

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2331 of 2012
Date of Decision:-23.01.2017.

Faquir Chand

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

Present: Mr. Rahul Gautam, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

1.) The petitioner has questioned the validity of the order dated 27.12.2011 by which he has been retired compulsorily with reference to the fact that he had completed 55 years.

2.) Learned counsel for the petitioner submitted that petitioner had more than 70% good record. It was submitted that for the year 2011-12 even though it has been recorded "Average", the same has not been communicated to the petitioner. Therefore, the respondents cannot consider the Annual Confidential Report for the year 2011-12 which is "Average". The petitioner would stand above 70% good record. Therefore, the impugned action of the respondents retiring petitioner compulsorily on the score that the petitioner had less than 70% good record, is arbitrary and

illegal.

3.) On the other hand, learned counsel for the respondents submitted that the competent authority has taken into consideration the Annual Confidential Report for the year 2002-03, 2003-04 and 2004-05 read with 2011-12 so as to contend that the petitioner do not fulfill the criteria of good record of more than 70%. Therefore, there is no infirmity in the order dated 27.12.2011 vide Annexure P-2.

4.) Heard learned counsel for the parties.

5.) Petitioner has given a statement of Annual Confidential Reports for 10 years commencing from 2002-03 to 2011-12 in the CM-7373-CWP-2012. Perusal of the same, it is evident that for four years, the petitioner's overall grading is as follows:-

2002-03	--	Below Average
2003-04	--	Poor
2004-05	--	Poor
2011-12	--	Average

Whereas, for the year 2005-06, 2006-07, 2008-09, 2009-10, 2010-11 are "Good". Insofar as 2007-08 is concerned, it is "Very Good". Overall taking the aforesaid grading for various years, it is evident that the petitioner has not good record above 70%. Therefore, the respondents have rightly retired the petitioner compulsorily with reference to Rule or instructions governing for the purpose of retiring an employee compulsorily. Learned counsel for the petitioner vehemently submitted that Average overall grading for the year 2011-2012 has not been communicated to the petitioner. Therefore, the respondents are prohibited in taking into consideration uncommunicated adverse remarks for the purpose of compulsory retirement of the petitioner. The Supreme Court in the case of

State of U.P. and others Vs. Raj Kishore Goel 2001 (10) SCC 183 Para -1

reads as under:-

“The State of U.P. is in appeal against the impugned judgment of the Division Bench of the High Court. The order of compulsory retirement of the respondent who was Executive Engineer, in exercise of powers under Rule 56 of the Uttar Pradesh Fundamental Rules, having been set aside by the High Court, the present appeal has been preferred. The High Court came to the conclusion that after expunction of the adverse entry dated 15-11-1991 in Writ Petition No. 24712 of 1992, three warnings and one censure against the respondent could not have formed the basis of the satisfaction of the appropriate authority to pass an order of compulsory retirement and as such the Court quashed the same. From the proceedings of the Review Committee report, which examined the cases of several engineers including the case of the respondent to decide the question as to whether it would be in the public interest to compulsorily retire the employee concerned, it appears apart from the warnings and censure referred to earlier, there were some adverse entries also for the year 1995-96. That apart, the High Court committed a mistake by coming to the conclusion that an uncommunicated entry could not have been taken into consideration by the appropriate authority, the same being contrary to a three-Judge Bench decision in Baikuntha Nath Das v. Chief District Medical Officer, Baripada. The very Rule under which the respondent has been compulsorily retired came up for consideration recently in the case of State of U.P. v. Lalsa Ram. The entire case-law and parameters for exercise of power by the High Court under Article 226 against an order of compulsory retirement have been considered therein and

applying the test laid therein to the facts and circumstances of the present case and on examining the impugned judgment, we are of the considered opinion that the High Court erred in law in interfering with the order of the compulsory retirement passed against the respondent. In our view, the conclusion arrived at by the appropriate authority on the materials concerned cannot be held to be a conclusion of an unreasonable man or arbitrary conclusion which could confer jurisdiction on a court to interfere with the same.”

6.) Having regard to the aforesaid decision, petitioner's contention that uncommunicated adverse remarks cannot be taken into consideration is not sustainable. Thus, the petitioner has not made out a case so as to interfere with Annexure P-2.

7.) Accordingly, petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

January 23, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.