

CWP No. 16957 of 1998 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 16957 of 1998 (O/M)
Date of decision : 24.10.2016

Amarjeet Singh Bhatia

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Harinder Sharma, Advocate, for the petitioner.

Mr. Naveen Sheoran, Deputy A.G. Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

The present case has been received by remand on the orders, passed by a Division Bench of this Court on 14.9.2016, vide which the judgment dated 5.8.2015, passed by a coordinate Bench of this Court, dismissing the writ petition, was set aside and the case was ordered to be re-heard.

The petitioner, who was working as a Lecturer of English in Government College, Saffidon, District Jind, has filed the present writ petition, seeking quashing of the order dated 24.9.1998 (Annexure-P-3), vide which the Governor of Haryana prematurely retired him from service in public interest while exercising the powers under Rule 5.32-A(C) of the

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Punjab Civil Services Rules, Volume-II, Part-I. The petitioner also seeks the quashing of adverse reports (Annexures-P-4 to P-9), which includes the order rejecting his representation. The date of birth of the petitioner is 16.2.1946. The petitioner, having obtained the Degree of Master of Arts in English subject, was appointed as a Lecturer in English in Brij Mandal College, Hodal, District Faridabad, on 1.8.1974. The said college was a privately managed Government Aided College. Later on, he was confirmed on the said post. On 16.2.1980, the said college was taken over by the Haryana Government and now it is known as a Government College, Hodal. As per the deed executed between the college authorities and the Government, the petitioner was absorbed in the Government service and his pay was protected and his service was also counted towards pension etc., but no seniority was allowed viz-a-viz the other Government employees of the department. According to the petitioner, he has got good, very good and excellent reports during his career, except for the years 1992-93 and 1993-94, which were malafide spoiled by the then Principal (since retired) as he was biased against the petitioner. In the confidential report for the year 1992-93, against the column of integrity, certain adverse remarks were recorded, which were not regarding the integrity. The petitioner claims that in the year 1990-91 when he was posted as a Lecturer in English in Government College, Saffidon, he applied for a car loan. The Government sanctioned a loan of Rs. 70,000/- to the petitioner for the purchase of a car. The said loan was disbursed to him on 4.12.1991. The petitioner purchased a second hand (1988 model) Premier Padmini Car for Rs. 90,000/-. The required documents, namely, utilization certificate, cash receipt and the registration certificate of the said car were submitted to the Principal,

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Government College, Saffidon, in April, 1992. In August, 1992, the petitioner was transferred to the Government College, Narnaul, where he was informed that the copies of the required documents regarding purchase of car have not been submitted. The petitioner again submitted the copy of the said document and also informed the Principal that he had already done so while being posted in Government College, Saffidon. When the Principal of the Government College, Narnaul, enquired from the Principal of the Government College, Saffidon, he was told that the petitioner had not submitted the documents regarding purchase of new car, but of old car. The petitioner also submitted his request that the loan was sanctioned to him for purchase of an old car and not for a new car as the new car at the relevant time was priced around Rs. 2 lacs, whereas the Government sanctions 3/4th amount of the price of the car to be purchased. Since he was sanctioned an amount of Rs. 70,000/-, he had purchased an old car and submitted the requisite documents. On the insistence of the Principal that the documents of new car be submitted, the petitioner requested that he should be allowed to sell the said car and be also allowed to deposit the entire loan amount with interest. Accordingly, the order was passed by the respondent No. 2 wherein the entire amount was ordered to be deducted from the salary of the petitioner with 4% penal interest over and above the 9% interest. The petitioner was forced to file a civil suit in the Civil Court at Narnaul to obtain the stay order. Now, a sum of Rs. 8,000/9,000 remains outstanding against the petitioner, while the outstanding loan has been repaid. It was stated that the Governor of Haryana was to consider the entire service record. The confidential reports for the years 1992-93 and 1993-94, recorded by the Reporting Officer, were with the ulterior motive and could

