

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

CWP No.16269 of 2017

Date of decision : 26.09.2017

Baljeet Singh

.....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Samarth Sagar, Advocate for the petitioner.

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DAYA CHAUDHARY, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside impugned order dated 29.12.2016 (Annexure P-3) passed by respondent No.2, whereby revision petition filed by the petitioner has been dismissed. A further prayer has also been made for quashing of Office Order dated 11.09.2014 (Annexure P-1) passed by the President, Punjab State Agricultural Marketing Board (respondent No.3), whereby while exercising the powers conferred under Rule 3 (1) (a) (b) of the Punjab State Agricultural Marketing Board and Market Committees Employees (Premature Retirement) Rules, 1989 (hereinafter referred to as 'the Rules, 1989') respondent No.3 has ordered premature retirement of the petitioner in the public interest.

Briefly, the facts of the case, as made out in the present petition are that initially the petitioner was appointed as Peon in respondent-department in the year 1986 and was kept on probation for a period of two years. Thereafter, he was promoted to the post of Clerk on 14.02.1992. Thereafter, he was promoted to the post of Senior Assistant vide order dated 01.02.2001 w.e.f. 17.09.1998. However, he filed CWP No.16356 of 1988 before this Court which was decided in his favour vide judgment dated 29.11.2000. As per said judgment, he was also given notional benefits regarding pay fixation and seniority.

Vide order dated 11.09.2014, he was prematurely retired by respondent No.3 while exercising powers conferred under Rule 3 (1) (a) (b) of the Rules, 1989. Aggrieved by said order of premature retirement, the petitioner challenged the same in the revision petition under Section 42 of the Punjab Agricultural Produce Markets Act, 1961. When nothing was done, he filed CWP No.20455 of 2016 for issuance of direction to decide the revision petition. In pursuance of the direction given in the writ petition, the revision was heard, but it was dismissed on 29.12.2016.

Petitioner is aggrieved by both the orders i.e. order dated 29.12.2016, whereby revision petition was dismissed as well as order dated 11.09.2014, whereby petitioner was ordered premature retirement, which are the subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that service record of the petitioner has remained very good and outstanding and no adverse remarks were conveyed, which is clear from this fact that he was promoted

on various posts after considering his merit and seniority. Learned counsel also submits that the allegations levelled against the petitioner have been made base for passing of impugned order of premature retirement, but were without correct appreciation of facts and to victimize at the hands of senior officers and other colleagues with *mala fide* intention of the officers. No public interest was involved while passing impugned order of premature retirement. The reply filed to the charges was not taken into consideration and the orders have been passed without any application of mind, just to harass the petitioner. At the end, learned counsel for the petitioner submits that the petitioner cannot be held responsible for the negligence as he was on leave on account of accident as well as other personal family problem. No financial loss was caused due to act and conduct of the petitioner. The findings recorded by the Enquiry Officer were not based on proper appreciation of evidence produced by the petitioner.

Heard arguments of learned counsel for the petitioner and have also perused the impugned orders and other documents on file.

Facts relating to appointment of the petitioner and thereafter promotion on various posts and passing of impugned orders including the order of premature retirement, are not disputed.

On perusal of impugned order dated 22.08.2013 (Annexure P-1) it is apparent that the petitioner was awarded various punishments, details thereof are also given in the impugned order. His annual increments with/without cumulative effect were stopped. It has also been mentioned that his five annual increments with future effect and seven annual

increments without future effect were forfeited. He was also warned to perform his duty with due care and conduct. He submitted reply to the notice. After affording opportunity of personal hearing and on perusal of annual confidential reports which were average and adverse and also by considering his over all service record, the impugned order of premature retirement was passed while exercising powers conferred under Rule 3 (1) (a) (b) of the Rules, 1989. Even the revision filed by the petitioner against order of premature retirement was dismissed by recording that the petitioner had completed 25 years of service and he had been awarded punishments on 13 occasions during his service from year 2002 to 2013. His 12 annual increments were stopped, out of which, five increments were stopped with future effect and seven increments were stopped without cumulative effect.

