to as the defendant-corporation). He was promoted as Store Clerk on 15.06.1998 and thereafter, in the year 1996, he was promoted as Assistant Manager (Store). No adverse remarks had ever been communicated to him, except 2003-04 and ACR for the period 2008-09, which were communicated to the plaintiff vide letter dated 28.07.2009,

after notice of retirement. The plaintiff was allowed to cross the efficiency bar w.e.f. 01.02.2005. His basic pay was raised from Rs.4800/- to 4900/- vide letter dated 15.11.2007 and his name was recommended for the post of Deputy Manager. Consequently, a notice/letter dated 22.07.2009 was issued to retire the plaintiff at the age of 55 years. He preferred an appeal against the said notice, which was rejected vide letter/order dated 14.09.2009. Main ground for challenging the order of compulsory retirement, in the suit, was that the ACRs for the years 1999-2000, 2000-01 and 2001-02, wherein he was given 'adverse' remarks, were never communicated to the plaintiff. Further, the ACR for the year 2008-09, wherein he was given 'average' remarks, was communicated to the plaintiff after issuance of notice of retirement. As per plaintiff, more than 70% of his ACRs were good and assessment of his ACRs has not been made by the competent authority in the correct perspective.

Upon notice, defendants-respondents filed written statement and controverted the allegations levelled by the plaintiff in his plaint. It was submitted that the compulsory retirement of the plaintiff from the service of the defendant-corporation was in the public interest.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the order dated 22.07.2009 for compulsory retirement of the plaintiff from the corporation is illegal, null and void, arbitrary, against the natural justice of CRS and are liable to be set aside and service of the plaintiff to be continued as prayed for? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled for the

relief of permanent injunction as prayed for? OPP

3. Whether the suit is not maintainable? OPD
4. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
5. Whether the civil court has no jurisdiction to try and entertain the present suit? OPD
6. Whether the suit is bad for notice under Section 80 CPC? OPD
7. Whether the plaintiff has not come to the Court with clean hands and suppressed the true and material facts from the Court? OPD
8. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. On appeal, the lower appellate Court affirmed the findings of the trial Court. Hence, this appeal.

The plaintiff had examined Pritam Singh, Superintendent as PW-2, who deposed that ACRs of the plaintiff for the years 1998-99 (Ex.9), 1999-2000 (Ex.P10), 2000-01 (Ex.P11), 2001-02 (Ex.P12), 2002-03 (Ex.P13), 2003-04 (Ex.P14), 2004-05 (Ex.P15), 2005-06 (Ex.P16), 2006-07 (Ex.P17) and 2007-08 (Ex.P18) were correct according to the record and the same were communicated to the plaintiff-appellant. He further stated that he had not brought the official record, but he could produce the same. Thereafter, the plaintiff-appellant did not ask the said witness to produce the relevant record from the office. The said record was not got produced by the plaintiff and hence, it was presumed by both the Courts below that ACRs for the aforesaid period, were communicated to the plaintiff-appellant.

Once, the aforesaid ACRs were communicated, then the subjective

satisfaction of the competent authority in considering those ACRs would not vitiate the impugned order of compulsory retirement dated 22.7.2009. As per depositions of Vijay Jain, Secretary (DW-1) and Krishan Pal Tomar, Manager (DW-2), overall record of the plaintiff-appellant was taken into consideration before forming an opinion for his compulsory retirement. Vijay Jain (DW-1) had tendered his affidavit, Ex.DW1/A and given the details of the work and conduct of the plaintiff, which is reproduced as under:-

- “(i) He was charge-sheeted for various acts of omission and commission on 30.09.1999 under Rule 9 of Haryana (Punishment and Appeal) Rules, 1987 and awarded punishment of stoppage of two increments without cumulative effect vide M.D. order dated 21.02.2000.
- (ii) He was charge-sheeted for various acts of omission and commission on 30.11.1999 under Rule 8 of Haryana (Punishment and Appeal) Rules, 1987 and awarded punishment of stoppage of two increments without cumulative effect vide M.D. order dated 31.03.2000.
- (iii) He was charge charge-sheeted for various acts of omission and commission on 30.09.1999 under Rule 7 of Haryana (Punishment and Appeal) Rules, 1987 on 7th August, 2000 and awarded punishment of stoppage of one increment without cumulative effect vide M.D. order dated 31.12.2001.
- (iv) He was charge-sheeted for various acts of omission and commission on 30.09.1999 under Rule 7 of Haryana (Punishment and Appeal) Rules, 1987 on 2nd April, 2002 and awarded punishment of stoppage of one increment without cumulative effect vide M.D. order dated 10.03.2004.

A perusal of the record, produced by the defendants-respondents,

been awarded major punishment under Rule 7 of Haryana (Punishment & Appeal) Rules, 1987 twice.

The Hon'ble Supreme Court in **Baikuntha Nath Cas & another Vs. Chief District Medical Officer, Baripada & another**, 1992 (2) SCT 92, laid down certain principles, which have been summoned up as under:-

- “(1) 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) malafide 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 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.”

After considering the ACRs and the punishment(s) imposed upon the plaintiff-appellant, this Court is of the view that the defendant-corporation had rightly taken a decision to retire him compulsorily in view of the aforesaid principles. Accordingly, suit of the plaintiff-appellant has

been rightly dismissed by both the Courts below after appreciating the

evidence in the right perspective. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

17.07.2015
ajp

(RITU BAHRI)
JUDGE