

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 22020 of 2013
Date of Decision: March 23, 2017

Dinesh Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. R.S. Mamli, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Jagdish Manchanda, Advocate,
for respondent nos. 3 and 4.

P.B. Bajanthri, J. (Oral)

1. In the instant writ petition, petitioner has questioned the validity of orders dated 17.06.2013 (Annexures P/2 and P/3), whereby petitioner has been retired compulsorily under Rule 3.26 of the Punjab Civil Services Rules (Haryana) Vol. 1 Part 1 (hereinafter referred to as “Services Rules”).

2. Petitioner is stated to have been appointed as a Clerk in the Municipal Committee, Hodal on 01.02.1978. While serving as such in the year 2011, petitioner was subjected to criminal proceedings by filing FIR. He was placed under suspension on 04.03.2011. Thereafter, he was retired compulsorily by the Deputy Commissioner, Palwal on 17.06.2013. Consequently, a formal order was passed by the Secretary, Municipal Committee, Hodal communicating the order of the Deputy Commissioner dated 17.06.2013 on the same day with reference to the fact that the petitioner has completed 55 years of service vide Annexure P/3.

3. Learned counsel for the petitioner cited Rule 3.26 of the Services Rules, which reads as under:-

“Compulsory Retirement –

3.26 (a) to (c) xxx xxx xxx

(d) The appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government employee other than Class IV Government employee by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notices:-

(i) If he is in Class I and Class II Service or post and had entered Government service, before attaining the age of thirty-five years, after he has attained the age of fifty years; and

(ii)(a) If he is in class I or class II Service or post, or

(b) If he is Class I or Class II Service or post and entered Government service after attaining the age of thirty-five years; after he has attained the age of fifty-five years.

[Provided that in the case of a member of the Judicial Service, if he had entered Government service before or after attaining the age of thirty-five years, his case for retention in service beyond the age of fifty-eight years, shall be considered before he attains such age.]

[Provided that in the case of member of the Judicial Service, he shall have the option to retire at the age of fifty-eight years, which should be exercised by him in writing before he attains the age of fifty-seven years. A member who does not exercise such option before he attains the age of fifty seven years, would be deemed to have opted for continuing in service till the superannuation age of sixty years with the liability to compulsory retirement at the age of fifty-eight years;

The Government employee would stand retired

immediately on payment three months pay and allowance in lieu of the notice period and will not be in service thereafter.

(e) xxx xxx xxx”

Having regard to the language employed in the above provision of law before competent authority proceeding for retiring an employee compulsorily with reference to the age criteria of 55 years completion. Respondent No.3 – Deputy Commissioner before passing the order of retiring the petitioner compulsorily has not complied provision of law, namely, giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notices. Since either of the clause mentioned in Rule 3.26 (d) of Services Rules has been complied by the respondents no. 3 and 4 - Deputy Commissioner, Palwal and Secretary, Municipal Committee, Hodal, hence, impugned orders dated 17.06.2013 are liable to be set aside. It was further pointed out that there were internal communication between respondents no.3 and 4 relating to retiring petitioner compulsory and respondent no.3 has sought certain clarifications and he never passed order of compulsory retirement as is evident from Annexure P/2. Therefore, respondent no.4 while misreading Annexure P/2 proceeded to relieve petitioner on compulsory retirement. Therefore, in the absence of a decision by respondent no.3 to the extent of retiring petitioner, decision of respondent no.4 is highly arbitrary and illegal.

