

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.12045 of 2000 (O&M)

Date of Decision: 21.10.2016

Sudesh Rani Singla

... Petitioner

Versus

The Manager, JN Arya Kanya S.S.School & Ors

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ravi Sodhi, Advocate for the petitioner

Mr.Amrit Paul, Advocate for Respondents no.1 & 2

Ms.Shruti Jain Goyal, AAG, Haryana

RAJIV NARAIN RAINA, J. (Oral)

1. Having regard to the elaborate and laboured order of compulsory retirement on three month's notice, this Court has no doubt in mind that even the opening salvo in the first sentence of the impugned order is stigmatic in character and therefore unsustainable in law when not preceded by a regular inquiry in to the allegations of misconduct. The order starts with an ex parte statement that discrepancies have been observed in the petitioner's services, which has caused loss to the School. The rest of the order need not be raptly read though I have satisfied myself after going through the entire length of the order that it qualifies more of a punitive order than one of compulsory retirement simpliciter. The remarks recorded in the order are to the effect that the petitioner has committed “wrong

behaviour” with the Institution. The moment the employer starts talking of a sympathetic view of the termination, then resort cannot be had to the mode of compulsory retirement without conducting an enquiry against the petitioner. There must be an enquiry before dunking the petitioner in the pool of misdemeanour held in accordance with the procedure the Institution is required to follow, and that too in accordance with the provisions of the Haryana Aided Schools (Security of Service) Act, 1971 (for short “the Act”). The petitioner was compulsorily retired on 31st August, 2000 and that started the present litigation.

2. The respondent-School has put in its reply and justified the action on the basis of Section 11 (2) and (4) of the Act which came into force w.e.f. 11th May, 1999 Section 11 (2) (4) reads as follows:-

“11: (2) If Management is of the opinion that it is in public interest to retire an employee for the reasons to be recorded in writing, it shall have the right by giving the employee concerned, a prior notice, in writing, of not less than three months, to retire him on the date on which he completes twenty years of qualifying service or on any other date thereafter to be specified in the notice :

Provided that where three months notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of pay and allowances at the same rate at which he was drawing immediately before the date of retirement for a period of three months or for the period by which such notice falls short of three months as the case may be.

XXX XXX XXX XXX

(4) An employee may, after giving at least three months notice in writing to the Management, retire from service on the date on which he completes twenty years

of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice :
Provided that no employee under suspension shall retire from service except with specific approval of the Director”

3. Section 11 deals with voluntary/compulsory retirement which provision refers to Sections 4 and 8 of the Act.

4. Section 11 (3) prescribes that if the retirement of the employee made under sub section 2 is set aside by a court of law, all pecuniary liabilities consequent thereto from the date of compulsory retirement upto the date of his rejoining the post, shall devolve on the Management. The question remains whether power has been exercised reasonably under Section 11 and in public interest. For this, it would be necessary to take an overview of the entire service record of the petitioner with greater emphasis on the confidential rolls of previous 10 years from the date the impugned action was taken.

5. In paragraph 4 of the written statement, there are 11 entries tabled from 1987 -88 to 1999-2000. The table is reproduced as under:-

Sr.No.	Year	Remarks	Overall Grading
1)	1987-88		Average
2)	1990-91		Good/Average
3)	1991-92		Good/Average
4)	1992-93		Average. Shirks cooperation
5)	1993-94		Average. The work of the teacheress has not been satisfactory in the interest of the school, and neither does she give attention towards examination result.
6)	1994-95		Average. Cooperation is given in the school works with an outward attitude.
7)	1995-96		In this year, 1995-96, there is some improvement in the matter of cooperation. But attitude

			remained totally of shirking nature. Otherwise average.
8)	1996-97		No complete satisfaction in the work of the teachress. Remaining Average.
9)	1997-98		Overall assessment: Average
10)	1998-99		Average.
11)	1999-2000		Average.

6. Even though grading in the confidential rolls may not be impressive, but these have not been taken into consideration while passing the impugned order of compulsory retirement given its extraordinary length, and therefore, the decision to compulsorily retire the petitioner is seriously flawed and has to be set aside on this ground alone. Assuming if it is set aside, then what is it that the Court may do, either to remit the matter back to the respondents to re-do the exercise from the stage where the fault was found as guided by the Supreme Court in Managing Director ECIL, Hyderabad etc. vs. B.Karunakar etc. 1993(4) SCC 737 or to quash the impugned order in its entirety leaving the natural consequences to flow.

7. The State has also put in its written statement which contributes grant-in-aid to the respondent-school. Their stand is that the government has no role to play in the internal affairs of the school. Nevertheless, if action is penal in nature, then the provisions of the Act will be attracted.

8. An argument has been raised by Mr. Amrit Paul, learned counsel for the School which appears on the face of it strange. He submits that if the impugned action is found by this Court to be punitive in nature by way of punishment, then resort could still have been taken by the employer to Section 3 of the Act wherein there are provisions of appeal etc. which have not been availed and therefore the petition is not maintainable on ground of availability of an alternative remedy. Even so, the impugned order

is apparently a hybrid of compulsory retirement and punishment rolled into one, which is rather impossible to separate and disentangle. If it is compulsory retirement then the service record does not justify action. If it is punishment then a regular employee would be necessary guarantee against arbitrary action. If it is both, then what part of it is appealable I dare ask Mr. Paul. It is an unholy cross between a compulsory retirement and an order of dismissal or removal from service. Besides, it is also a case of attaching a stigma on the petitioner which makes it worse. In such circumstances and by looking from all the possible angles this court is of the considered view that the impugned order is wholly illegal and arbitrary and cannot be sustained in the eyes of law and is therefore liable to be set aside.

9. The basic foundation of an order retiring employee compulsorily is held not to be punitive in nature, in view of the law declared by the Constitution Bench of the Supreme Court in Baikuntha Nath Das And Anr vs Chief Distt. Medical Officer, AIR 1992 SC 1020 : 1992 SCR (1) 836. But still, the overall service record has to be taken into consideration by laying greater emphasis on recent confidential rolls spanning the previous 10 years and in case this exercise is not done or reflected in the impugned order, then nothing solid could be said in defence of the action brought to Court for judicial scrutiny of the order impugned. No amount of defence pleadings in the written statement for the first time can breathe life into a dead order. It is well settled that if reasons contained in an administrative order are found unacceptable in law, then the order must fall to the ground and the court cannot supply its own reasoning unlike in a judicial or quasi judicial proceeding.

10. In view of the position explained and the discussion above, I allow this petition and set aside the impugned order dated 25th May, 2000

(Annex P-1). Consequent upon setting aside of the impugned order, the petitioner will be deemed to be in service till she would have reached the age of superannuation had the order not been passed and she would thus become entitled to the monetary benefits accordingly accruing. The monetary benefits representing salary for the period falling between the date of compulsory retirement and the date of superannuation are directed to be determined and paid to the petitioner, after the principal amount calculated would earn interest at the rate of 6% per annum as per rates in the Code of Civil Procedure since the petitioner was wrongfully deprived of the money by an illegal order. The amounts be paid to the petitioner within three months from the date of receipt of a certified copy of this order.

21.10 .2016
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes