

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.16184 of 1998 (O&M)
DATE OF DECISION : 2.6.2016

Sudarshan Kumar Sharma

PETITIONER

VERSUS

State of Punjab and another

RESPONDENTS

CORAM : HON'BLE Mr.JUSTICE MAHESH GROVER
HON'BLE Mr.JUSTICE SUDIP AHLUWALIA

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 ?

Present:- Shri D.S.Patwalia, Senior Advocate with Shri Sehaj Bir Singh,
Advocate for the petitioner.

Shri P.S.Bajwa, Additional Advocate General, Punjab
for respondent No.1/State.

Shri S.S.Kharb, Advocate for respondent No.2.

MAHESH GROVER, J.

The petitioner was compulsorily retired from the post of Additional District & Sessions Judge vide order dated 24.8.1998. The grievance of the petitioner is flowing from an adverse confidential remark recorded by the Inspecting Judge for the year 1996 commenting on his Integrity against which the

petitioner filed a representation on 28.10.1997 which was considered by the same Inspecting Judge and rejected. The remarks were accepted by the Hon'ble Full Court and it was recommended that the petitioner be retired prematurely from service. The petitioner submitted a representation dated 22.8.1998 against the adverse remarks and also against the decision of premature retirement. According to the petitioner, he was informed by the District & Sessions Judge, Ludhiana on 24.8.1998 about the adverse remarks against him which led to the filing of a representation dated 27.8.1998.

The dates are relevant for the petitioner as he pleads that the representation against the adverse remarks was still pending, but a decision to retire him prematurely was taken by the Hon'ble Full Court and this has prejudiced his case to attract the observations of the Hon'ble Supreme Court in **Dev Dutt v. Union of India and others** 2002(2) S.C.C. (L&S) 771 wherein it was observed as under :-

“45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.”

This briefly is the case of the petitioner and the learned counsel representing him with reference to the material on record has stated that the adverse remarks were communicated to the petitioner on 17.8.1998 vide Annexure P-9 against which he submitted a representation on 27.8.1998 and the decision to retire him prematurely was taken by the Hon'ble Full Court on 13.8.1998 and final

decision taken by the Government on 24.8.1998 was endorsed to the petitioner on 1.9.1998.

From the above, learned counsel for the petitioner contends that the impugned order is unsustainable as it has been passed on the basis of adverse comments which were never communicated to him thereby depriving him of the valuable right of making a representation and consideration before an order adverse to him was passed.

The respondents have filed a reply and have also produced before us the original record including the decision of the Hon'ble Full Court.

A perusal of the record shows that the petitioner's case is based on contorted facts and consequently, his grievance also fades into insignificance. We notice that on 30.8.1998, the Inspecting Judge recorded 'C – Integrity Doubtful' remarks and the same was conveyed to the petitioner on 19.9.1997 against which the petitioner made a representation on 28.10.1997 before the very same Inspecting Judge who considered the same and rejected it on 4.2.1998. This decision was also conveyed to the petitioner vide letter dated 6.2.1998 and the Hon'ble Administrative Committee of the High Court in its meeting dated 1.5.1998 considered the adverse remarks against the petitioner but reiterated the same which was then put up before the Hon'ble Full Court and approved on 29.7.1998 on which date the matter for retention in service of the petitioner beyond the age of 55 was also considered but resulted in a decision of premature retirement upon which a recommendation was made to the State Government in accordance with law on 5.8.1998. On 17.8.1998, the remarks were once again conveyed to the petitioner. On 27.8.1998, the petitioner submitted a representation which matter was referred to the Hon'ble Full Court once again. The petitioner also made a representation on 22.8.1998 for expunction of the adverse remarks which was referred to the Hon'ble Full Court along with a representation dated 27.8.1998 and on 15.10.1998

the representations were once again rejected and conveyed to the petitioner on 2.11.1998.

It is the communication from the High Court dated 17.8.1998 regarding adverse remarks and his subsequent representations that the petitioner places reliance upon to argue that the decision to prematurely retire him was taken before his representation was decided. He also states that the remarks were conveyed subsequent to the decision of premature retirement which in itself is a gross illegality.

We have heard the learned counsel for the parties and perused the material on record and notice that there was absolutely no reason for the High Court to have even communicated the adverse remarks to the petitioner once a decision to retire him prematurely had been taken by it and after the remarks stood communicated to the petitioner earlier and the Administrative Committee too had approved it. It was in fact, an exercise in futility to communicate the ACR to the petitioner at that stage.

We also do not agree with the petitioner that this has resulted in prejudice to his case for the simple reason that he was made aware of the adverse remarks on 30.8.1997 against which he filed a representation which was rejected on 19.9.1997 and communicated to the petitioner on 4.2.1998 against which another representation was made by the petitioner on 6.2.1998 and the Hon'ble Administrative Committee also approved on 1.5.1998 that the same be put up before the Hon'ble Full Court which also approved the same to take a decision regarding premature retirement of the petitioner.

The matter was then referred to the Government who passed an appropriate order.

It is clear from the above that the petitioner was made aware of the adverse remarks against him and therefore, in view of the settled proposition of

law that even if there is a violation of the rules of procedure, it does not necessarily nullify a decision unless prejudice is shown. The Hon'ble Supreme Court in **Hitendra Singh Bhupendra Singh and others v. Dr.P.D.Krishi Vidyapeeth by Reg. and others** 2014 A.I.R. (SC) 1635) observed as under :-

“18. The petitioners had unsuccessfully challenged Justice Dhabe Committee Report before the High Court on the ground that principles of natural justice had not been complied with by the Committee. The High Court has noted and in our opinion rightly so that Justice Dhabe Committee had issued notices to each one of the petitioners asking for their explanation which the petitioners had submitted. The High Court noted that the inquiry proceedings before Justice Dhabe had continued for nearly three years during which period the petitioners had made no grievance either before the Committee or before any other forum regarding non-compliance with the principles of natural justice. There is nothing on record to suggest that any point relevant to the controversy was not considered by Justice Dhabe Committee or that there was any impediment in their offering an effective defence before the Committee. The petitioners had on the contrary candidly admitted in the writ petition itself that upon receipt of notices from the Committee they had appeared and filed their respective affidavits before the Committee. Some of the petitioners had even furnished some additional information which was summoned from them. The Committee had, it is evident, associated the petitioners with the proceedings by inviting them to appear and participate in the same, heard the petitioners and considered their version.

There is neither an allegation nor any material to suggest that there was any reluctance or refusal on the part of the Committee to entertain any material which the petitioner intended to place in their defence or to summon any record from any other quarter relevant to the questions being examined by the Committee. The argument that the petitioners did not know as to what the complaint against them was has been rejected by the High Court and quite rightly so. Once the petitioners were informed about the setting up of the Committee and invited to participate in the same and once they had appeared before the Committee and filed their affidavits it is difficult to appreciate the argument that the petitioners did so without knowing as to why was the Committee set up and what was the inquiry all about. Assuming that any of the petitioners did not fully comprehend the nature of allegations being inquired into by the Committee or the purpose of the inquiry nothing prevented the petitioners from taking suitable steps at the appropriate stage assuming that they were so naove as to simply appear before the Committee without being aware of the purpose for which they were invited. They could indeed approach the Committee to secure the relevant information to fully acquaint themselves about the on-going process and the nature of the defences that was open to them. Having remained content with their participation in the inquiry proceedings for nearly three years and having made no grievance at all against the procedure adopted by the Committee in dealing with the subject till the writ petitions

challenging the termination orders were filed, **we see no merit in the specious contention that principles of natural justice were violated by the Committee especially when no prejudice is demonstrably caused to the petitioners on account of the procedure which the Committee followed in concluding the enquiry proceedings.”**

The Hon'ble Supreme Court in **LIC of India v. Hansraj** 2005(9)

Scale 538 observed as under :-

“13. There are situations when order of punishment made in violation of principles of natural justice may still not be set aside, such as :

1. Where no prejudice is caused to the person concerned ;
and
2. The quashing of the order of which violation of natural justice is alleged is likely to result in revival of another order which is in itself illegal.”

The Hon'ble Supreme Court in **State Bank of India v. Boa Penji**

2014(4) S.C.T. 685 observed as under :-

“16. There is no doubt that the Bank must record reasons for a change in the Enquiry Officer – and in this case, it did not do so. But, in the facts and circumstances of this case, in our opinion, the failure to record reasons would not be fatal to the inquiry nor would it be enough reason to vitiate the enquiry against Penji, unless some prejudice has been caused to him. However, nothing by way or prejudice to Penji has been shown either to the High Court or to us. Since no prejudice

has been caused to Penji by the appointment of Nidhir Ranjan Kar as the fresh Enquiry Officer in place of Puntsok Richin, we reject the view of the High Court that the inquiry against Penji was vitiated.”

Consequently, we have no hesitation to hold that since the petitioner was given sufficient opportunity to represent against the adverse remarks, he would have no cause to plead prejudice on the facts advanced by him. That apart, premature retirement is not a punishment and it is always for the employer to evaluate an employee when he attains the milestone of age prescribed by the rules. The High Court was completely within its rights to evaluate the conduct of the petitioner at the age of 55 and finding the adverse remarks regarding integrity of the petitioner recorded by the Inspecting Judge and approved by the Administrative Committee and Hon'ble Full Court, would justify a decision of premature retirement. There are no allegations of mala fides against the Administrative Judge and in any case, the entire decision has met the test of scrutiny by the Administrative Committee comprising of seniormost Judges of the High Court and eventually the Hon'ble Full Court itself.

We thus, do not find any ground to interfere.

Petition is dismissed.

(MAHESH GROVER)
JUDGE

(SUDIP AHLUWALIA)
JUDGE

June 2, 2016
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