

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.9276 of 2016 (O&M)
Date of Decision-18.07.2016**

Rajesh Kumar ... Petitioner

Versus

Chandigarh Housing Board Chandigarh ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Raman Sharma, Advocate for the petitioner.

Mr. J.S. Sathi, Advocate for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 31.03.2016 (Annexure P-6) passed by the respondent ordering pre-mature retirement of the petitioner by giving three months notice in terms of Rule 3 (1) of Punjab Civil Services (Pre-mature Retirement) Rules, 1975.

[2]. Petitioner claims that the impugned order is illegal and is violative of statutory provisions of rule and principles of natural justice. Petitioner was selected and offered a post of Clerk in the year 1984. According to the plaintiff, he has discharged his official duties to the entire satisfaction of his superiors. The service record of the petitioner is unblemished from commencement of his service till October, 2013.

[3]. Petitioner has also submitted that initially he was considered and was granted promotion to the post of Junior

Assistant on 04.04.2003. Petitioner was further promoted to the post of Senior Assistant on satisfactory work and conduct on 01.11.2012. The promotion of the petitioner was made on the basis of recommendations of Departmental Promotion Committee on regular basis against the vacant post in the pay scale as prescribed by the Competent Authority.

[4]. While promoting the petitioner as Senior Assistant, the past incident of the year 2008 was not found to be worth consideration because the petitioner was never attributed any misconduct in the charge of misplacement of file belonging to one Sanjiv Kumar. The Competent Authority had dropped the charges against the petitioner because he was not at all responsible for any such misplacement of file.

[5]. Petitioner was considered and granted benefit of Assured Career Progression Scheme on completion of 14 years of service as on 12.01.2008. The order was passed on 31.08.2015. The service record of the petitioner needs to be mentioned. The tabulated form of opinion received by the petitioner through RTI Act is given as under:-

Name : Sh. Rajesh Kumar, Senior Assistant

Sr. No.	Period of Report	Grading	Remarks
1.	1994-1995	Good	
2.	1995-96	V. Good	

3.	1996-97	V. Good	
4.	1997-98	V. Good	
5.	1998-99	V. Good	
6.	1999-2000	V. Good	
7.	2000-01	V. Good	
8.	2001-02	V. Good	
9.	2002-03	Good	
10	2003-04	_____	Less than 3 months
11.	2004-05	V. Good	
12.	2005-06	Good	
13.	2006-07	Good	
14.	2007-08	Good	
15.	2008-09	V. Good	
16.	2009-2010	V. Good	
17.	2010-11	V. Good	
18.	2011-12	V. Good	
19.	2012-13	V. Good	
20.	2013 (Apr-13) to (Oct-2013)	V. Good	

[6]. Apparently, the service record of the petitioner from 1994-95 till October 2013 was shown to be good and very good. Petitioner was however involved in a case bearing FIR No.5 dated 27.06.2015 under Sections 7/13 (1) (d), 13(2) of PC Act

1988, Police Station Vigilance, UT, Chandigarh. In the said case, the petitioner was granted bail. No challan/report under Section 173 Cr.P.C has been filed by the prosecution so far. The matter is still under investigation. The petitioner was placed under suspension and he continued to remain under suspension till the date of passing of the impugned order. Respondent also issued a chargesheet to the petitioner owing to the registration of the aforesaid FIR against him and departmental inquiry was held. In the departmental inquiry, the witnesses cited from the vigilance department did not come forward on the ground that matter is still under investigation and as such, the disciplinary proceedings have been kept in abeyance for the time being.

[7]. Petitioner has relied upon the information received under RTI Act i.e. letter dated 21.04.2016 (Annexure P-5). Petitioner claims that he is facing unwarranted departmental action on unfounded allegations and the same have been made root cause for his premature retirement under Rule 3 of Punjab Civil Services (Premature Retirement) Rules 1975. The show cause notice which has been issued to the petitioner is in fact an order of premature retirement after three months and the same is claimed to have been issued in public interest.

[8]. Rule 3 (1) of Punjab Civil Services (Premature Retirement) Rules 1975 is reproduced herein:-

“(1) (a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

(b) The period of such notice shall not be less than three months.”

[9]. In the year 2014, the aforesaid rule was amended in the following terms:-

“3. In the Punjab Civil Services (Premature Retirement) Rules, 1975, in rule 3 in sub rule (1) in clause (a), for the words “twenty five years” words “fifteen years or twenty years or twenty five years or thirty years or thirty five years, as the case may be,” shall be substituted.”

[10]. Petitioner contends that he has completed 23 years of service on 31.03.2016. He submits that according to aforesaid Rule, the appropriate authority has to review the cases of employee for premature retirement as per instructions dated 24.02.1999 issued by the Chandigarh Administration to all the departments in Chandigarh Administration in order to weed out corrupt, dishonest and inefficient employees from services. Following stages for premature retirement can be noticed:-

[1]. When a Government employee completes 25 years of qualifying service, if it is earlier than his attaining of 50 years of

age or and when a Government employee is to attain the age of 50 years, as the case may be; and (ii) when a Government employee is to attain the age of 55 years and review in each case is to be done well in advance i.e., 6 months prior to the date on which an employee attains the age of 50 years or complete 25 years of qualifying service and 55 years age, as the case may be, so that in the event of a decision finally taken by the appropriate authority to retire the Government employee from the date he completes 25 years of qualifying service, if it is earlier than his attaining the age of 50 years or from the date he is attaining the age of 50/55 years, as the case may be, a notice of 3 months could be given to the employee concerned before the date on which he is completing required qualifying service or attaining the age of 50/55 years, as the case may be. In case a Government employee is cleared at the time of first review, he should be allowed to continue till the second review and in case he is cleared at the second review, he should be allowed to continue up to the age of 58 years without any fresh review unless another review is justified by any exceptional circumstances, such as his subsequent work or conduct or the state of his physical health, which may make such earlier retirement clearly desirable.

[11]. Under the aforesaid rules, a notice of three months is required to be given to the Government employee whose premature retirement is to be ordered in terms of these rules. In pith and substance, the requirement of aforesaid instructions is

that the process should have been initiated six months in advance.

[12]. The respondent has also relied upon the aforesaid instructions to show that the appropriate authority is competent to rule out Government servants who have outlived their utility and have become ineffective as also those employees whose integrity is doubtful with the result such employees continue in service till their superannuation. The public interest means those officials who are inefficient, corrupt or whose integrity is doubtful or any other substantial materials which also come within its purview, the competent authority has to formulate its opinion on the basis of scrutiny of confidential records of the employee concerned and by taking into consideration any other substantial material that it might have before it for determining the merits of each case. The confidential roll alone would be sufficient to guide the appropriate authority in reaching a conclusion. Even a single entry depicting the employee concerned as a person of doubtful integrity and the adverse remark having been communicated and not expunged by the competent authority would justify the appropriate authority in considering the official for his premature retirement under the rules. The appropriate authority may also consider the premature retirement of an employee, if, it has reasonable cause to believe that the employee concerned is lacking in integrity, irrespective of an assessment of his ability or efficiency in work.

[13]. Appropriate authority has to take into consideration the entire service record of the employee in order to formulate its opinion to retire the employee at a premature stage. If the work and conduct of the employee has been found good during the last five years than the competent authority has to consider this fact in favour of the employee. No retirement should be ordered within a month preceding to the date of superannuation of the employee. On the date of issuance of premature notice to the petitioner on 31.03.2016, the petitioner has 23 years, 2 months of service to his credit. Retirement on Rule 3 as amended in 2014 is that the appropriate authority has to form an opinion that it would be in public interest to prematurely retire a person by giving a prior notice in writing on the date on which he completes 25 years of qualifying service or attains 50 years of age or of any other date thereafter to be specified in the notice. The words twenty five years have been substituted by words 15 years or 20 years or 25 years or 30 years or 35 years, as the case may be.

[14]. Learned counsel for the petitioner submits that since the petitioner has already completed 20 years of successful service, therefore, at this stage, juncture of 23 years, 2 months amended provision in terms of Rule 3 cannot be pressed into service.

[15]. The respondent is also relying upon the instructions dated 24.04.1999 (Annexure R-2), wherein it has been squarely

prescribed that review in each case has to be done well in advance i.e. 6 months prior to the date on which an employee attains the age of 50 years or completes 25 years of qualifying service and 55 years of age, as the case may be, so that in the event of a decision finally taken by the appropriate authority to retire the Government employee from the date on which he completes 25 years of qualifying service, if it is earlier than his attaining the age of 50 years, a notice of three months would be given to the employee concerned from the date on which he is completing required qualifying service.

[16]. Learned counsel for the petitioner contends that since the next slab as per amended Rule comes to 25 years, therefore, issuance of notice at this stage that too in utter disregard to the instructions (Annexure P-9/R-2) is nothing but an abuse of process of law. Secondly, as per aforesaid instructions, service record has to be consulted. Apparently, there was no adverse report as per service record of the petitioner is concerned. The Annual Confidential reports of the petitioner from the very inception of his services were either good or very good till October, 2013. Only one FIR dated 27.06.2015 was recorded against the petitioner under Section 7/13 of PC Act, wherein a report under Section 173 Cr.P.C has not been submitted so far.

[17]. Learned counsel for the petitioner also pointed out the gist prepared by the respondent in the order dated 14.12.2015 in

the context of conduct of petitioner in the year 2008 and the registration of FIR on 27.06.2015. The gist prepared by the respondent viz-a-viz the conduct of the petitioner is reproduced here as under:-

3.	Sh. Rajesh Kumar, Sr. Asst.	The overall service record of Sh. Rajesh Kumar, Sr. Asstt. regarding ACR dossier is Good/V. Good. In the year 2008, a charge sheet was served upon him on account of processing the application of Sh. Sanjeev Kumar under Sports Category the certificate securing gold Medal in XXXI National Games, Punjab-2001 whereas Certificate in question was misplaced with the result the name of the applicant was not considered by the Screening committee for allotment of house out of the discretionary quota of the Administrator. The Inquiry Officer has not proved the charges leveled against him. The competent authority dropped the charges leveled against him. He was placed under suspension w.e.f. 24.06.2015 because he was caught red handed by the Vigilance Department, Chandigarh Administration on 24.06.2015 while accepting bribe amount of Rs.7,000/- from the complainant. The Vigilance
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		inquiry is under process.
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[18]. As on date the following features have come to fore:-

(1). The overall service record of the petitioner is either good or very good.

(2) In the year 2008, a chargesheet was served upon the petitioner with the allegations that certificate of securing gold medal by Sanjeev Kumar under Sports Category was misplaced and as a result of that his name was not considered by Screening Committee for allotment of house in discretionary quota. The said episode was investigated into by the inquiry officer and charges were not proved against the petitioner. Competent authority ultimately dropped the charges against the petitioner.

(3) FIR No.5 dated 27.06.2015 was registered under Section 7/13(1) (d), 13 (2) of PC Act, 1988, Police Station Vigilance, UT, Chandigarh for which no report under Section 173 Cr.P.C has been filed as yet. Petitioner is on bail.

(4). Petitioner was placed under suspension w.e.f. 24.06.2015 for accepting the ransom under the complaint which is under investigation of the Vigilance Department.

[19]. As per amended Rule 3, different stages viz-a-viz the slots of completing number of years of qualifying service have been prescribed i.e. 15 years or 20 years or 25 years or 30 years or 35 years, as the case may be. Petitioner is in the slot of 20-25

years as he has already completed 23 years, 2 months of service. As per the instructions Annexure P-9/R-2, the case of premature retiree has to be prepared six months in advance.

[20]. The case of the petitioner for premature retirement has to be considered on the threshold of aforesaid requirements. Admittedly, petitioner has unblemished service record from the first date of his appointment till October, 2013. There was no adverse entry in the service record of the petitioner as reproduced in earlier part of the judgment i.e. upto October 2013. The departmental inquiry of the year 2008 ultimately culminated in favour of the petitioner as nothing incriminating was found against the petitioner. The only incriminating material as available against the petitioner as on date is his alleged involvement in FIR under Prevention of Corruption Act.

[21]. Learned counsel for the petitioner relied upon **Dr. Khajan Singh Vs. The State of Haryana and others, 2003(8) SLR 445** to contend that premature retirement cannot be resorted to merely on account of registration of an FIR in corruption case unless there is material on record to hold that the employee is dead-wood and is liable to be axed-out or otherwise in the public interest.

