IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 25001 of 2014
Date of Decision : 20.10.2016

Harpreet Singh ....Petitioner

vs.

State of Punjab and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Gurminder Singh, Sr. Advocate with
Mr. R.P.S. Bara, Advocate, for the petitioner.

Mr. Vinod S. Bhardwaj, Addl. A.G., Punjab.

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DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of Certiorari for quashing of impugned order dated 22.10.2014 (Annexure P-19) whereby the petitioner has been compulsorily retired. A further prayer has also been made for issuance of a direction to respondents to reinstate the petitioner to the post of Excise and Taxation Officer with all consequential benefits.

Briefly, the facts of the case, as made made out in the present petition, are that while working as Excise and Taxation Officer, the petitioner was compulsorily retired vide impugned order dated 22.10.2014 (Annexure P-19) during pendency of the departmental inquiries and without even waiting for its outcome. It is mentioned in the impugned order that charge-sheet was issued to the petitioner to which he filed reply and thereafter, a regular inquiry was going on. It has also been mentioned therein that out of all his Annual Confidential Reports (ACRs), adverse remarks were recorded only in ACR for the year 2011-2012, which were duly conveyed to the petitioner and after considering the relevant record, it was decided to retire the petitioner compulsorily in view of provisions of Rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975 (hereinafter referred to as 'the Rules, 1975') as well as instructions dated 26.9.1975 issued by the Government.

The impugned order of compulsory retirement has been challenged by raising various grounds. Learned counsel for the petitioner submits that incomplete departmental inquiry and un-communicated ACRs have been taken into consideration while passing the impugned order of compulsory retirement. Out of total 25 ACRs, only one ACR for the year 2011-2012 was treated as adverse and the same was communicated to the petitioner. Learned counsel also submits that the petitioner has even sent a statutory representation dated 28.02.2013 against the recording of adverse remarks in the ACR for the year 2011-2012 but the same was not decided. Even in the vigilance inquiry, challan was not presented but a cancellation report was filed by the Vigilance Department before the Competent Court and same was accepted. Learned counsel also submits that the past service record of the petitioner has remained good since the year 1988 and he was exonerated of all the charges levelled in the first charge-sheet dated 17.12.2012 by the Inquiry Officer vide report dated 8.9.2014. The second charge-sheet was issued on 19.12.2013 and nothing was done in spite of changing of three Inquiry Officers. Learned counsel also submits that a Committee was constituted under the Chairmanship of Financial Commissioner (Taxation), Punjab to consider the service record of Class A and B Officers in the State of Punjab, for compulsory retirement on completion of their 15, 20, 25, 30 and 35 years of service. The service record of 190 officers was considered but only the names of four officers including the petitioner were recommended for compulsory retirement. One Ms. Urvashi Goel, out of four officers, who were compulsorily retired, challenged the order of her compulsory retirement by way of filing CWP No. 23287 of 2014, which is pending consideration before this Court and the order of compulsory retirement has been stayed vide interim order dated 4.12.2014. Learned counsel further submits that the service record of the petitioner is on better footings vis.-a-vis. the service record of Ms. Urvashi Goel. It has been provided under Rule 3(1)(a) of the Rules, 1975, that the appropriate authority has an absolute right to compulsorily retire an employee on completion of 25 years of qualifying service or on attaining of 50 years of age. It also provides that it can only be done by giving three months' prior notice to the concerned employee or on payment of three months' salary in lieu thereof. Said rules were amended vide notification dated 5.9.2014 and are called 'The Punjab Civil Services (Premature Retirement) First Amendment Rules, 2014' whereby 25 years of service in Rule 3(1)(a) has been substituted to 15, 20, 25, 30 and 35 years of service. Learned counsel has also relied upon judgments of Hon'ble the Apex Court in **State of Gujarat vs. Umedbhai M. Patel,** 2001 (3) SCC 314, **M.S. Bindra vs. Union of India,** 1998 (7) SCC 310, **Dev Dutt vs. Union of India and others,** 2008 (8) SCC 725, **State of Gujarat and another vs. Surya Kant Chunni lal Shah,** 1999 (1) SCC 529, **H.C. of Punjab and Haryana vs. Ishwar Chander Jain and another,** 1999 (4) SCC 579,

Pawan N. Chandra vs. Rajasthan High Court and another, 2009 (17) SCC 770 as well as judgments of this Court rendered in **Jatinder Pal Singh vs. High Court of Punjab and Haryana,** 2005 (4) SCT 1 (HC DB), **Gurmail Singh vs. State of Haryana and others,** 2002 (4) SCT 718 (HC DB), **Ranbir Singh vs. State of Haryana and others,** passed in CWP No. 8403 of 2006, decided on 24.12.2008 and **Brij Mohan Singh Chopra vs. State of Punjab,** 1987 (2) SCC 188 in support of his contentions.

Learned counsel for the respondents-State opposes the submissions made by learned counsel for the petitioner and submits that not only the adverse remarks were recorded in the ACR for the year 2011-2012 but the petitioner was caught red handed while accepting bribe by the team of Vigilance Department when he was posted as an Excise and Taxation Officer at Amritsar. A case was also registered against him at the Vigilance Bureau, Amritsar, in which he was arrested and remained in custody for more than 48 hours due to which he was placed under suspension on 19.7.2004 w.e.f. 21.6.2004. Even in the ACR of the petitioner for the year 2011-2012, the honesty was mentioned of "Medial Level" along with certain adverse remarks stating that the Officer has always expressed false excuses for the work assigned to him and he did not take initiative of work rather is an opportunist. It was also recorded that an improvement is required in the capacity of doing hard work along with training. The representation filed by the petitioner was rejected and the same was conveyed to him. Learned State counsel also submits that after observing the overall assessment of the work and conduct of the petitioner, adverse remarks as well as the allegations of accepting bribe by the petitioner, he was compulsorily retired vide order dated 22.10.2014. Learned counsel has relied upon judgments of Hon'ble the Apex Court rendered in **Baikuntha Nath Das vs. Chief District Medical Officer, Baripada,** 1992 (2) SCT 92, **Union of India and others vs. P. Gunasekaran,** (2015) 2 Supreme Court Cases 610 and **Rajasthan State Road Transport Corporation and others vs. Babu Lal Jangir,** (2013) 10 Supreme Court Cases 551 in support of his contentions.

Heard arguments of learned counsel for the petitioner as well as learned counsel for the respondents-State and also perused the impugned order as well as the other documents available on the file.

The petitioner initially joined the respondents-Department as Taxation Inspector on 23.8.1988. Subsequently, he was promoted to the post of Excise and Taxation Officer vide order dated 16.10.2002. It is also not disputed that FIR No. 35 dated 21.6.2004 was registered against the petitioner by Vigilance Department at Amritsar and he was placed under suspension as he remained in custody for more than 48 hours but subsequently un-traced report was filed on 23.4.2005 and he was reinstated subject to decision of criminal case. Thereafter, Court accepted the cancellation report filed on 3.1.2006 and it was decided by the Department to treat the suspension period of the petitioner w.e.f. 21.06.2004 to 08.06.2005 as duty period. It is also not disputed that the petitioner was assessed as average in the ACR recorded for the year 2011-2012 and said ACR recorded was also conveyed to him. Although the reply was filed by the petitioner but the same was not considered. The petitioner was issued first charge-sheet vide letter dated 17.12.2012 to which he filed reply. After conducting of departmental inquiry, the petitioner was exonerated by the Inquiry Officer and was asked to submit comments in relation to second charge-sheet.

While passing impugned order dated 22.10.2014, it has been mentioned that as per decision by the Committee constituted under the Chairmanship of Financial Commissioner (Taxation), the cases of 190 officers/officials were reviewed and their entire service record was considered. During scrutiny, not only the ACR of the petitioner for the year 2011-2012 was considered but the ACRs for the years 1988-89 to 2012-2013 as well as four ACRs for the years 1990-1991, 1994-1995, 2000-2001 and 2011 -2012, which were of average grade, were also taken into consideration regarding his honesty/integrity. Thereafter, an order of premature retirement was passed which has been challenged before this Court.

It has been a settled principle in various judgments of this Court as well as judgments of Hon'ble the Apex Court that compulsory/premature retirement is not a punishment as it does not leave any stain or stigma. Rule 3.26 (a) and (d) of CSR Vol. I Part I provides that every government employee shall retire from service on the last date of the month on attaining the age of 58 years. An Exception to this Rule has also been provided in sub-clause 9(d) under which the appointing Authority has an absolute right in case, it is in the public interest, other than class IV employee and that too by giving him a notice in writing of not less than three months or three months' pay in lieu thereof. The Punishing Authority has a right to review the work and conduct of the employee and total service record of the concerned employee is to be taken into consideration before taking a decision in the matter- of course attaching more importance to record and performance during the service period. The service record includes entries in the confidential records/character rolls, both favourable and adverse. The order, as such, is to be passed on the basis of subjective satisfaction by the Competent Authority on forming an opinion that it is not in public interest to keep the government employee in service or to retire him compulsorily. It is also not disputed that principles of natural justice have to be adopted and the order is not to be passed in an arbitrary manner without forming an opinion by considering the total service record. No doubt, judicial scrutiny is also permissible while granting premature compulsory retirement and in case the order is arbitrary or mala fide or is based on no evidence, then reasons are necessary to be recorded.