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not be sole consideration for premature retiring the petitioner. He further stated that in last three years, he had done excellent work and his result was also excellent. He has furnished following table of his result :-

“Government College, Saffidon

<u>Years</u>	<u>Subject</u>	<u>Classes taught</u>	<u>Percentage of result</u>
1997-98	English	B.A. Part-III	100%
		B.A. Part-I	63%
1996-97	English	B.A. Part-III	97%
		B.A. Part-I	100%

Government College, Gohana

1995-96	English	B.A. Part-I	66.5%
		+1	76.5%”

It was emphasized that he could not be prematurely retired from service and the remarks recorded in the ACRs for the years 1992-93 and 1993-94 are liable to be quashed.

In the written statement, respondents No. 1 and 2 took the plea that a meeting of the Officers' Committee for reviewing the cases for retention of officers/officials in Government service beyond the age of 50/55 years was held on 3.8.1998 under the Chairmanship of Chief Secretary to Government of Haryana. In the said meeting, the case of the petitioner was also considered alongwith summary of the Annual Confidential Report (Annexure-R-II) and, therefore, the Government decided to retire the petitioner from Government service in the public interest. It was stated that Annual Confidential Report for the year 1992-93 was of 'below average' category and ACR for the year 1993-94 was of 'average' category. It was also stated that the petitioner was advanced a loan of Rs. 70,000/- on 7.10.1988 for purchase of a new car, but he purchased an old car and also did not submit the requisite documents to the competent authority within stipulated time. Thereafter, the petitioner prayed for the

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grant of permission to purchase a new car and the same was rejected by the competent authority. The full amount alongwith penal interest and normal interest was ordered by the Government to be recovered from the petitioner in lumpsum and it was also ordered to withhold his salary. The petitioner filed Civil Suit No. 382 of 27.8.1993 in the Court of Sub Judge, Narnaul, which was dismissed as withdrawn on 16.11.1993. The petitioner again filed Civil Suit No. 607 of 94 in the Court of Civil Judge, Junior Division, Narnaul, on 6.3.1994 and the same was also dismissed, vide judgment dated 19.11.1998. The respondents justified the order of premature retirement of the petitioner.

I have heard the learned counsels for the parties and have also carefully gone through the file.

The impugned order dated 24.9.1998 (Annexure-P-3) is reproduced as under :-

“ Whereas, it has been decided by the Governor of Haryana to retire Sh. Amarjeet Singh Bhatia, English Lecturer in Education Department, from Government service in the public interest.

2. Now, therefore, in terms of the provisions contained in the note below Rule 5.32-A(C), of the Punjab Civil Services Rules, Volume-II, Part-I, as is applicable to the employees of the State of Haryana the Governor of Haryana hereby retires Sh. A.S. Bhatia, Lecturer in English from service with effect from the date of communication to him of this order on payment of three months' salary and allowances in lieu of notice as is required under Rule 5.32-A(C), of the Punjab Civil Services Rules, Volume-II.”

Rule 5.32-A(C) of the Punjab Civil Services Rules, Volume-II, Part-I empowers the Government to retire a Government employee after

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giving him notice of not less than three months in writing. The petitioner has been apparently retired on the ground that his service record was not satisfactory.

Now, in order to get a peep into the mind of the Government, it is necessary to examine the resume of the Officers' Committee, which reviewed the retention of officials/officers in Government service beyond the age of 50/55 years, the copy of the memorandum (Annexure-R-II) has been placed on file. The extracts from the said noting (Annexure-R-II), which was considered by the Officers' Committee to retire the petitioner, are reproduced as under :-

