

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 26126 of 2016

Date of decision: 16.12.2016

SI Nanak Singh

... Petitioner

Versus

State of Haryana & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sunil K. Nehra, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

Relies on case in ASI Krishan Singh v. State of Haryana & ors., (CWP NO.8138 of 2012), decided on January 15, 2014, which has been upheld in the Supreme Court. This confirms Mr. Nehra's argument that Rule 9.18(2) of the Punjab Police Rules, 1934 as applicable to Haryana is the procedural safeguard against wanton compulsory retirement and if the procedure laid down therein is not adhered to, the order will be open to be declared bad. In the present case, the petitioner has been compulsorily retired in public interest by an order of the Superintendent of Police, Palwal without obtaining the previous approval of the State Government which was a mandatory condition before taking drastic action. The impugned order has been passed by invoking Rule 9.18 of P.P.R. read with Rule 5.32 (a) of the C.S.R., Vol-II, without following the procedure laid down in the rule itself. It is a matter of surprise that the Superintendent of Police, Palwal, could pass such a loose order when the law is clear and ought to be known to him. It appears that the officer did not acquaint himself with the bar in the provisions of Rule 9.18(2). Therefore, he embarked on a journey on his own

sweet will to compulsorily retire the petitioner at the age of 55 years. The order is therefore entirely perverse and is abuse of power. It has been passed in disobedience to Rule 9.18(2), which is not a fair and proper thing for the Superintendent of Police to have done. It would be an entire waste of time to issue notice to the State only to expect a different view on the subject. I therefore, consider this a fit case, where a writ of certiorari should be issued to quash the illegal order at the first hearing itself and remand the matter for a fresh decision in accordance with law.

Notice of motion.

On the asking of Court, Ms. Shruti Jain Goyal, AAG, Haryana, accepts notice on behalf of the State and waives service.

Heard the case for disposal.

The Superintendent of Police had no authority to pass the compulsory retirement order in the case of a Sub Inspector and it is only the Inspector General of Police, who could have passed the order in terms of the Rule 9.18 (2). For both the procedure was false. The impugned order is declared ab initio void and is liable to be invalidated suffering from lack of jurisdiction.

Without expressing any opinion on the merits of the case or going into the facts or record as to the justification for compulsory retirement, the impugned order dated October 31, 2016 (Annex P-7) is quashed. The petitioner will be taken back in service and thereafter, it is for the Police Department to follow such procedure as is warranted by law.

Accordingly, the petition is partly allowed and the impugned order is invalidated and set aside with the consequential benefits flowing

therefrom. But while doing so the court expresses no opinion with respect to the merits of the case or whether compulsory retirement order is justified or not in view of the nature of the order passed on point of jurisdiction.

(RAJIV NARAIN RAINA)
JUDGE

16.12.2016
monika

Whether speaking/reasoned *Yes*

Whether reportable *No*