It has been a settled principle in various judgments of this Court as well as judgments of Hon'ble the Apex Court that compulsory/ premature retirement is not a punishment as it does not leave any stain or stigma. Rule 3.26 (a) and (d) of CSR Vol. I, Part-I provides that every Government employee shall retire from service on the last date of the month on attaining the age of 58 years. An exception to this Rule has also been provided in sub-clause 9 (d) under which the appointing authority has an absolute right in case, it is in the public interest, other than Class IV employee and that too by giving him a notice in writing of not less than three months or three months' pay in lieu thereof. The punishing authority has a right to review the work and conduct of the employee and total service record of the concerned employee is to be taken into consideration before

taking a decision in the matter- of course attaching more importance to record and performance during the service period. The service record includes entries in the confidential records/character rolls, both favourable and adverse. The order, as such, is to be passed on the basis of subjective satisfaction by the competent authority on forming an opinion that it is not in public interest to keep the Government employee in service or to retire him compulsorily. It is also not disputed that principles of natural justice have to be adopted and the order is not to be passed in an arbitrary manner without forming an opinion by considering the total service record. No doubt, judicial scrutiny is also permissible while granting premature compulsory retirement and in case the order is arbitrary or *mala fide* or is based on no evidence, then reasons are necessary to be recorded.

Undisputedly, the State Government has an absolute right to retire the petitioner in public interest but such an opinion is to be based on subjective satisfaction and performance of the petitioner or concerned employee during his entire service record and especially the record of last 10 years before the date of passing of order of compulsory retirement. It is not disputed that sometimes un-communicated service record can also be taken into consideration. In judgment of ***Baikuntha Nath Das Vs. Chief District Medical Officer, Baripada 1992 (2) SCT 92***, Hon'ble the Apex Court has also observed that interference is permissible but only in case the order passed is *mala fide* or is based on no evidence or found to be perverse. Same view was taken by Hon'ble the Apex Court in cases ***Union of India Vs. Ajoy Kumar Patnaik 1995 (4) SCT 692 (SC)*** as well as in ***Chandra***

Saikia Vs. State of Assam (2003) 4 SCC 50. Similarly, in cases of ***Jarnail Singh Vs. State of Haryana 2007 (1) SCT 492***, ***Baikuntha Nath Das's*** case (supra) and Chandra Saikia's case (supra), it was held that communication of adverse remarks is not necessary while considering the case for retention of an employee in service beyond 50/55 years of age. In the present case also, the case of the petitioner was reviewed and he was not found to be useful in larger public interest and the impugned order of premature retirement was passed. As per judgment in ***Baikuntha Nath Das's*** case (supra), the order of compulsory retirement is not a punishment and it implies no stigma. Only an opinion is to be formed which is in the public interest to retire a Government servant compulsorily and the order is passed on the subjective satisfaction of the competent authority. The review committee is to consider the entire record of the concerned employee before taking a decision in the matter.

“What is public Interest?” was explained by Hon'ble the Apex Court in case of ***Union of India Vs. Col. J.N. Sinha and another, 1970 (2) SCC 458***, wherein it was held that the objective of premature retirement of a Government servant was to weed out the inefficient, corrupt, dishonest employees from Government service. In State of ***Gujrat & Anr. Vs. Suryakant Chunilal Shah 1999(1) SCT 208***, the observations made by Hon'ble the Apex Court in para Nos. 11 to 17 are as under:-

“11. What is 'public interest' was explained in the classic decision of this Court in ***Union of India Vs. Col. J.N. Sinha***

and another, 1970 (2) SCC 458. It was pointed out that the object of premature retirement of a Government servant was to weed out the inefficient, corrupt, dishonest employees from the Government service. The public interest in relation to public administration means that only honest and efficient persons are to be retained in service while the services of the dishonest or the corrupt or who are almost dead-wood, are to be dispensed with. The Court observed :

“Compulsory retirement involves no civil consequences. The aforementioned Rule 56 (j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with, the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in Government organizations, there is good deal of dead-wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual Government servant and the interests of the public. 'While a minimum service is

guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.....

“It is true that a compulsory retirement is bound to have some adverse effect on the Government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired Government servant does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment.

In our opinion the High Court erred in thinking that the compulsory retirement involves civil consequences.”

12. This was also the view of this Court in ***H.C. Gargi Vs. State of Haryana, 1986 (4) SCC 158.***

13. In ***Gian Singh Mann Vs. High Court of Punjab and Haryana and another, 1980 (4) SCC 266***, it was pointed out that “the expression 'public interest' in the context of premature retirement has a well settled meaning. It refers to cases where the interests of public administration require the retirement of a Government servant who with the passage of years has prematurely ceased to possess the standard of efficiency competency and utility called for by the Government service to which he belongs.”

14. In ***Kailash Chandra Aggarwal v. State of M.P. and***

another, 1987 (3) SCC 513, it was pointed out that the order of compulsory retirement, if taken in public interest, could not be treated as a major punishment and that Article 311(2) of the Constitution could not be invoked, as the employee concerned was no longer fit in public interest to continue in service and, therefore, he was compulsorily retired.

15. In *Union of India Vs. M.E. Reddy and another, 1980 (2) SCC 15*, it was pointed out that the object of compulsory retirement was to weed out the dead-wood in order to maintain a high standard of efficiency and initiative in service. Rule 16 (3) of the **All India (Death-cum-Retirement) Rules, 1958**, empowered the Government to compulsorily retire officers of doubtful integrity. The safety valve of public interest was the most powerful and the strongest safeguard against any abuse or colourable exercise of power under that rule.

16. A three Judge Bench of this Court in *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, 1992 (2) SCT 92 (SC): 1992(2) SCC 299*, laid down the following five principles :

- (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is

passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) *mala fide* or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it un-communicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.”

17. This decision was reiterated by another three Judge Bench of this Court in ***Posts & Telegraphs Board and others Vs. C.S.N. Murthy, 1992 (2) SCC 317 : 1992(2) SCT 325 (SC)***, in

which it was laid down as under :

“An order of compulsory retirement is not an order of punishment. F.R. 56 (j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service, if in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at *bona fide* and on the basis of material available on the record.”

(emphasis supplied)

18. In ***K. Kandaswamy v. Union of India, 1995 (6) SCC 162: 1995 (4) SCT 567 (SC)***, Apex Court observed as under :-

"While exercising the power under Rule 56(j) of the Fundamental Rules, the appropriate authority has to weigh several circumstances in arriving at the conclusion that the employee requires to be compulsorily retired in public interest. The Government is given power to energise its machinery by weeding out dead-wood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them from service. When the appropriate authority forms *bona fide* opinion that compulsory retirement of the Government employee is in the public interest, Court would not interfere with the order."

19. The Court, however, added that the opinion must be based on the material on record otherwise it would amount to arbitrary or colorable exercise of power. It was also held that the decision to compulsorily retire an employee can, therefore, be challenged on the ground that requisite opinion was based on no evidence or had not been formed or the decision was based on collateral grounds or that it was an arbitrary decision.

20. In *S. R. Venkataraman Vs. Union of India (1979) 2 SCC 491*, it was held the order of compulsory retirement as a gross abuse of power as there was nothing on the record to justify and support the order.

21. In *Baldeo Raj Chaddha Vs. Union of India, (1980) 4 SCC 321*, it was held that although the purpose of Rule 56 was to weed out worthless employees without punitive extremes, if, under the guise of "public interest", an order of premature retirement is made for any other purpose, it would be the surest menace to public interest and the order must fail for unreasonableness, arbitrariness and "disguised dismissal".

22. *Baikuntha Nath's* case (supra) was considered by this Court in *M.S. Bindra vs. Union of India & Ors. JT 1998 (6) SC 34 : 1998 (4) SCT 325 (SC)* and it was laid down as under:

"Judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or *mala fide* or if it is based on no evidence. The

observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion the same can be obviated on the assumption that other materials alone need be looked into.

It was further observed as under :

"While viewing this case from the next angle for judicial scrutiny, *i.e.* want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials no reasonable man would reach such a conclusion. In order, therefore, to find out whether any Government servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that Government servant has to be taken before deciding, after he has attained the age of 50 years, either to retain him further in service or to dispense with his services in public interest, by giving him three months' notice or pay in lieu thereof.

In judgment of Hon'ble the Apex Court in case of ***Rajasthan State TPT Corporation and another vs. Bajrang Lal, 2014 (2) SCT (620)*** by following judgment of case ***Municipal Committee, Bahadurgarh vs. Krishna Bihari and others, 1996 (2) SCT 508***, it was held that in cases involving corruption, there cannot be any other punishment than dismissal from service. It has also been held that any sympathy shown in such cases is totally uncalled for and contrary to public interest. By considering the total

service record and the allegations levelled against him during his service record, it cannot be said that his service record was clean. While passing impugned order, the entire service record has been scrutinized and taken into consideration including the ACRs.

In the present case also, while passing of impugned order of premature retirement, the material with regard to utility outlived by petitioner or retiring the petitioner compulsorily for not performing his duty in an effective manner and by considering the allegations of remaining negligence in performance of duty and in awarding various punishments and also in not maintaining an efficient administration or an objective view of overall performance has been taken into consideration.

Accordingly, the impugned order of premature retirement of the petitioner as well as order of rejecting revision do not require any interference by this Court and as such, the present petition being devoid of any merit is hereby dismissed.

26.09.2017

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No