

CWP NO.20336 of 2016

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP NO.20336 of 2016

Date of Order: 10.03. 2017

Gulshan Lal

....Petitioner

Versus

State of Punjab and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. L.S Mann, Advocate for the petitioner.

Mz. Sudeepti Sharma, DAG, Punjab.

JASWANT SINGH, J

The petitioner has retired, on attaining the age of superannuation of 58 years, w.e.f 31.3.2015 as Inspector of Punjab Police from his place of posting in District Jalandhar (Rural). He has invoked the jurisdiction of this court under Article 226 of the Constitution praying for issuance of a writ of Certiorari for quashing of the impugned order dated 31.3.2015 (**P.3**) whereby extension in service for two years has been declined; and order dated 08.9.2016 (**P.9**), whereby despite his exoneration in disciplinary proceedings, the re-consideration has been denied, in the light of Instructions dated 30.4.2015; with further a writ of Mandamus directing the Respondent-Authorities to grant him the said benefit with all consequential reliefs.

Learned counsel for the petitioner has contended that the impugned orders are legally unsustainable, in view of the fact that the petitioner has rendered more than 33 years of service upto the age of 58 years and during this period, he earned as many as 19

commendations including cash rewards to his credit **(P.12 colly)**.

It is further contended that in the alleged disciplinary proceedings, which was the sole ground for rejection of the claim of the petitioner, he has been found to be innocent **(P.11)** by the Inquiry Officer. It has also been argued that the claim of the petitioner cannot be rejected on the basis of the Instructions dated 30.4.2015 **(P.5)** as those were applicable prospectively i.e with immediate effect and cannot be applied to the disadvantage of the petitioner, who attained the age of 58 years prior to issuance of said Instructions i.e on 31.3.2015.

On the other hand, learned State counsel has argued that the claim of the petitioner is not maintainable, in the light of the fact that the Deputy Superintendent of Police, Sub Division, Nakodar vide his letter dated 26.3.2015 intimated to the Sr. Superintendent of Police (Rural), Jalandhar/respondent No.4 that the petitioner while posted as SHO, PS Noormahal investigated FIR No.93 dated 29.12.2014 under Sections 420,353/186/323/506/148/149 IPC, PS Noormahal and without following due procedure deleted Section 420 IPC with the intention to cause undue benefit to the accused persons, as a result thereof, they were granted bail on the basis of which, a Departmental inquiry was initiated against him by the SSP, Jalandhar vide order dated 27.3.2015. An information, to this effect, was sent to Deputy Inspector of Police, Jalandhar/respondent No.3 on 28.3.2015 and after taking into consideration of the same, the case of the petitioner was rightly rejected vide order dated 31.3.2015. It is also argued that exoneration of the petitioner subsequent to

31.3.2015 is not helpful to him.

Heard learned counsel for the parties and perused the paper book with their able assistance.

To decide the matter in controversy, it is relevant to refer to the relevant part of the Punjab Civil Services (First Amendment) Rules Volume-I Part I 2012 dated 8.10.2012 (**P.1**) (for short "2012 Amendment"), which read as under:

"3.26 (a) *Except as otherwise provided in this rule, the date of retirement of a Government employee other than a Group D Government employee shall be the date on which he attains the age of 58 years and the date of retirement of a Group D Government Employee shall be the date on which he attains the age of 60 years.*

Provided that if the State Government is of the opinion that it is necessary or expedient in public interest so to do, the service of a government employee or a class government employee, may be extended beyond the date of retirement for a period not exceeding two years, after getting an option from the concerned government employee or the government employees, as the case may be.

It transpires that in consonance with the proviso reproduced hereinabove, the Finance Department, Government of Punjab, accorded approval for extension in service initially for one year to the Punjab Government Employees vide Instructions dated 08.10.2012 (**R.1/T**) and the same was circulated to all heads offices of Police Departments, Punjab vide letter dated 23.10.2012 by the D.G.P,Punjab/respondent No.2. It further transpires that the Government of Punjab vide Circular dated 30.10.2014 (**R.2/T**) withdrew the clause at Sr.No.7 of the Instructions dated 22.1.2013

thereby deciding that the government employees against whom any departmental inquiry/criminal case or Vigilance case is pending, will not be considered for extension in service under the Instructions dated 08.10.2012 and 20.9.2013.

The Circular dated 30.10.2014 also stipulates in the following terms:

“For ensuring the compliance of these Instructions a Committee consisting of Administrative Secretary of concerned Department, Director (Head of Department) and one another Officer will be constituted in which a list of officer/officials, who are facing vigilance/criminal case/departmental inquiry, will be prepared and decision for extension in service, will be taken before the date of superannuation. These Instructions will be applicable with immediate effect.”

A bare perusal of letter/communication dated 2.3.2015 (P.2) clearly reveals that Sr. Superintendent of Police (Rural), Jalandhar/respondent No.4 recommended the case of the petitioner for extension in service upto the age of 59 years and it was specifically observed that at that time, there was no departmental inquiry/criminal case or vigilance case pending against him and in view of the Instructions dated 08.10.2012, extension was recommended. It was also observed in the recommendation dated 02.3.2015 that the date of birth of the petitioner is 27.3.1951 and he was due to retire on 31.3.2015 but despite that his case was kept pending for the reasons best known to the respondents and just two-three days prior to the date of his superannuation i.e 31.3.2015, the departmental proceedings were

initiated against him on 27.3.2015 just to frustrate the lawful claim of the petitioner for grant of extension in service despite the fact that he served the Department with utmost sincerity.

It seems that the petitioner is the victim and the impugned orders have been passed on account of the legal malice at the fag end of his retirement, which, in the opinion of this court, is the sole reason that the case of the petitioner has been rejected on the last date of his superannuation i.e 31.3.2015. Moreover, in view of the Circular dated 30.10.2014 (**R.2/T**) reproduced hereinabove, the matter for extension in service of employees, who were facing departmental inquiries/criminal case/vigilance case, was to be considered by a Committee of three Officers including Secretary, Director (Head of Department) and one another Officer, but the case of the petitioner has never been considered by such a Committee, rather the same has been rejected by the D.I.G, Police Jalandhar (Rural),Jalandhar Cantt-respondent No.3. To support this view, reference in this regard can be made to clause 5 of the Instructions dated 30.4.2015, whereby it was decided that in case of Group C & D employees, the decision in such kind of cases, would be taken at the level of Appointing Authority and, thus, it is crystal clear that until the issuance of Instructions dated 30.4.2015, the cases for extension in service of the officials, who are facing departmental inquiries, were to be considered by a Committee as stipulated under the Instructions dated 13.11.2014 (R.2) and not by the Appointing Authority. Consequently, on that count also, the impugned orders are not sustainable being violative of Article 14 of the Constitution of India.

The contention of the State counsel that in view of the Instructions dated 30.4.2015 (**P.5**), the case of the petitioner cannot be considered, is not acceptable as these Instructions were made applicable prospective and not retrospective as the petitioner attained the age of 58 years on 31.3.2015.

In view of foregoing discussion, the present writ petition is allowed and impugned orders dated 31.3.2015 (**P.3**) and dated 08.9.2016 (**P.9**) are set aside. Respondent No.3-Deputy Inspector of Police (Rural), Jalandhar, now being the competent Authority, is directed to grant extension of service to the petitioner admissible as per Rules and Instructions within a period of one week from the receipt of certified copy of this order, keeping in view the fact that petitioner will attain the age of 60 years on 31.3.2017.

March 10th, 2017
Manoj

(JASWANT SINGH)
JUDGE