

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 20591 of 2011

Date of decision : March 10, 2016

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Bhale Ram

.....Petitioner

Versus

The State of Haryana and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. C.M Chopra, Advocate for the petitioner.

Mr. Keshav Gupta, AAG, Haryana.

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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?*

RITU BAHRI, J

The petitioner is seeking quashing of the order dated 12.10.2010 (Annexure P-3), vide which he had been prematurely retired from service w.e.f 19.10.2010 after attaining the age of 56 years.

The petitioner was appointed as Conductor in Haryana Roadways on 15.1.1976 and his services were regularized on 11.9.1976. The petitioner completed 55 years on 7.8.2009 and was to retire on 7.8.2012. The grievance of the petitioner is that he was

allowed to work after the age of 55 years but later on ordered to be retired at the age of 56 years on the direction given by the higher authorities without application of mind by the General Manager, Haryana Roadways.

Mr. C.M Chopra, counsel for the petitioner has referred to instructions dated 16.8.1983 (Annexure P-4). As per these instructions, to retain an employee in service after 55 years, his last 10 years confidential reports are to be seen and out of which 70% reports should be good. In the present case, the respondents have taken into consideration the ACR for the year 1999-2000 (Annexure P-5) wherein his integrity was doubted and on the basis of which the impugned order of premature retirement dated 12.10.2010 has been passed. Counsel for the petitioner submits that the respondents should have considered the reports from the period 2000-2001 onwards, wherein integrity of the petitioner has not been doubted. The petitioner had never been conveyed any adverse remarks in these reports. As per the Haryana Government Instructions (Annexure P-4) ACR prior to the period 2000-01 would not be significant for consideration of the case of the petitioner for premature retirement. Even if the overall record of an employee has to be taken into consideration, the entries beyond 10 years have to be ignored. While referring to the ACR (Annexure P-5), wherein integrity of the petitioner has been doubted and overall grading is 'Average', he has referred to the Division Bench judgment of this Court in **CWP No. 1984 of 1987** titled, '**Faquir Chand Aggarwal vs.**

State of Haryana' decided on 21.1.1988 (Annexure P-7) to contend that *when the integrity of a person is doubted then the overall report should have been 'below Average'*.

In the written statement filed on behalf of the respondents, it has been stated that as per Rules and Instructions dated 19.11.1991 issued by the Haryana Govt. the extension in service after crossing the age of 55 years has to be given to those employees who must have earned at least 50%, 70% good or above ACR's reports during the last ten years and there is no entry regarding doubtful integrity during this period. The copy of these instructions has been annexed as **Annexure R-1**. In the ACR of the petitioner for the year 1999-2000 entry of '*integrity doubtful*' has been recorded. It was further submitted that after completion of 55 years age of the petitioner on 7.8.2009, record of the petitioner was considered and case was sent to Head of the Department. The Transport Commissioner, Haryana, Chandigarh vide its letter dated 9.11.2009 and 25.2.2010 had directed not to retire the petitioner till the decision of appeal filed by the petitioner in regard with the ACR for the year 1999-2000. This appeal was dismissed vide order dated 11.6.2010 by the Director General, State Transport, Haryana, Chandigarh and directed vide letter dated 29.6.2010 to the respondents that the petitioner is not entitled for extension after completion of 55 years of age. After giving a notice of three months to the petitioner and getting his reply, he was retired from service w.e.f 19.10.2010.

In compliance of the order of this Court dated 29.11.2013, an affidavit of the General Manager, Haryana Roadways, Hissar dated 7.3.2014 has been filed explaining that figures 60/- and 10/- were recorded in the integrity column of the ACR of the petitioner for the year 1999-2000. Sh. Jagbir Singh, the then Traffic manager, Harayna Roadways, Hisar in the capacity of Reporting Authority recorded the above mentioned figures of 60/- and 10/- on the basis of reports regarding embezzlement of Government money of above mentioned amount by the petitioner. On 26.6.1999, petitioner was on duty on Sirsa-Jaipur route and bus was inspected by the inspecting staff. It was found that the petitioner had received the full amount of Rs.10/- of bus fare from one passenger without issuing a ticket to him. On receipt of embezzlement report (Annexure A-1), the then General Manager, Haryana Roadways, Hisar issued recovery order (Annexure A-2) of Rs.500/- against the petitioner. The Traffic Manager recorded the figure of Rs.10/- in the integrity column of the ACR of the petitioner for the year 1999-2000 on the basis of the above mentioned embezzlement report against the petitioner. Thereafter on 21.7.1989, the petitioner, Bhale Ram, Conductor No.137 was on duty on Jaipur-Hisar route. The bus was inspected by the Inspecting Staff at Village Chomu. At the time of inspection, it was found that the petitioner had received the amount of Rs.60/- from three passengers in the bus without issuing tickets to them. On the basis of embezzlement report (Annexure A-3), a charge sheet under Rule-7 was issued against the petitioner. Sh. Manoj Kumar,

the then General Manager, Haryana Roadways, Hisar imposed the penalty of stoppage of one annual increment without cumulative effect on the petitioner vide order Annexure A-4. The then Traffic Manager recorded the figure of 60/- in the integrity column of the ACR of the petitioner for the year 1999-2000.

I have heard counsel for the parties at length and carefully gone through the contents of the writ petition and the written statement filed on behalf of the respondents. The petitioner's case was rightly proceeded by the respondents for premature retirement after crossing the age of 55 years on 7.8.2009. However, since the appeal of the petitioner against his adverse ACR for the year 1999-2000 was pending, the Transport Commissioner, Haryana, Chandigarh directed not to retire the petitioner till the decision of the appeal. The argument of the counsel for the petitioner that the entry prior to 2000-01 cannot be taken into consideration as it was beyond a period of ten years is liable to be rejected. The petitioner has crossed the age of 55 years on 7.08.2009 and for all intents and purposes, his entry of 'doubtful integrity' in the ACR for the year 1999-2000 had to be taken into consideration as per the Instructions (Annexure R-1) dated 19.11.1991. The relevant portion of these instructions have been reproduced as under:

"The provisions contained in 3.26

(d), commonly referred to as the rule of premature retirement is based on sound policy and in public interest. Judicial pronouncements have also

accepted the fact that such compulsory/premature retirement is not a punishment nor does it invoke a stain or stigma and its provisions in the rules is necessary in public interest. The higher the level reached by a Govt. servant, the higher will be the responsibilities entrusted to him and hence higher will be expectation of Govt. that these responsibilities are discharged with exemplary competence, efficiency and effectiveness. It is with a view to assessing whether such expectations are being fulfilled or not that a procedure for reviewing the performance of Govt. servants, who have attained the age of 50/55 years or have rendered 30 years qualifying service; has been laid down for the retirement of those Govt. servants who do not fulfill this expectation, it is essential that employee must have earned at least 50%, 70% good or above reports during the last 10 years, as the case may be and there is no entry regarding doubtful integrity during this period.

The procedure for review of cases of compulsory/premature retirement has been laid down in Haryana Govt. letter No.5846-4GSI-74/27662 dated 22.11.74 and No.3575-4GSI-75/24237, dated 9.8.1975 letter No. 32/10/89GSI

dated 9.1.1989 and letter No.321179189-4GSI dated 21.2.1990. It is therefore, requested that the cases of compulsory/premature retirement at the age of 50/55 years may be examined in the light of these instructions.”

A perusal of the above Instructions shows that there should not be any adverse entry regarding his honesty in the last 10 years. In the case of the petitioner, his integrity was doubted in the ACR for the year 1999-2000 (Annexure P-5) and hence his case was initiated for premature retirement on 7.8.2009. However, it was kept pending only to await the decision of the appeal which was filed in regard to the adverse entry in the ACR for the year 1999-2000. Once his appeal was dismissed on 11.6.2010, he was retired from service w.e.f 19.10.2010. The respondents have further explained in their affidavit that he had been punished on account of embezzlement on two occasions first with regard to the incident that occurred on 26.6.1999 and second with regard to the incident which occurred on 21.7.1999. The embezzlement reports and recovery orders would be sufficient material to enable the respondents to come to a conclusion that he was a deadwood and there was no need to retain him service after crossing the age of 55 years. *An order of compulsory retirement is not a punishment and does not imply stigma* as has

been held by Hon'ble the Supreme Court in various judgments.

Having regard to the aforesaid, there is no merit in the present petition. The same is hereby dismissed.

March 10, 2016
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(RITU BAHRI)
JUDGE