Undisputedly, the State Government has an absolute right to retire the petitioner in public interest but such an opinion is to be based on subjective satisfaction and performance of the petitioner or concerned employee during his entire service record and especially the record of last 10 years before the date of passing of order of compulsory retirement. It is not disputed that sometimes un-communicated service record can also be taken into consideration. In judgment of **Baikuntha Nath Das's case** (supra), the Hon'ble Apex Court has also observed that interference is permissible but only in case the order passed is mala fide or is based on no evidence or found to be perverse. Same view was taken by Hon'ble the Apex Court in cases **Union of India vs. Ajoy Kumar Patnaik,** 1995 (4) SCT 692 (SC) as well as in **Chandra Saikia Vs. State of Assam** (2003) 4

SCC 50. Similarly, in cases of **Jarnail Singh vs. State of Haryana, 2007 (1) SCT 492, Baikuntha Nath Das's case (supra)** and **Chandra Saikia's case (supra)**, it was held that communication of adverse remarks is not necessary while considering the case for retention of an employee in service beyond 50/55 years of age. In the present case also, the case of the petitioner was reviewed and he was not found to be useful in larger public interest and the impugned order of compulsory retirement was passed. As per judgment in **Baikuntha Nath Das's case (supra)**, the order of compulsory retirement is not a punishment and it implies no stigma. Only an opinion is to be formed which is in the public interest to retire a Government servant compulsorily and the order is passed on the subjective satisfaction of the Competent Authority. The review Committee is to consider the entire record of the concerned employee before taking a decision in the matter.

"What is public Interest?" was explained by the Hon'ble Apex Court in case of **Union of India vs. Col. J.N. Sinha and another,** 1970 (2) SCC 458 wherein it was held that the objective of premature retirement of a government servant was to weed out the inefficient, corrupt, dishonest employees from government service. In **Suryakant Chunilal Shah's** case (supra), the observations made by Hon'ble the Apex Court in para Nos. 11 to 17 are as under:-

> "11. What is 'public interest' was explained in the classic decision of this Court in **Union of India vs. Col. J.N. Sinha and another, 1970 (2) SCC 458.** It was pointed out that the object of premature retirement of a Govt. servant was to weed out the inefficient, corrupt, dishonest employees from the Govt.

service. The public interest in relation to public administration means that only honest and efficient persons are to be retained in service while the services of the dishonest or the corrupt or who are almost dead-wood, are to be dispensed with. The Court observed:

> "Compulsory retirement involves no civil consequences. The aforementioned rule 56(j) is not intended for taking any penal action against the government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with, the appropriate authority while exercising the power conferred under the rule. In some cases, the government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in government organizations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the

interests of the public. 'While a minimum service is guaranteed to the government servant, the government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest........

> "It is true that a compulsory retirement is bound to have some adverse effect on the government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired government servant does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment.
>
> In our opinion the high Court erred in thinking that the compulsory retirement involves civil consequences."

12. This was also the view of this Court in **H.C. Gargi v. State of Haryana, 1986 (4) SCC 158.**

13. In **Gian Singh Mann v. High Court of Punjab and Haryana and another, 1980 (4) SCC 266,** it was pointed out that "the expression 'public interest' in the context of premature retirement has a well settled meaning. It refers to cases where the interests of public

administration require the retirement of a Government servant who with the passage of years has prematurely ceased to possess the standard of efficiency competency and utility called for by the Government service to which he belongs."

14. In **Kailash Chandra Aggarwal v. State of M.P. and another, 1987 (3) SCC 513,** it was pointed out that the order of compulsory retirement, if taken in public interest, could not be treated as a major punishment and that Article 311(2) of the Constitution could not be invoked, as the employee concerned was no longer fit in public interest to continue in service and, therefore, he was compulsorily retired.

