

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

LPA No. 1065 of 2016(O&M)

Date of decision :11.07.2016

Amarjit Singh

.....Appellant

Versus

Chandigarh Housing Board and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Arvind Singh, Advocate
for the appellant.

DARSHAN SINGH, J.

The challenge in this Letters Patent Appeal under clause X of the Letters Patent of the High Court Rules and Orders has been made against the order dated 24.05.2016 passed by the learned Single Judge in CWP No. 8312 of 2016 vide which the writ petition filed by the appellant has been dismissed.

2. The appellant has filed the Civil Writ Petition under Article 226/227 of the Constitution of India for issuance of an appropriate writ in the nature of certiorari quashing the impugned show cause notice dated 31.03.2016 issued by respondents no.1 and 2 being a virtual order of premature retirement of the appellant at the age of 54 years as a measure of punishment, stigmatic, punitive in nature and contrary to law. A writ in the nature of prohibition has also been sought restraining the respondents from compulsorily retiring the appellant except in due course of law by holding an

enquiry and granting an opportunity of being heard to the appellant.

3. The appellant was appointed as a Mortormate on 08.09.1982 in Chandigarh Housing Board and was promoted as Junior Engineer on 31.03.1992. His date of birth is 15.07.1961 and he would have attained the age of superannuation on 31.07.2019. He has rendered 33 years of unblemished service to his credit. His work and conduct has always remained satisfactory during the long period of service except a penalty of reduction of his pay scale for two consecutive years with a rider that after two years he will be placed in the original pay scale. Since the period of two years have already elapsed, the penalty stands exonerated. It is further pleaded that the appellant was served with a show cause notice on 31.03.2016 for compulsory retirement in the garb of Rule 3 (a) of the Punjab Civil Service (Premature Retirement) Rule, 1975 (hereinafter called 'Rules'). It is alleged that the order of compulsory retirement is punitive, stigmatic, as a measure of punishment and contrary to law.

4. The writ petition filed by the appellant was dismissed by the learned Single Judge vide impugned judgment/order dated 24.05.2016. Hence this Letters Patent Appeal.

5. We have heard Mr. Arvind Singh, Advocate, learned counsel for the appellant and have carefully perused the record.

6. Initiating the arguments, learned counsel for the appellant contended that the impugned order of compulsory retirement has been passed as a measure of punishment as in the show cause notice itself the decision was already taken to inflict the punishment of premature retirement w.e.f. 30.06.2016. He further contended that no opportunity has been given to the appellant to submit his reply/explanation to the show cause notice proposing his premature retirement. He further contended that the action of the

respondents is very harsh as the employees of the Chandigarh Housing Board are not entitled for pension. He further contended that the rules relied upon by respondents are not applicable to the appellant as he was not holding any pensionable post. He contended that learned Single Judge has lost sight of all the aforesaid issues. He further contended that as the order of premature retirement of the appellant is as a measure of punishment, stigmatic, punitive and contrary to the provisions of law and principles of nature justice, the same is illegal and the learned Single Judge has erroneously dismissed the writ petition.

7. We have duly considered the aforesaid contentions.

8. The relevant rule i.e. Rule 3 of the Rules can be reproduced below with advantage:-

(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 :

As per the aforesaid rule, the Competent Authority has absolute right to retire an employee on the date on which he completes 25 years of qualifying service or attain 50 years of age or on any date thereafter to be specified in the notice, if it is of the opinion that the retirement of such employee is in the public interest. Before the premature retirement of the employee, a prior notice in writing of a period not less than three months is required to be issued. It has been further provided that in lieu thereof the employee can be paid a sum equivalent to the amount of his allowances at the same rate that he was drawing immediately before his retirement for a period of three months.

9. The learned Single Judge has relied upon the landmark judgment rendered by the Constitution Bench of the Hon'ble Apex Court in case **Baikuntha Nath Das and another Vs. Chief Medical Officer, Baripada and another-(1992)2 SCC 299** laying down the principles governing the compulsory retirement. The crux of the principles laid down in the aforesaid authoritative pronouncement is that the order of compulsory retirement is not a punishment and it implies no stigma. The order has to be passed by the Government/Competent Authority on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is always passed on the subjective satisfaction of the Competent Authority. The principles of natural justice have no place in context of an order of compulsory retirement but, the judicial scrutiny thereof is not altogether excluded. The entire service record of the concerned employee has to be taken into consideration for forming the opinion to take the decision. The order of compulsory retirement cannot be quashed by the Court simply on the ground that while passing the order the un-communicated adverse remarks were taken into consideration. The said order can be interfered with if the aggrieved employee satisfies the Court that the order passed is malafide; that it is based on no evidence or that it is arbitrary – in the sense that no reasonable person would form the requisite opinion on the given material and finally if the order is found to be perverse. The same legal position has been reiterated by the Hon'ble Apex Court in case **State of Gujarat Vs. Umedbhai M.Patel AIR 2001 SC 2009**.

10. The Government/Competent Authority has absolute right to exercise the power to compulsory retire an employee to weed out the government employee in the public interest. It is only a measure to chop-off

the deadwood by the employer from the public service in public interest. The Competent Authority can even take into consideration the old and stale adverse entries regarding integrity for compulsory retirement. Reference can be made to cases **State of U.P Vs. Vijay Kumar Jain 2002(3) SLR 363** and **Punjab State Power Corporation Ltd. & Ors. Vs. Hari Krishan Verma AIR 2015 S.C 2426**.

11. In view of the aforesaid legal position, the contentions raised by learned counsel for the appellant that the impugned order is punitive and violative of the principles of natural justice carries no substance and have been rightly considered and rejected by the learned Single Judge.

12. It is not disputed that the appellant had been conveyed two adverse entries during his service tenure including an entry qua his doubtful integrity for the period 2005-06. The adverse remarks recorded by the Reviewing Authority for the period 01.04.2006 to 02.09.2006 shows that the appellant was warned earlier also with respect to the complaints against him for demanding money and his integrity was not absolutely fit for government job as he had been making money in the enforcement work. The appellant was even charge sheeted on 16.11.2006 for making money and giving incorrect survey report. The said charges were proved in the domestic enquiry and he was imposed the penalty of reduction of his pay.

13. In the writ petition, the appellant has not levelled any allegation of *malafide* or arbitrariness in passing the impugned order. The learned Single Judge has rightly observed that the appellant has been chopped-off as a deadwood on account of adverse entries in his service record doubting his integrity in the public interest. We have no reason to differ with the conclusion arrived at by the learned Single Judge.

14. Thus, no fault can be found with the powers exercised by the Competent Authority in compulsorily retiring the appellant on the subjective evaluation of his service record. Consequently, the present intra-court appeal is devoid of merits and the same is hereby dismissed.

(SURYA KANT)
JUDGE

(DARSHAN SINGH)
JUDGE

July 11, 2016
s.khan