

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4139 of 2016
Date of Decision:-18.04.2017.

Mahender Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

Present: Mr. Jai Vir Yadav, Advocate for the petitioner.

Mr. Sushil Gautam, DAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of retiring him compulsorily with reference to his service record. The Superintendent of Police while ordering compulsory retirement w.e.f. 30.11.2011 passed the following order:-

“EHC Mahender Singh No.13/RWR, HRMS Code HP 55810063, has attained the age of 55 years as on 31.1.2010, being his date of birth 1.2.1955. His extension case has been examined in view of Rules and Government Instructions laid down for this purpose. His service is no longer required due to chequered record which reflect adversely on his integrity. As such, in view of provision contained in PPR 9.18 read with Rule 5.32(a) of CSR Vol-II & Rule 3.26(d) of CSR Vol-I he was served upon three months

notice vide this office No.13448 dated 27.8.2011 for retirement which he had received on 1.9.2011. As such, in view of provision contained in Rules referred to above he will stand retired from Police department w.e.f. 30.11.2011 A.N. After three months from the day of receipt of the notice on retiring pension.

OASI will be responsible to relieve him on due date. Pension clerk will get settle his pension case from A.G. Haryana as well as other pensionary benefit in accordance with revised pension Rules- 2009. Welfare Inspector will ensure that all Govt. articles are deposited by the retiree before proceeding on retirement. He may be informed accordingly. Orders be booked.”

Learned counsel for the petitioner submitted that the Superintendent of Police has not discussed service records relating to the petitioner. He has only mentioned that the petitioner's service is no longer required due to chequered record which reflects adversely on his integrity. Whereas the service record of the petitioner is good with reference to the Government instructions that 70% or above good reports and whose integrity is not doubted during the last 10 years. Whereas in the present case, the respondents have recorded that the petitioner had good entries of 17 and bad entry of one punishment of censure in the year 1989 and parallel proceedings initiated in the year 2002. In the disciplinary proceedings, it is stated that stoppage of one increment has been awarded whereas in the criminal proceedings, the petitioner is stated to have been acquitted. Against the column ACRs for last 10 years, it was noted that “*Nothing Adverse*”. At the same time doubtful integrity has been taken into consideration for the purpose of retiring the petitioner compulsorily which

was recorded for the period from 26.12.2010 to 31.3.2011 and general remarks is that "One increment WPE stopped for claiming bogus TA vide order dt. 31-3-11. Thus, the respondents have not adhered to circular issued for the purpose of compulsory retiring an employee with reference to 70% or above good reports. Even though the petitioner has earned 70% and above good reports still the Superintendent of Police, Rewari proceeded to retire the petitioner compulsorily. Therefore, the order of retiring the petitioner compulsorily dated 4.11.2011 is liable to be set aside.

Per contra learned State counsel resisted the claim of the petitioner while contending that the petitioner had the doubtful integrity for the period from 26.12.2010 to 31.3.2011 and other penalty imposed on the petitioner, namely, stoppage of increment WPE, censure for the year 1989 have been taken into consideration for the purpose of retiring the petitioner compulsorily after completing 55 years. Thus, the respondents have taken a decision not to continue the service of the petitioner beyond 55 years of age.

Heard learned counsel for the parties.

For the purpose of retiring an employee compulsorily, as and when he completes 55 years of service and if the employer comes to the conclusion that such an employee is not entitled to continue beyond 55 years in that event the employer is required to take note of the instructions issued by the Government with reference to the fact that whether an employee has earned 70% or above good reports and whose integrity is not doubted during the last 10 years. The above exercise has not been complied by the Superintendent of Police in the present case for the reasons that doubtful integrity is for the period from 26.12.2010 to 31.3.2011 and not for

bad entry, censure in the year 1989 and stoppage of one increment in the year 2010-11. Thus, it is evident that the petitioner has earned 70% good reports even though the doubtful integrity has been written in the annual confidential report for the period from 26.12.2010 to 31.3.2011. However, the same is required to be ignored for the reasons that writing such doubtful integrity is with reference to the departmental inquiry initiated by the respondents which was ended in imposing the penalty of stoppage of one increment WPE for claiming bogus TA vide order dated 31.3.2011. That apart doubtful integrity is only for a period of 3 months. Perusal of the official records, it is evident that the petitioner has good records which reads as under:-

Subject:- Extension beyond the age of 55 years- case of EHC Mahender Singh No.13/RWR

Sir,

EHC Mahender Singh No.13/RWR of this distt. Is attaining the age of 55 years as on 31.1.2010, his date of birth being 1.2.1955. He was enlisted in police department on 30.4.1981 as constable and has completed more than 28 years of qualifying service.

As per HR. Govt. Instruction No.32/198/83-4 GSI dated 16-8-1983, 32/15-A/87-4 GSI dated 6.7.1987, 32/194/89-GSI dated 22.3.1990 and 32/01/2005-4GSI dated 11.4.2005 read with Instruction conveyed vide DGP/HR office Memo No.1638-89/E(III)-II dated 14.3.2006, with the purpose to retain a Government employee in service beyond the age 55 years it is provided that only those Govt. employees should be allowed to continue in service beyond the age of 55 years who have earned 70% or above good reports and whose integrity is not doubted during the last ten years. However cases of those

employees, who on the basis of their service record are fit to be retained in service beyond the age of 55 years but his integrity is reported to be doubtful are to be decided by the head of department in view of Govt. instruction dated 11.4.2005. further it is provide that while deciding such case, service record of the official/Punishment awarded to him should be properly scrutinized. An official who has been awarded punishment of the basis of charges which inflict on his integrity of employee should not be permitted to serve beyond the age of 55 years. Minor punishment like warning/Censure should be avoided. Cases in which charge sheet have been issued under Rule 7/ court case are pending where the charge are such which casts aspertions on his integrity of the employee should be referred to PHQ for decision.

His service record is as under:-

<i>Good entries</i>	--	<i>17</i>
<i>Bad Entries</i>	--	<i>1. Censure in 1989 for missing his identity card.</i>
		<i>2. 15 days P.D. In 1989 for absence.</i>

D.E. Crl case if any-- A case FIR No.196 dated 6.3.2002U/S 409/420/468/471 IPC P.S.City GGN is pending against him. Moreover a D.E in his regard is kept pending till the next decision of criminal case.

ACRs for last ten years -- Nothing adverse

His case for retention in service beyond the age of 55 years was referred to PHQ vide this office Memo No.685/SPL dated 3.2.2010, for seeking guideline due to involvement in criminal case having

charge of moral turpitude. The Director General of Police, Haryana vide his office memo. No.9670/E(II)-4 dated 22.2.2010 made following observation:-

On the perusal of CH. Roll of EHC Mahender Singh No.13/RWR it revealed that after registration of criminal Case against him, he has been granted 2nd ACP Scale w.e.f. 1-5-02 and also confirmed in the rank of Constable w.e.f. 31-1-03 for which he was not entitled as a criminal case is still pending against him. Further as per entries in his Ch. Roll none of his punishment and also ACR reflects adverse on his integrity. There are only two minor punishment in his Ch. Roll which were awarded to him in the year 1989 and as such have, by now, outlived their effect. The case, is therefore, not covered under PPR 9.18(2) as neither his honesty is doubtful nor his efficiency can be held to be impaired. He is also not of infamous conduct. The case should have been duly examined before sending to this office. It is also directed that in future such cases must be sent through IGP/South Range.

On the above observation, his Ch. Roll has been scrutinized and it has been found that he was granted 2nd ACP w.e.f. 1.5.2001 instead of 1.5.2002. The same was granted prior to his involvement in above criminal case.

As such, keeping in view the facts explained above, his extension case may kindly be kept pending till the decision of his criminal case as well as departmental enquiry.

Orders are solicited as to whether his extension case may kindly be kept pending till the decision of his criminal case as well as departmental enquiry or otherwise.

Submitted for order please.”

In view of the above recording by the Department in respect of the petitioner's service particulars vide Annexure P-5 merely stating that the petitioner service is no longer required due to chequered record which reflect adversely on his integrity is not supported by any reasons/incidents. Moreover it is very vague. Further for the purpose of retiring an employee an employer cannot rely on doubtful integrity. Doubtful integrity is with reference to suspicion and the Government instructions is very specific that 70% or above good reports are required to be taken into consideration and whose integrity is not doubted during the last 10 years whereas in the present case, doubtful integrity is only for the period of 3 months during the year 2010-11. Hence, the order retiring the petitioner compulsorily is hereby set aside. The petitioner is entitled for consequential benefits. The same shall be released within a period of 3 months from today.

Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

April 18, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.