15. In **Union of India vs. M.E. Reddy and another, 1980 (2) SCC 15,** it was pointed out that the object of compulsory retirement was to weed out the dead-wood in order to maintain a high standard of efficiency and initiative in service. Rule 16(3) of the All India (Death-cum-Retirement) Rules, 1958, empowered the Govt. to compulsorily retire officers of doubtful integrity. The safety valve of public interest was the most powerful and the strongest safeguard against any abuse or colourable exercise of power under that rule.

16. A three Judge Bench of this Court in **Baikuntha Nath Das and another v. Chief District Medical**

Officer, Baripada and another, 1992 (2) SCT 92 (SC): 1992(2) SCC 299, laid down the following five principles :

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) *mala fide* or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

17. This decision was reiterated by another three Judge Bench of this Court in **<u>Posts & Telegraphs Board and others v. C.S.N. Murthy, 1992 (2) SCC 317 : 1992(2) SCT 325 (SC),</u>** in which it was laid down as under :

"An order of compulsory retirement is not an order of punishment. F.R. 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service, if in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, *if arrived at bnonafide and on the basis of material available on the record."*

(emphasis supplied)

18. In **<u>K. Kandaswamy v. Union of India, 1995 (6)</u>**

SCC 162: 1995 (4) SCT 567 (SC), Apex Court observed as under :-

> "While exercising the power under Rule 56(j) of the Fundamental Rules, the appropriate authority has to weigh several circumstances in arriving at the conclusion that the employee requires to be compulsorily retired in public interest. The Government is given power to energies its machinery by weeding out dead wood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them for service. When the appropriate authority forms bona fide opinion that compulsory retirement of the government employee is in the public interest,court would not interfere with the order."

19. The Court, however, added that the opinion must be based on the material on record otherwise it would amount to arbitrary or colorable exercise of power. It was also held that the decision to compulsorily retire an employee can, therefore, be challenged on the ground that requisite opinion was based on no evidence or had not been formed or the decision was based on collateral grounds or that it was an arbitrary decision.

20. In. **S.R. Venkataraman vs. Union of India. (1979) 2 SCC 491**, it was held the order of compulsory retirement as a gross abuse of power as there was nothing on the record to justify and support the order.

21. **In Baldeo Raj Chaddha vs. Union of India, (1980) 4 SCC 321**, it was held that although the purpose of Rule 56 was to weed out worthless employees without punitive extremes, if, under the guise of "public interest", an order of premature retirement is made for any other purpose, it would be the surest menace to public interest and the order must fail for unreasonableness, arbitrariness and "disguised dismissal".

22. Baikuntha Nath's case (supra) was considered by this Court in **M.S. Bindra vs. Union of India & Ors. JT 1998 (6) SC 34 : 1998 (4) SCT 325 (SC)** and it was laid down as under:

> "Judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the conext of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion the same can be obviated on the assumption that other materials alone need be looked into."

It was further observed as under :

> "While viewing this case from the next angle for judicial scrutiny, i.e. want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that form the available materials no reasonable man would reach such a conclusion. In order, therefore, to find out whether any Govt. servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that Govt. servant has to be taken before deciding, after he has attained the age of 50 years, either to retain him further in service or to dispense with his services in public interest, by giving him three months' notice or pay in lieu thereof.

In judgment of Hon'ble the Apex Court in case of **Rajasthan State TPT Corporation and another vs. Bajrang Lal, 2014 (2) SCT (620)** by following judgment of case **Municipal Committee, Bahadurgarh vs. Krishna Bihari and others,** 1996 (2) SCT 508, it was held that in cases involving corruption, there cannot be any other punishment than dismissal from service. It has also been held that any sympathy shown in such cases is totally uncalled for and contrary to public interest. By considering the total service record and the allegations levelled against him during his service record, it cannot be said that his service record was clean. While passing impugned order, the entire service record has been scrutinized and taken into consideration including the ACRs.

In the case in hand, while passing the order retiring the petitioner compulsorily, the material with regard to utility outlived by petitioner or retiring the petitioner for not performing his duty in an effective manner and by considering the allegations of acceptance of bribe and in not maintaining an efficient administration or an objective view of overall performance has been taken into consideration.

Accordingly, the impugned order of compulsory retirement does not require any interference by this Court and as such the present petition being devoid of any merit is dismissed.

October 20, 2016 **(DAYA CHAUDHARY)**
poonam **JUDGE**

Whether Reportable **Yes/No**

Whether speaking/reasoned **Yes/No**