

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

CWP No. 22367 of 2015

Date of decision : 27.08.2018

* * * * *

Ram Dhari

.....Petitioner

Versus

State of Haryana and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. R.N Lohan, Advocate for the petitioner.

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

* * * * *

RITU BAHRI, J.

The petitioner Ram Dhari has come up in the present petition seeking quashing of the adverse entry in the ACR for the period w.e.f 1.4.2006 to 31.3.2007 issued vide letter dated 27.8.2007 (Annexure P-21) order dated 28.1.2009 (Annexure P-25) passed by respondent no.2 and order dated 16.7.2015 (Annexure P-28) issued by respondent no.4 vide which, the petitioner was served with three months notice for retirement from service as provided under Rule 3.26 (d) of Punjab Civil Services Rules, Volume-I, Part-I read with 9.18 (i)(C) of PPR Volume-I and order dated 2.10.2015 (Annexure P-31) issued by respondent no.4, whereby he was retired from service w.e.f 16.10.2015 (A.N).

The petitioner was recruited in the Haryana Police on 7.12.1986 as Constable and was promoted up to the rank of Sub Inspector. The petitioner was also awarded the President Medal on the occasion of Republic Day 2005. The petitioner was conveyed the adverse entry in the ACR for the period 01.4.2006 to 31.3.2007 vide letter dated 27.8.2007 (Annexure P-21). This entry reflected his honesty to be doubtful. Against this adverse entry in the ACR for the period 01.04.2006 to 31.3.2007, the petitioner filed a representation dated 28.9.2007 (Annexure P-22) before respondent no.3, which was rejected vide order dated 28.5.2008 (Annexure P-23). Another representation dated 27.6.2008 (Annexure P-24) was given to respondent no.2, which was also rejected vide order dated 28.1.2009 (Annexure P-25). Finally he submitted representation dated 17.3.2009 (Annexure P-26) before respondent no.1. However, the petitioner was asked to appear before respondent no.1 on 9.6.2014 vide letter dated 12.5.2014 (Annexure P-27). Thereafter vide order dated 16.7.2015 (Annexure P-28), the petitioner was served with three months notice for retirement from service and finally vide impugned order dated 2.10.2015 (Annexure P-31), he was retired from service.

On notice, joint written statement was filed by Superintendent of Police, Jind on behalf of respondents no. 1 to 4. It has been submitted therein that the petitioner was reported adversely in the ACR for the period from 1.4.2006 to 31.3.2007 against the column of integrity etc. (Annexure P-7) which was conveyed to the petitioner by the Inspector General of Police, Hisar Range vide letter dated 27.8.2007 (Annexure P-21). On the representation of the petitioner regarding adverse remarks, comments of the reporting officer were obtained by the Inspector General of Police, Hisar

Range, Hisar. The Inspector General of Police, Hisar Range, Hisar vide his letter dated 4.10.2007 sent his detailed comments. As per the comments of the Reporting Officer, the adverse remarks in the ACR for the period from 1.4.2006 to 31.3.2007 were recorded in the ACR of the petitioner on the basis of very careful and objective assessment of over all functioning of the petitioner during the period under report. The representation was rejected as the petitioner was found dishonest with regard to his work. The stand taken by the respondents with regard to representation (Annexure P-26) was that no second representation is maintainable against an adverse ACR and reference was made to Instructions dated 22.3.1971 issued by the State Govt. which are reproduced as under:-

“ii) Before passing final orders on a representation against adverse remarks, the comments of the reporting authority/authorities should invariably be obtained. Final, orders on such representation will be conveyed to the Government employee concerned as far as possible within three months of the date of submission of the representation. The orders so passed shall be final and a second representation against the adverse remarks will not be entertained.”

Counsel for the petitioner has argued that before passing the order of compulsorily retirement, approval of the State Government is required to be taken under Rule 9.18 (2) and without approval of the Government, the order cannot be sustained. He has referred to cases in ASI ***Krishan Singh vs. State of Haryana and others*** (CWP No. 8138 of 2012) decided on January 15, 2014 and in ***SI Babu Ram vs. State of Haryana and others*** (CWP No. 3188 of 2017) decided on 2.3.2017, wherein it has been held that Rule 9.18 (2) mandates approval of the State Government and without the said approval, the petitioner could not have been retired from service especially when he has completed more than 32 years of service.

Counsel for the State, on the other hand, has referred to ***Om Parkash vs. State of Haryana and others, 2011 (4) PLR 696***, wherein it has been held that Rule 9.18 has two parts. Under Rule 9.18 (1), if an employee has to be retired at the age of 55 years, absolute power has been given to the appointing authority to retire him in public interest by giving him notice for not less than three months in writing. Rule 9.18 (2) undoubtedly authorizes the Inspector General of Police to compulsorily retire an Assistant Sub Inspector of Police who has completed 25 years qualifying service with the previous approval of the State Government. However, this power has to be exercised in public interest.

I have considered the submissions made by the counsel for the parties and gone through the records of the case.

Rule 9.18 reads as follows:-

[9.18. Retiring pension. (1) Notwithstanding anything contained in these rules, a retiring pension is granted to an officer-

(a) who is permitted to retire from service after completing qualifying service of twenty-five years or such lesser period of as may, for any class of officers, be prescribed; or

(b) who is compulsorily retired under sub-rule (2) after completing twenty-five years' qualifying service; or

(c) who is retired by the appointing authority on or after he attains the age of 55 years, by giving him not less than three months' notice; or

(d) who retires on or after attaining the age of 55 years by giving not less than three months' notice of his intention to retire to the appointing authority.

Provided that where the notice is given before the age of fifty-five years so attained, it shall be given effect to from a date not earlier than the date on which the age of fifty five years is attained.

Note:- *Appointing authority retains an absolute right to retire any Government servant on or after he has attained the age of 55 years without assigning any reason. A corresponding right is also available to such a Government servant to retire on or after he has attained the age of 55 years.*

(2)The Inspector-General of Police may, with the

precious approval of the State Government, compulsorily retire any Police Officer, other than an officer belonging to Indian Police Service or Haryana State Police Service who has completed twenty-five years' qualifying service, without giving any reasons. An officer who is so compulsorily retired will not be entitled to claim any special compensation for his retirement.

Note:- *The right to retire compulsorily shall not be exercised when it is in the public interest to dispense with the further services of an officer on grounds such as inefficiency, dishonesty, corruption or infamous conduct. Thus the rule is intended for use-*

(i) against an officer whose efficiency is impaired but against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient i.e., when an officer's value is clearly incommensurate with the pay which he draws but not to such a degree as to warrant his retirement on a compassionate allowance. It is not the intention to use the provisions of this rule as a financial weapon that is to say the provisions should be used in only the case of an officer who is considered unfit for retention on personal as

opposed to financial grounds.

(ii) in case where reputation for corruption, dishonesty or infamous conduct is clearly established even though no specific instance is likely to be proved.

Note 2:- *The officer shall be given an adequate opportunity of making any representation that he may desire to make against the proposed action and such representation shall be taken into consideration before his compulsory retirement is ordered. In all cases of compulsorily retirement of enrolled police officers, the Inspector-General of police shall effect such retirement only with the previous approval of the State Government in accordance with the instructions, if any, issued by the Government on the subject from time to time.*

Note3:- *The officer whose duty it would be to fill the post if vacant, shall record his orders on the application to retire, which, if in vernacular, should be accompanied by a translation in English. If the officer who applies for pension is permitted to retire, the application shall be forwarded with the pension papers.]*

A perusal of Rule 9.8 (1) note makes it abundantly clear that an

Appointing authority retains an absolute right to retire any Government servant on or after he has attained the age of 55 years without assigning any reason. However, as per Rule 9.18 sub Clause 2 the Inspector General of Police may, with the previous approval of the State Government, compulsorily retire any Police Officer, other than an officer belonging to Indian Police Service or Haryana State Police Service who has completed twenty five years qualifying service without giving any reasons.

This Rule has been interpreted by a Division Bench of this Court in the case of *Babu Ram Walia vs State of Haryana and others* , **2007 (1) SCT 288** whereby the Division Bench has upheld the order retiring a Police Office after attaining the age of 55 years by the competent authority by observing that the competent authority had an absolute power to consider the entire service record and get rid of an inefficient and dishonest officer and compulsorily retire such officer in the public interest as well as in the interest of the police force. In the case of *ASI Harinder Singh vs. State of Haryana and others (CWP No. 4155 of 1995)* decided on **5.9.1995**, the petitioner an ASI of Police filed writ petition against the order by which he had been retired from service under Rule 9.18 of the Punjab Police Rules, Volume-I. The petitioner was recruited as Constable on August 27, 1963. On May 4, 1993, the Director General of Police proposed that the petitioner should be compulsorily retired in public interest under Rule 9.18(2). A show cause notice was issued to him by the Director General of Police whereby he was called upon to show cause as to why he should not be compulsory retired from service in public interest. Along with this notice, the material on the basis of which, the petitioner was sought to be compulsory retired was also conveyed to him. It was held by the Division

Bench of this Court that Rule 9.18(2) undoubtedly authorizes the Inspector General of Police to compulsorily retire an Assistant Sub Inspector of Police who has completed 25 years' qualifying service with the previous approval of the State Government. However, this power has to be exercised in public interest. Furthermore, the employee is entitled to be given an adequate opportunity of making any representation and the same has to be taken into consideration before his compulsory retirement is ordered. The impugned order was quashed. However, this judgment will not be helpful to the petitioner in the present case, as in *ASI Harinder Singh's case (supra)*, the petitioner was compulsorily retired after 25 years of service.

A coordinate Bench of this Court in the case of *Om Parkash vs. State of Haryana and others 2011 (4) PLR 696* has held that compulsory retirement in public interest under the service Rules (like 9.18 (1)) is like premature retirement. It does not cast any stigma. The Government servant is entitled to earn pension and other retiral benefits. So long as the opinion is formed to compulsorily retire an officer in public interest and this opinion is formed bona fide, the same cannot ordinarily be interfered with by a judicial forum. In paragraph 6 it has been observed as under:

None of the submissions made by the counsel would impress me. In my view, Rule 9.18 (2) of the Rules is not attracted in this case. Rule 9.18(1) (c) has apparently been invoked to pass the impugned order. Appointing Authority is given complete power to retire a person on or after he has attained age of 55 years by giving him not less than three months notice. This rule provides that notwithstanding anything contained in these rules, a

retiring pension is granted to an officer- (a) who is permitted to retire from service after completing qualifying service for twenty-five years or such lesser period as may be prescribed, (b) who is compulsorily retired under sub-rule (2) after completing ten years' qualifying service; or (c) who is retired by the appointing authority on or after he attains the age of 55 years; (d) who retires on or after attaining the age of 55 years. The Note appended under the Rule would further make it clear that the Appointing Authority has an absolute right to retire any Government servant on or after he has attained age of 55 years without assigning any reason. The Note reads as under:-

“NOTE:- Appointing authority retains as absolute right to retire any Government servant on or after he has attained the age of 55 years without assigning any reason. A corresponding right is also available to such a Government servant to retire on or after he has attained the age of 55 years.”

In the facts of the present case, the petitioner has attained the age of 55 years and hence the appointing authority retired him after giving him notice of three months. The main question for consideration is whether adverse remarks recorded in the ACR, where his honesty was reported as

doubtful would caste a stigma after his retirement. Even this aspect has been considered by Supreme Court in the case of **Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another, AIR 1992 SC 1020**, wherein various principles have been laid down, one of it being that an order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion or misbehavior. Such orders are passed on the subjective satisfaction of the Government and even the principles of natural justice have no place in the context of an order of compulsory retirement. The judicial scrutiny by the High Court is limited on the ground of mala fide or where such an order is based on no evidence or that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material, in short, if such or order is found to be perverse order. Hon'ble the Supreme Court in the case of ***National Aviation Company of India Ltd. vs. S.M.K Khan 2009(2) SCT 442 AIR 2009 Supreme Court 263=2009 (5) SCC 732*** has again considered this question in the context of a rule which permitted the competent authority to ask an employee to retire after he attains the age of 55 years on giving him three months notice without assigning any reason. The Court observed as under:-

“An order of compulsory retirement in pursuance of a rule/regulation which enables the competent authority to prematurely retire an employee, on the formation of a bona fide opinion that continuation of the employee in service will not benefit the institution or be in the interest of the institution (or will not be in public interest where the employee is a government servant), on review of the performance/service record of the employee, on the

employee attaining the specified age or completing the specified period of service, is valid and not open to challenge. It is neither a punishment nor considered to be stigmatic. Where the compulsory retirement, is not by way of punishment for a misconduct, but is an action taken in pursuance of a valid condition of service enabling the employer to prepone the retirement, the action need not be preceded by any enquiry and the principles of natural justice have no application. The unsatisfactory service of the employee which may include any persistent misconduct or inefficiency furnishes the background for taking a decision that the employee has become a dead wood and that he should be retired compulsorily. Such 'compulsory retirement' is different and distinct from imposition of a punishment of compulsory retirement (or dismissal/removal) on a specific charge of misconduct, where the misconduct is the basis for the punishment. The difference is on account of two factors : Firstly, the employee on account of completing a particular age or number of years of service falls within the zone where his performance calls for assessment as to whether he is of continued utility to the employer or has become a deadwood or liability for the employer. Secondly, the record of service, which may include poor performance, unsatisfactory service or incidentally any recent conduct (which if separately

considered may constitute a misconduct subject to punishment) when considered as a whole, leads the Reviewing Authority to the conclusion that the employee in question is not fit to be continued in service and not of utility to the employer. Therefore, any incidental reference to unsatisfactory service, or any remarks in the context of explaining the reason for compulsory retirement under the relevant rule, in the letter of compulsory retirement will not be considered as stigmatic, even though read out of context, they may be capable of being construed as allegations of misconduct. Any order of compulsory retirement in terms of the rule/regulation providing for such compulsory retirement is not open to interference unless shown to be malafide or arbitrary or not based on any background material at all relating unsatisfactory service justifying the premature retirement. When an order of compulsory retirement purports to be one under the rule/regulation providing for such premature retirement, the proper approach of the court would be to consider whether the order is sustainable with reference to the requirements of the relevant rule, rather than examining whether the order could also be construed as a punishment for misconduct vide **Baikuntha Nath Das v. Chief District Medical Officer [1992 (2) SCC 299]**, **Allahabad Bank Officers' Association v. Allahabad Bank [1996 (4) SCC 504]**,

I.K.Mishra v. Union of India [1997 (6) SCC 228], State of Uttar Pradesh v. Lalsa Ram [2001 (3) SCC 389] and M. L. Binjolkar vs. State of Madhya Pradesh [2005 (6) SCC 224].

In **Balwant Singh vs. State of Haryana and others, 2018 (2) SCT 335**, it was held that premature retirement of police officer at attaining the age of 55 years not required to be preceded by approval of State Government. Approval of the Government is necessary only before ordering compulsory retirement of officer after completion of 25 years of service. In paragraphs 21, 21-A and 22, it was observed as under:

*21. Again, in **Shamsher Singh v. State of Haryana and others** 2008 (2) SCT 616, yet another Division Bench, after discussing Rule 9.18 of the Police Rules, held that premature retirement at the age of 55 years, by the appointing authority, is not by way of a punishment and does not cast any stigma and has to be based on the objective consideration of the entire service record of the employee, with greater emphasis on the Annual Confidential Reports of later periods.*

In that case too, it was the appointing authority itself (Superintendent of Police, Ambala), that had issued a notice of retirement to the petitioner in that case, upon him having attained 55 years of age, due to an adverse entry in his ACR. The Division Bench, thus, upheld the

retirement notice holding as above, that the appointing authority has an absolute right to retire any police officer at the age of 55 years without assigning any reason, the reason of course being that there was an adverse entry in his ACR reflecting on the integrity of the officer.

21-A. Obviously, the aforesaid judgments were not brought to the notice of the co-ordinate Bench that was considering ASI Krishan Singhs' case, nor to the notice of another co-ordinate bench that relied upon Krishan Singhs' case in a judgment passed on 07.10.2016, in CWP no.5602 of 2015.

22. It needs, however, to be stated here that the judgment in Krishan Singhs' case was appealed against by the respondent State of Haryana by way of LPA no.725 of 2014, which appeal was dismissed by a Division Bench on 14.01.2015. A perusal of that judgment shows that the Division Bench has actually held that the order of premature retirement having been passed without previous approval of the Government, it was unsustainable and therefore, the learned single Judge had not erred in quashing the notice issued for retirement of the writ petitioner. Consequently, the appeal of the State was dismissed.

Thereafter, SLP (C) no.17945 of 2015, filed by the

State was also dismissed, but by making no observation on the merits of the case.

The implication of both the orders shall be discussed further in this judgment.

In the present case, the petitioner has been retired after attaining the age of 55 years. It does not require any interference as SP, Jind had absolute powers to compulsorily retire him at the age of 55 years without taking approval of the Government. The adverse remarks recorded in the ACR and conveyed to the petitioner vide letter dated 27.8.2007 (Annexure P-21), which reflected his honesty as doubtful, have rightly been taken into consideration while retiring and even the second representation dated 17.3.2009 (Annexure P-26) was not required to be decided as there was no such provision regarding it according to the Instructions dated 22.3.1971 issued by the State Government, if the first is already dismissed.

In view of the judgments referred to above and in view of all that has been discussed above, no ground is made out to interfere with the impugned order. Present writ petition is dismissed.

27.8.2018

ritu

**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

Yes