[22]. A perusal of aforesaid judgment reveals that though the said case was of acquittal in a criminal case and the complaint itself was found to be motivated but at the time of order

of premature retirement, only the FIR had been registered. In the said case, FIR was registered on 03.01.1994 under Prevention of Corruption Act. The incumbent was granted bail and after registration of FIR, the employee was placed under suspension. After 1 year, 1 month and 15 days, the employee was reinstated but vide order of even date, he was prematurely retired from the service by invoking provisions under the Punjab Civil Services Rules, Volume I, Part I as applicable to State of Haryana. The said order of premature retirement was assailed by the incumbent in the writ petition on the ground that there was no material available before the competent authority for forming the opinion that the employee had outlived his authority and had become a dead-wood or otherwise unfit for further retention in public service. While dealing with the prepositions, the Division Bench of this Court ultimately held as under:-

“A recapitulation of the facts borne out from the pleadings of the parties and the files produced by the learned Senior Deputy Advocate General shows that in the ten years preceding his retirement from service, the appellant had not earned any adverse remark in his ACRs. Rather, the grading given by the competent authorities in all these years was good. It is also not the case of the respondents that during these years, any departmental inquiry was held against the appellant for major misconduct and he was punished. The file of the Screening Committee produced by Shri Jaswant Singh shows that the sole reason for retiring the appellant before attaining the age of

superannuation was the registration of criminal case which as mentioned above, ended in his acquittal on 04.09.1996. The observation made by the learned Special Judge that the complaint made by Niyaz Mohammad was motivated goes a long way to show that the appellant was made a victim of conspiracy hatched by an employee against whom the appellant had initiated action on the charge of remaining absent from duty. Notwithstanding this, the learned Single Judge upheld the premature retirement of the appellant by making the stock observation that the competent authority had taken the decision after considering his entire service record. In our opinion, the learned Single Judge committed a serious legal error by upholding the premature retirement of the appellant ignoring the fact that his acquittal by the Special Judge had the effect of removing the substratum foundation of the decision taken by the State Government.”

[23]. Learned counsel for the respondent argued that the impugned order is totally innocuous and is not stigmatic. The premature retirement of the petitioner is being ordered in public interest after overall consideration of material on record. The appropriate authority has lawfully formed its opinion and the case of the petitioner has been tested on the touchstone of that consideration and ultimately, competent authority came out with the conclusion that the continuation of the petitioner on completion of 23 years of service was not in public interest as he has outlived his utility and has become ineffective. The evaluation of the petitioner on completion of requisite service for the

purposes of continuation in service was required to be evaluated in a time bound manner.

[24]. First of all, the employee who has outlived his utility or has become ineffective or the employee whose integrity is doubtful have to be reviewed as per provisions made under the instructions. No such evaluation has been made in case of petitioner as per instructions dated 24.02.1999. The time prescribed for such evaluation has not been adhered to, nor any opinion has come forth on record that the petitioner has become dead-wood or ineffective or has any doubtful integrity. It appears that it is only a pending criminal case which has been considered to be an instance of subjecting the petitioner under Rule 3 of Punjab Civil Services Rules, 1975.

[25]. The material on record is suggestive of the fact that service record of the petitioner remained unblemished throughout, the complaint of the year 2008 against the petitioner was found worthless and he was exonerated of all the charges.

[26]. Admittedly, petitioner is undergoing 23 years, 2 months of service at the time of issuance of notice of premature retirement. Except the FIR, there is no incriminating material against the petitioner as on date. In the FIR also except the bald allegation of the prosecution, the case has not made any headway despite the fact that FIR was registered on 27.06.2015.

Even report under Section 173 Cr.P.C/ Challan has not been filed in the competent court so far.

[27]. On the strength of aforesaid facts, the forming opinion for premature retirement of the person cannot be held to be in public interest. To retire the petitioner in public interest, it has to be based on sound opinion and such opinion should be based on objective material on record. The impugned notice of retirement dated 31.03.2016 though caused in a very innocuous term, but in fact is based on alleged misconduct. Even, if, the order appears to be innocuous but facts on record indicating alleged incriminating material on the basis of which premature retirement is being ordered. In such situation, the Court is competent to unveil the curtain in order to know the nature of order actually being passed.

[28]. In the light of aforesaid, I am of the considered view that the impugned show cause notice dated 31.03.2016 issued to the petitioner retiring him w.e.f. 30.06.2016 is liable to be quashed and is hereby quashed. Writ petition is allowed in the aforesaid terms.

(RAJ MOHAN SINGH)
JUDGE

18.07.2016
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