

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.264 of 1989

Date of Decision:-21.12.2016.

Karta Ram

.....Petitioner

Versus

Haryana State Electricity Board

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. D.C. Dhaula, Advocate for the appellant.

Mr. D.S. Nalwa, Advocate for the respondent.

P.B. BAJANTHRI, J. (Oral)

1.) Appellant in the present appeal has questioned, the validity of the order of the Appellate Court dated 8.9.1987 passed in Civil Appeal No.26 of 1987.

2.) The appellant while working as a Foreman in the respondent Board, he was retired compulsorily under Rule 3.26-A read with 5.32-A of the Punjab Civil Services Volume-II read with the instructions dated 16.8.1983.

3.) The respondent Board would invoke the above provisions to the employees to find out the suitability whether to continue beyond the age of 55 years. The respondents have examined the case of the appellant with reference to Annual Confidential Reports and found that appellant did not satisfy for his continuation in service beyond 55 years. Thus, the appellant has been retired compulsorily on 21.8.1986. The appellant filed a suit before the Trial Court on 20.8.1986 i.e. one day prior to retiring him compulsorily. In the suit he has sought for declaration that his services

should be continued beyond age of 55 years having regard to the service records. The Trial Court decreed the suit on 21.3.1987. Respondents Board feeling aggrieved by the order of the Trial Court dated 21.3.1987 preferred an appeal before the Appellate Court. The Appellate Court reversed the order of the Trial Court on 8.9.1987 while taking note of the fact that the appellant has been retired compulsorily on 21.8.1986. The same has not been questioned or challenged before the appropriate forum. That apart the service records of the appellant has been taken note of. Thus, the appellant has presented this Regular Second Appeal.

4.) Learned counsel for the appellant submitted that the Appellate Court has erred in reversing the order of the Trial Court for the reasons that Trial Court decreed the suit based on the service records. Such declaration is with reference to the prayer made in the suit and the suit was filed on 20.8.1986 whereas the order of compulsory retirement is dated 21.8.1986. When there is a declaration by the Trial Court, the appellant need not question the order of compulsory retirement. Thus, the Appellate Court has erred in reversing the order of the Trial Court.

5.) On the other hand, learned counsel for the respondent submitted that the appellant has not questioned the validity of the order of compulsory retirement dated 21.8.1986. Therefore, rightly, the Appellate Court has interfered with the Trial Court order and reversed the same. It was further contended that the Trial Court proceeded to pass orders on the ground that four Annual Confidential Reports have not been communicated. The same has been taken into consideration by the respondent-Board. Thus, the Appellate Court while appreciating the service record of the appellant

that he is entitled to continue in service beyond the age of 55 years.

6.) Heard learned counsel for the parties.

7.) Question for consideration in the present appeal is whether the appellant in not challenging the compulsory retirement order dated 21.8.2016 by which he has been retired compulsorily under Rule 3.26-A read with 5.32-A of Punjab Civil Services Rules, Volume-II would entitle the appellant for continuation in service beyond the age of 55 years or not. Admittedly, the respondent Board has retired the appellant compulsorily on 21.8.1986 invoking Rule 3.26 and 5.32-A of the Punjab Civil Services Rules, Volume-II. The same has not been challenged as long as 21.8.1986 order is intact. Question of obtaining declaration from the Trial Court that appellant is entitled to be in service beyond age of 55 years is without authority of law since the respondent-Board has invoked statutory provision for retiring compulsorily which has attained finality since the appellant has failed to question the order of compulsory retirement dated 21.8.1986 and the fact that appellant's four Annual Confidential Reports are not up to the mark. Therefore, there is no infirmity in the Appellate Court order dated 8.9.1987. The appellant has not made out a case so as to interfere with the Appellate Court order.

8.) Appeal stands dismissed.

(P.B. BAJANTHRI)
JUDGE

December 21, 2016.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.