4. Per contra, learned counsel for respondent Nos. 3 and 4 submitted that petitioner is facing serious allegations and he has been suspended and departmental enquiry has been initiated. Therefore, the Deputy Commissioner proceeded to retire the petitioner compulsorily under Rule 3.26 (d) of Services Rules. Contention of the petitioner that there is no

compliance either issuing notice or payment of three months' pay is concerned, respondents are ready to comply the later portion that payment of three months' pay. It was further submitted that in respect of retiring an employee on compulsory basis with reference to Rule 3.26(d), no opportunity or no show cause notice is required to be given as held by the Supreme Court and this Court. In this regard, learned counsel for respondents cited the following decisions:-

- 1) **Jugal Chandra Saikia vs. State of Assam and another**, reported in (2003) 4 SCC 59;
- 2) **High Court of Punjab and Haryana vs. Ishwar Chand**, reported in (1999) 4 SCC 579;
- 3) **Baikuntha Nath Das vs. Chief District Medical Officer, Baripada**, reported in (1992) 2 SCC 299;
- 4) **L.P.S. Tomar vs. State of Haryana**, reported in 2007(2) S.C.T. 400.

In view of the above decisions, question of compliance to Rule 3.26 (d) of Services Rules to the extent of issuance of show cause notice to the petitioner may not arise, therefore, contention of the petitioner that non compliance of Rule 3.26 is not tenable.

5. Respondent No.3 – Deputy Commissioner adopted the arguments of respondent No.4 – Municipal Committee, to sustain the decision of the Deputy Commissioner that petitioner is not entitled for notice before passing order under Rule 3.26(d) of Services Rules.

6. Heard the learned counsel for the parties.

7. Crux of the matter in the present petition is whether petitioner has been retired compulsorily by the competent authority and whether Rule 3.26(d) of Services Rules is mandatory or not?

8. Petitioner is in the cadre of Clerk and appointing authority is

Deputy Commissioner – respondent No.3. Perusal of Annexure P/2 dated 17.06.2013 it is evident that respondent no.3 has not passed order of compulsory retirement and he has sought certain clarification from respondent No.4. Instead of furnishing clarification, respondent proceeded as if respondent no.3 passed order of compulsory retirement. Therefore, in the absence of order of compulsory retirement Annexure P/3 passed by respondent no.4 is liable to be set aside. Even assuming that there is an order of compulsory retirement, still there is no compliance of Rule 3.26 of Services Rules.

9. Having regard to the language used in the statutory provisions Rule 3.26 (d) the appointing authority before exercising rule 3.26(d), is bound to issue notice to the employee of not less than three months in writing or three months' pay and allowances in lieu of such notices. Undisputedly, the same has not been complied either by the Deputy Commissioner or by the Secretary of Municipal Committee before passing the order of compulsory retirement.

10. The decisions of the Supreme Court as well as this Court cited supra by the learned counsel for respondent No.4 are perused. None of the decision states about the waiver of issuance of notice of not less than three months in writing or three months' pay and allowances in lieu of such notice. Further, it is to be noted that till date, said provision is existing in the eye of law. Therefore, compliance to the said provision is mandatory. In the case of *Captain Sube Singh and others vs. Lt. Governor of Delhi and others* reported in (2004) 6 SCC 440, Supreme Court has held that statute is required to be read as it is. In other words, whatever the statute mandates the authority is required to comply. Therefore, the Deputy Commissioner

and Secretary, Municipal Committee have failed in their duty in complying the issuance of notice to the petitioner or three months' pay and allowances in lieu of such notices.

11. One of the contention of the Municipal Committee is that the petitioner is facing serious allegations and departmental enquiry has been initiated. In view of pendency of the departmental enquiry, it seems that the respondents are resorting to short-cut method by retiring the petitioner compulsorily instead of completing the process of disciplinary proceedings.

12. Decisions cited by the learned counsel for the respondents are distinguishable on facts as well as law. On facts competent authority – Deputy Commissioner has not passed order of compulsory retirement. Consequently, question of compliance to Rule 3.26 of Services Rules is redundant. Assuming that order of compulsory retirement is existing in the eye of law in that event none of the decision cited declare that Rule 3.26 of Services Rules is only directory so as to say it need not be complied.

13. In view of these facts and circumstances, order of compulsory retirement dated 17.06.2013 (Annexure P/3) is hereby set aside. This order would not come in the way of completing the disciplinary proceedings which has been already initiated by the respondents.

14. Instant writ petition stands allowed.

March 23, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : No