

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16466 of 2013 (O&M)
Date of Decision:-21.02.2017.

Managing Committee A.S. Senior Secondary School, Ambala City

.....Petitioner

Versus

State of Haryana and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Ramandeep Singh, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Vikas Chatrath, Advocate and
Mr. Khushkaran, Advocate for
respondent No.4.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, petitioner-Management have questioned the validity of order dated 5.6.2013 (Annexure P-10) passed by the Director, Secondary Education, Haryana. The fourth respondent who was an employee of the petitioner-Management, while he was in service, the petitioner-Management proceeded to retire him compulsorily in the public interest with immediate effect. In order to comply the 3 months' salary for notice period, an amount of ₹ 89,157/- was paid through cheque on 28.8.2012. The fourth respondent feeling aggrieved by the order of compulsory retirement dated 28.8.2012 preferred an appeal/application before the Director. At the same time, he has invoked writ jurisdiction

before this Court. During pendency of CWP No.17365 of 2012, the Director General, Secondary Education, Haryana set aside the order of compulsory retirement dated 28.8.2012. Consequently, the writ petition was disposed of. While disposing of the matter, the petitioner-Management was given opportunity to challenge the order dated 5.12.2012 in accordance with law. Thereafter, the petitioner-Management approached this Court questioning the validity of the Director's order in CWP No.25282 of 2012 which was disposed on 22.3.2013 while setting aside the order of Director and matter was remanded to the Director further directing the parties to appear before the second respondent-Director General Education on 4.4.2013 for further proceedings. The petitioner-Management submitted an application before the Director, Secondary Education, Haryana defending the order of compulsory retirement dated 28.8.2012 passed against the fourth respondent. While considering the Management application, the Director passed the order on 5.6.2013 while setting aside the order of compulsory retirement dated 28.8.2012 while referring to Rule 108-A of the Haryana School Education Rules, 2007, Rule 8 (2) of the Haryana School Education Act, 1995 and Rule 51(4) of the Haryana School Education Rules, 2003 while stating that prior approval of the Director or its nominee is violated by the petitioner-Management. Therefore, order of compulsory retirement has been set aside. The petitioner-Management feeling aggrieved by the order of Director Secondary Education, Haryana dated 5.6.2013. Hence, this petition.

2.) Learned counsel for the petitioner submitted that the Director, Secondary Education, Haryana is not the competent authority to examine

language employed in Rule 108 (A) of the Haryana School Education Rules, 2007. Therefore, the order dated 5.6.2013 vide Annexure P-10 is liable to be set aside. The Director, Secondary Education has invoked a wrong provision while considering the compulsory retirement of the fourth respondent dated 28.8.2012 which has been passed under Rule 108 (A) of the Haryana School Education Rules, 2007. It was further pointed out by learned counsel for the petitioner that prior approval of the Director or its nominee is required only when the Management invoked Rule 110 (d) (iii), whereas, in the present case the fourth respondent's case for compulsory retirement has been considered under Rule 108 (A) and not Rule 110. Therefore, the impugned order is liable to be set aside.

3.) On the other hand, learned counsel for the State submitted that compulsory retirement is one of the major penalty which falls under Section 107. Therefore, there is a violation of Rule 110 (d) (iii) by which the approval of the Director or its nominee is necessary before giving effect to the penalty of compulsory retirement. The same has been taken note by the Director while passing the order dated 5.6.2013. Therefore, there is no infirmity in the order of the Director.

4.) Learned counsel for the fourth respondent submitted that order of compulsory retirement retiring the fourth respondent is based on the allegations. Therefore, the inquiry should have been held. Consequently, resorting to Rule 108 (A) is impermissible and Rule 107 read with Rule 110 is attracted in the present case. Therefore, the Director has rightly interfered with the order of compulsory retirement dated 28.8.2012 passed by the petitioner in retiring the fourth respondent compulsorily. It was further

Management-petitioner have resorted to retire the petitioner compulsorily without holding inquiry. In view of these facts and circumstances, Director has rightly interfered with the order of compulsory retirement and set aside the same. Therefore, there is no infirmity in the order dated 5.6.2013.

5.) Heard learned counsel for the parties.

6.) Question for consideration in the present petition is whether the Director is empowered to interfere with the order of compulsory retirement of an employee by the Management passed under Rule 108 (A) of 2007 Rules or not. Therefore, it is relevant to extract Rule 108 (A) of the Haryana School Education Rules, 2007 which reads as under:-

“108 (A) If managing committee is of the opinion that it is in public interest to retire an employee for the reasons recorded in writing, it shall have the right by giving the employee concern, a prior notice in writing, not less than 3 months, to retire him on the date on which he completes 20 years of qualifying service or on any other dates thereafter to be specified in the notice.”

So also Section 8 (2) of the Haryana School Education Act, 1995 which reads as under:-

“8 (2) Subject to any rules that may be made in this behalf no employee of a recognized private aided schools shall be dismissed, removed or reduced in rank nor shall his services otherwise terminated except with the prior approval of the Director or his nominee.”

Rule 51(4) of Haryana School Education Rules, reads as under:-

“51 (4) No teacher in position shall be removed by the managing committee without prior

approval of the Department.”

7.) The fourth respondent has been retired compulsorily on 28.8.2012 stated to be in public interest w.e.f. 28.8.2012 and an amount of ₹ 89,157/- has been given to him in lieu of three months' salary for notice period. Perusal of Annexure P-5 dated 28.8.2012 retiring the fourth respondent compulsorily, it is evident that fourth respondent has been retired compulsorily while invoking Rule 108 (A) of the Haryana School Education Rules, 2007. Haryana School Education Rules, 2007 provides for two types of compulsory retirement. One is under Rule 108 (A) with reference to examining the employee's service record and retiring such an employee compulsorily. The other mode is imposing the penalty of compulsory retirement as a measure of penalty for certain misconduct under Rule 107 read with Rule 110 i.e. compulsory retirement arising out of disciplinary proceedings. The petitioner Management has invoked Rule 108 (A) which is undisputed. Both the State as well as fourth respondent are relying on Rule 107 and 110 as if the Management petitioner has invoked Rule 107 and 110 so as to non-compliance of certain procedures like taking approval of the Director or its nominee under Rule 110 (D) (iii). Therefore, the Director has interfered with the compulsory retirement order. Of course the Director is empowered to interfere with the order of compulsory retirement of an employee by the Management only under circumstances whereby the Management has invoked Rule 107 read with Rule 110 for imposing penalty. Case in hand is not the case that the management has invoked Rule 107 and 110 so as to point out that there is a violation of procedures prescribed under Rule 110 etc. Therefore, the Director has no powers to interfere with the order of compulsory retirement dated

28.8.2012. Learned counsel for the State submitted that compulsory retirement is one of the major penalty, therefore, Rule 110 (d) (iii) is required to be complied. As stated above, there are two types of compulsory retirement as a major penalty. The other one is after examining the service record of an employee. Here is a case where the fourth respondent has been retired compulsorily in public interest after examining the service record and not as a measure of penalty. Therefore, the contention of the State respondent that the compulsory retirement penalty would fall under one of the major penalty, therefore, there is a non-compliance of Rule 110 is rejected. That apart Section 8 (2) of the Haryana School Education Act, 1995 is crystal clear that is restricting prior approval of the Director or his nominee wherever penalty of dismissal, removal or reduction in rank has been ordered. Section 8(2) does not say any major penalty. Moreover, in the present case, retiring the fourth respondent compulsorily is not as a major penalty. In view of these facts and circumstances, the order dated 5.6.2013 passed by the Director is set aside.

8.) Petition stands allowed.

9.) Disposal of this petition would not come in the way to fourth respondent to challenge the order of compulsory retirement before an appropriate forum, in accordance with law.

(P.B. BAJANTHRI)
JUDGE

February 21, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.