“ The confidential record for the last ten years of Sh. A.S. Bhatia lecturer is enclosed and according to it six reports are earned to be good and very good. The Annual Confidential Report for the year 89-90 of this lecturer is not available but the Principal Government College Faridabad has certified that his conduct has been satisfactory and the Annual Confidential Report for the year 1990-91 is 'Average' with adverse remarks also. The annual confidential report for the year 1992-93 is also Below Average and there is adverse remarks also regarding integrity and the annual confidential report for the year 1993-94 is Average and adverse remarks is also there. The adverse remarks in the report for 1990-91 is that the lecturer does not obey the order of the Principal even if asked time and again. The adverse remarks in the Annual Confidential Report for the year 1992-93 are that he made wrong statement regarding his car loan and the income-tax and does not have good relation with the Principal etc. The adverse remarks in the Annual Confidential Report for the year 1993-94 are that relations and conduct with the Principal are not good, low results and improper maintenance of attendance register. The representation given against the adverse remarks in the annual confidential reports for the year 1990-91, 1992-93

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and 1993-94 have been rejected after the due consideration by the Government.”

It goes to show that there are two grounds; first, the low results and improper maintenance of attendance register and the second is the adverse comments in the ACRs for the years 1992-93 and 1993-94 and the 'average' report of the year 1990-91. The petitioner was retired in the year 1998 and the result of the pass percentage, as mentioned by him in his petition, does not show that it was poor result and that the same was constantly poor during the entire career of the petitioner. The lower or poor result for one or the other year is itself no ground to retire an employee from the service. For the purpose of retention of officials/officers in Government service beyond 50/55 years, the entire service record is required to be examined. Now, the extract of noting (Annexure-R-II) would show that it was noted that there are some remarks regarding integrity in the ACR for the year 1992-93. The extracts, from the adverse entry for the year 1992-93, are reproduced as under :-

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|--|--|
| “1. Remarks about integrity : | 1. Made false statement in r/o documents relating to car loan.
2. Tried to conceal an income tax deduction of the amount of Rs. 3000/- by filling wrong income statement.
3. Did not maintain the attendance register of the class taught by him. Hence he can not be relied upon. |
| 2. Relation with the Principal/Colleagues : | Disrespectful. Acrimonious and challenging. |
| 3. Whether the Lecturer participated in or in or instigated any strike in the College. | He tries to make gang with other few teachers to pressurize humiliate the College Administration. |

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4. Overall assessment : Below Average (E)”

The adverse remarks recorded in the report for the year 1993-94 are also reproduced as under :-

“1. Relation with the Principal : Not respectful

- (i) On 11.8.93, he came late in the college. At 12.45 he objected for putting a sign interrogation in his attendance column in the morning session for which he misbehaved and quarreled in the office.
- (ii) Results are poor as shown.
- (iii) Attendance register maintained by him for his class which seems that it has been casually prepared.

2. Over-all assessment : Average”

Now, when the 'integrity column' of ACR for the year 1992-93 is examined, it is recorded that a false statement was made regarding documents of a car loan. I am of the view that obtaining of car loan has nothing to do with the integrity. The petitioner had purchased an old car, whereas the Government had claimed that it had granted the loan for a new car. I think that it was not that big issue, which should be blown out of proportion and the Government could easily settle it by converting the said car loan into a car loan for purchase of an old car and only on this ground, the integrity of the petitioner cannot be said to be doubtful. The other two grounds are that the petitioner tried to conceal the income tax deduction and that he was not maintaining the attendance register of the class taught by him. I think, all these allegations in column No. 1 could be subject matter of inquiry, if the department so desires, so that the petitioner get the opportunity to prove that these allegations are incorrect. These grounds

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cannot be made the basis for retiring the petitioner prematurely from service.

In column No. 2, the reporting authority i.e. Principal has reported that the petitioner is a 'disrespectful, acrimonious and challenging person'. This Court fails to understand as to what kind of respect the Principal was expecting from his subordinates Lecturers and in which matter the petitioner had challenged the Principal. It is possible that the petitioner might not be indulging in the act of sycophancy towards the Principal and, therefore, he (Principal) might have got the impression that he (petitioner) is a disrespectful person. No particular act of disrespect has been mentioned. It is further stated that the petitioner had tried to make gang with other teachers to humiliate the college administration. No such specific act has been mentioned. If the petitioner wanted to make some demand from the college administration, that could not be made a ground to throw him out being inconvenient employee. The college authorities should have been satisfied if the petitioner is a good teacher and teaching his students well, in place of indulging in the act of sycophancy. Therefore, the adverse remarks in the ACR for the year 1992-93 could not be made the basis to hold that the overall service record of the petitioner was not satisfactory as in this report, he was graded 'below average'. I am of the view that this report of 'below average' category has to be quashed and in view of the observations made above, this is required to be treated as 'satisfactory' report/grade. Consequently, the order dated 4.10.1995 (Annexure-P-6), rejecting the representation for expunging the adverse remarks contained in ACR for the year 1992-93, is also hereby quashed.

Coming to the adverse remarks in the ACR for the year 1993-

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94 regarding relations with the Principal, it is stated that on one date, the petitioner came late, for which he could have been proceeded departmentally or he could have been asked to apply for leave. The other ground is that the results are poor. The third ground is that the attendance register is not maintained by the petitioner for his class, which seems to have been casually prepared. The overall assessment was 'average'. However, if the proper attendance register was not maintained, it could be a subject of departmental proceeding.

The petitioner had joined the service in the year 1974 and except for these two reports, there was no adverse entries and one report for the year 1990-91 was 'average' without adverse remarks. The chart of the ACRs produced on file shows that during his entire service, there are only three entries, which could be questionable. For the year 1990-91, his report was 'average', stating that he had not submitted the ACRs. The entries for the years 1992-93 and 1993-94 have been discussed above. Thereafter, for the subsequent year 1994-95, the ACR was 'good' and for the year 1995-96, it was 'very good'. In this way, the last two ACRs were 'good' and 'very good'. Therefore, it cannot be said that the overall service record of the petitioner was not satisfactory. The ACRs have already been discussed above. Even if some poor result is shown for one or two years, it could not be made the ground to retire the petitioner prematurely from service, particularly when he had improved in the coming two years. The perusal of the impugned order alongwith noting shows that the order was stigmatic in nature. There were allegations against the petitioner, for which the department has to establish these allegations. Without establishing the charges, no action could be taken against the petitioner.

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In similar circumstances, when the order was found to be stigmatic and punitive, the Constitutional Bench of the Hon'ble Supreme Court of India in State of U.P. Versus Madan Mohan Nagar, 1967 AIR (SC) 1260 held that before passing such order, inquiry under Article 311 (2) is necessary and dismissed the appeal filed by the State. The similar view was reiterated by the Apex Court in R.K. Panjetha Versus Haryana Vidyut Prasaran Nigam Ltd., 2002 (10) SCC 590, and set aside the order of compulsory retirement.

The learned State counsel contends that previously, the petitioner has filed Civil Suit No. 382 of 27.8.1993 in the Court of Sub Judge, Narnaul, and the Civil Suit No. 607 of 94 in the Court of Civil Judge, Junior Division, Narnaul. The copies of the said civil suits and judgments have not been placed on file. However, it comes out that these civil suits were filed before the passing of order of premature retirement dated 24.9.1998 and the same were regarding different controversy. The first civil suit was regarding the car loan. The impugned order, retiring the petitioner from service prematurely, was not the subject matter of the previous civil suits. Therefore, the decisions in the said civil suits have no bearing on the merits of the present controversy.

The net result would be that the adverse report in the ACRs for the years 1992-93 and 1993-94 are to be treated as 'satisfactory' and the order rejecting his representations stand quashed. The impugned order dated 24.9.1998 (Annexure-P-3), retiring the petitioner from service prematurely also stands quashed. Since the petitioner has already attained the age of superannuation and he was wrongly retired prematurely from service, therefore, the petitioner shall be entitled to full salary and all retiral

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benefits including the arrears with effect from the date of his premature retirement till the date of superannuation with interest at the rate of 8% per annum.

The present writ petition is accordingly allowed.

(KULDIP SINGH)
JUDGE

24.10.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes