

313-A

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

CWP No.6377 of 2001

Date of decision: March 09, 2018

Gurnam Singh Sewak

.....Petitioner

Versus

State of Punjab and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Sehaj Bir Singh, Advocate for the petitioner.

Mr. H.S. Sullar, DAG Punjab.

Ms. Deepali Puri, Advocate for respondent No.2.

A.B. CHAUDHARI, J

By the present petition, the petitioner has put to challenge the order of his dismissal from service dated 28.02.2001 (Annexure P-12) passed by the respondents.

The petitioner had joined Punjab Civil Services (Judicial Branch) he having been appointed through proper channel, on 08.02.1977. His first posting was at Jalandhar as Sub Judge-III Class-cum-Judicial Magistrate-II Class. He continuously served at various places. He was transferred/posted as Civil Judge (Sr. Division)-cum-Additional Chief Judicial Magistrate at Bathinda, on 01.06.1996. While serving at Bathinda, he submitted a notice seeking voluntary premature retirement from service, on 28.06.1996 through proper channel by giving three months notice as he had rendered continuous service of 32 years. However, there was no

response to the said notice, but by letter dated 27.08.1996 received by the petitioner on 02.09.1996, he was informed that his request seeking voluntary retirement was considered and was not accepted. In the meanwhile, the petitioner was put under suspension on 17.08.1996 in the context of a departmental inquiry against him. He continued under suspension till the age of superannuation, namely 58 years, on 30.06.1999. He was served with a charge-sheet dated 15.10.1996 along with articles of charges etc. He filed his reply to the charge-sheet on 07/09.01.1997. In accordance with the charge-sheet, the inquiry was made by the inquiry officer who submitted his inquiry report dated 04.02.1998 by which the petitioner was exonerated from charge Nos.1 and 2. But with regard to charge No.3, it was held that he was guilty thereof. There was no material on record to establish charge No.3 and therefore, the petitioner could not be held guilty. Finally, the petitioner received order of dismissal from service, which is impugned in the present petition.

Mr. D.S. Patwalia, learned Senior Advocate for the petitioner restricted his submissions in the matter of claim for relief in the present petition on only one legal ground and therefore, we have adverted to only the facts relating to the said legal ground and we accordingly, proceed to determine the said legal issue raised by him in the present petition. Following is the prayer clause (i) in the present petition:-

“(i) issue a writ in the nature of certiorari/mandamus or any other appropriate writ, order or direction for quashing the impugned order dated 28.02.2001 (Annexure P-12) the charge memo dated 15.06.1996 (Annexure P-3 Colly) as also the Inquiry report dated 04.02.1998 (Annexure P-6) to the extent it

has been decided against the petitioner.”

The only legal ground of attack for challenging the impugned order of dismissal from service dated 28.02.2001 (Annexure P-12) based on the charge-sheet and the inquiry report mentioned in the aforesaid prayer clause is as under.

The petitioner attained the age of superannuation on 30.06.1999 during the continuance of departmental inquiry against him and he was served with an order dated 28.02.2001 of dismissal from service (Annexure P-12) that is much later after retirement from service, which is illegal and liable to be quashed and set aside. Learned Senior counsel for the petitioner submitted that the relevant governing rules, namely the Punjab Civil Services Rules (Volume II) (for short 'Rules') does not provide for any enabling power in the employer to issue order of dismissal from service after the age of superannuation to which the petitioner was, in ordinary course, legally entitled to. He has referred to the relevant Rules, which we would quote hereinafter. He, then submitted that the arguments that the age of requirement from judicial office is 60 years and therefore, the dismissal order would fall within 60 years, is misconceived because the age of retirement of judicial officer is 58 years in accordance with Rules. The next two years after 58 years is not a matter of right, but would depend upon the suitability, evaluation and opinion of the High Court whether to extend the services for total period of 2 years. Therefore, the age of retirement of a member of judiciary ordinarily is 58 years. At any rate, according to him, relevant Rules does not permit issuing of order of dismissal beyond the age of retirement. He relied on the decision of the Supreme Court in the case of

High Court of Punjab and Haryana versus Amrik Singh, 1995 Supp(1) SCC 321 and **UCO Bank and another versus Rajinder Lal Capoor**, AIR 2007 SC 2129. He, therefore, prayed for grant of relief as aforesaid.

Per contra, learned counsel for the respondents vehemently opposed the writ petition and submitted that the petitioner was found guilty of charge No.3 for the serious act of misconduct. Learned counsel for respondent No.2 invited our attention to the finding regarding charge No.3 to contend that the petitioner had indulged in the acts of corruption and therefore, he was rightly dismissed from service. According to her, the age of retirement of a judicial officer, in accordance with the present Rules, is 60 years and not 58 years as contended by the learned Senior counsel for the petitioner. She submitted that even if after the age of 58 years, a person is allowed to continue in service for 2 years, fact remains that he is entitled to continue upto the age of superannuation which would be 60 years. She has invited our attention to the Punjab Civil Services (First Amendment) Rules, 2002 (for short 'PCS (First Amendment) Rules'), which came into effect from 01.01.1993 and submitted that by amendment, the age of retirement has been made as 60 years for a member of such service and therefore, the submission in that behalf made by the learned Senior counsel for the petitioner will have to be rejected. She also relied on the decision in the case of **All India Judges' Association & Others versus Union of India**, 1993 AIR (SC) 2493. She, therefore, prayed for dismissal of the writ petition.

CONSIDERATION

We have heard learned counsel for the rival parties at length. We have seen the entire record of the petition. We have also seen the relevant

Rules.

Learned Senior counsel for the petitioner has cited Rule 2(b) of Rules. We quote Rule 2(b) of Rules as under:-

“2(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that—

- (1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;*
- (2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment—*
 - (i) shall not be instituted save with the sanction of the Government;*
 - (ii) shall not be in respect of any event which took place more than four years before such institution; and*
 - (iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable*

to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.”

He also relied on the decision of the Supreme Court in respect of this Court and in that decision, High Court of Punjab and Haryana was the appellant before the Supreme Court. We quote the Para-7 from **Amrik Singh's case (supra)**, which reads thus:-

“7. It is seen that the learned Chief Justice of the High Court, on the administrative side, while passing the order of dismissal agreed with the enquiry officer's finding that the respondent committed embezzlement and mentioned that the order of dismissal would come into immediate effect from the date of the order. In other words, he appears to have intended to say that the order of dismissal will be operative from the date of the order of the dismissal. But it would appear that the Chief Justice was not apprised that the delinquent had already been retired from service on completion of two years period of extended service of re-employment with effect from August 31, 1982. Therefore, the order of giving effect to the order of dismissal from the date of its order was of no consequence and became superfluous as he was no longer in service as on that date. However, it would be clear that he has the power either under Rule 2.2 of the Punjab & Haryana Civil Services Manual, Vol. II or Rule 9 of the Central Civil Services Pension Rules to take appropriate action as was made applicable to the staff of the High Court of Punjab & Haryana as the case may be. Therefore, it would be open to him to take such action as is open to him under law. The impugned order of the High Court is set aside, and the writs are issued with the above modification. The appeals are allowed. No costs.”

In so far as the decision in UCO Bank's case (supra) is

concerned, there is reference to the earlier decision in Para-20 of the said judgment in the case of **Union of India versus Sangram Keshari Nayak**, (2007) 6 SCC 704. It would be appropriate for us to quote relevant of Para-21 and 23 which read thus:-

“.....20. A departmental proceeding is ordinarily said to be initiated only when a chargesheet is issued.

(See also Union of India v. Sangram Keshari Nayak MANU/SC/7342/2007 : (2007) 6 SCC 704

23. An order of dismissal or removal from service can be passed only when an employee is in service. If a person is not in employment, the question of terminating his services ordinarily would not arise unless there exists a specific rule in that behalf. As Regulation 20 is not applicable in the case of the respondent, we have no other option but to hold that the entire proceeding initiated against the respondent became vitiated in law”.

It is clear from the aforesaid decision of the Apex Court particularly in **Amrik Singh’s case (supra)** that the Apex Court clearly held considering the relevant rule that the order of giving effect to the order of dismissal from the date of his order was of no consequence and became superfluous as officer was no longer in service on that date. In the present case, it is not in dispute that while the petitioner was in service, he was charge-sheeted on 15.10.1996 and thereafter, inquiry was conducted. He attained the age of 58 years on 30.06.1999. In other words, he attained the age of superannuation at the age of 58 years, on 30.06.1999, but order of his dismissal from service was passed on 28.02.2001 that is much after the age of superannuation at 58 years. It is thus, clear that facts pertaining to the legal question, are not in dispute.

The next question for consideration is the contention raised by learned counsel for respondent No.2-High Court. She relied on the amended Rules from PCS (First Amendment) Rules. We quote Rule-1 and Rule-2 thereof as amended as under:-

“1. (1) *These rules may be called the Punjab Civil Services (First Amendment) Rules, Volume-I, Part-I, 2002.*

(2) *They shall be deemed to have come into force on and with effect from 1st day of January, 1993.*

2. *In the Punjab Civil Services Rules, Volume-I, Part-I, in rule 3.26, in clause (a), at the end.-*

(i) *for sign “ . ”, the sign “ ; ” shall be substituted; and*

(ii) *the following shall be added, namely :-*

“Provided that a member of the Punjab Civil Services (Judicial Branch) or the Superior Judicial Services shall be required to retire on attaining the age of sixty years if High Court is satisfied of his continued utility to the Judicial system on objective assessment of his work, conduct and integrity and also keeping in view the reputation acquired by him as a Judicial Officer and has passed an order in this regard, otherwise the Judicial Officer will retire at the age of fifty eight years.”

A perusal of the above amended Rules shows that the retirement is 60 years; only if the High Court is satisfied of his continued utility to the Judicial system on objective assessment of his work, conduct and integrity and also keeping in view the reputation acquired by him as a Judicial Officer. It is thus, clear from the first part of the amended proviso that it is none of the right of the petitioner to claim that he would continue beyond the

age of 58 years upto the age of 60 years and would retire at the age of 60 years whether or not the High Court is satisfied about requirement stipulated above. To put in other words, it is for the High Court to get satisfied whether an officer is required to be continued after 58 years and whether continued utility of such officer in judicial system is required or not. We will have to therefore, reject the submission made by the learned Counsel for respondent No.2-High Court that the age of retirement would be 60 years in ordinary course.

It is also important to note that the second part of the proviso, in clear terms show that there has to be an order for continuing services of judicial officer beyond the age of 58 years. In the present case, it is an admitted position that there is no order made by the High Court for continuance or extending the services of petitioner beyond the age of 58 years and rightly so because enquiry officer found the petitioner guilty of serious charge of corruption as per charge No.3. We are not deciding the merits of the findings of guilt of the petitioner since the limited legal issue is required to be decided. It is further clear from the reading of the second part of the proviso that if there is no order to extend services beyond 58 years by the High Court, the judicial officer will retire at the age of 58 years. The last part of the said proviso is thus, emphatic that the age of retirement of the judicial officer is 58 years and not 60 years. We thus, answer the legal question holding that the dismissal order dated 28.02.2001 (Annexure P-12) of the petitioner is of no consequence and was superfluous as the petitioner was no longer in service on that date and hence, the same must be quashed.

Learned counsel for respondent No.2-High Court then submitted

that liberty should be given to the High Court to take action according to law even, though, the dismissal order has been found to be vitiated.

We have given our conscious thought to this aspect and we find that since such course of action was indicted by the Apex Court in **Amrik Singh's case (surpa)**. We would follow the suit. In the result, we make the following order:-

ORDER

- (i) CWP No.6377 of 2001 is allowed;
- (ii) The impugned order dated 28.02.2001 (Annexure P-12) passed by the respondents based on the charge-sheet dated 15.06.1999 (Annexure P-3 Colly) and inquiry report dated 04.02.1998 (Annexure P-6) is held to be illegal and is quashed and set aside;
- (iii) It would be open to the High Court of Punjab and Haryana to take such action as is open in accordance with law and in the facts and circumstances of the case.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

March 09, 2018

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**