

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

CWP No.15384 of 2019 (O&M)

Date of Decision.28.08.2019

Sunehra Singh

...Petitioner

Vs

State of Haryana and others

...Respondents

Present: Mr. Sunil K. Nehra, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.9917 of 2019

Application is allowed.

Replication filed to written statement filed on behalf of
respondents No.1 to 3 is taken on record.

CWP No.15384 of 2019

The question in the present case is whether petitioner, who was
serving as Block Development and Panchayat Officer (hereinafter called as
'BDPO') can be compulsory retired by the respondents in alleged violation
of Rule 144 and 145 of the Haryana Civil Services (General Rules), 2016.

In order to answer the aforementioned question, it would be in
the fitness of things to give few facts. Vide Annexure P-1 dated
20.06.1994, petitioner as appointed as Social Education and Panchayat
Officer in Pachayat Department and thereafter on 24.12.1999 (Annexure P-
2) promoted as BDPO.

Mr. Sunil Kumar Nehra, learned counsel appearing on behalf of
the petitioner submitted that vide communication dated 09.01.2015, Deputy

Commissioner directed the petitioner to register criminal case against one Manju Sharma for embezzlement of government funds. The aforementioned communication was on the basis of investigation conducted by Deputy Chief Executive Officer, District Council, Kurukshetra. Accordingly on 11.01.2015 (Annexure P-4), Block Development and Panchayat Officer wrote a letter to Station House Officer, Police Station, Shahabad for lodging of FIR against Manju Sharma, Accountant. Simultaneously, the Deputy Commissioner also accorded permission to file suit for recovery qua embezzled amount against Manju Sharma. Civil Suit bearing No.RBT/620/2016 for recovery of ₹1,50,63,412/- was filed against Manju Sharma, which was decreed vide judgment and decree dated 06.09.2017. On the basis of complaint, FIR bearing No.19 dated 13.01.2015 under Sections 409 and 420 IPC at Police Station Shahabad, District Kurukshetra, against Manju Sharma, was registered. Petitioner was flabbergasted to receive charge sheet dated 27.02.2017 for alleged misappropriation done by Manju Sharma, which was duly replied. Dis-satisfied with the reply, Balwan Singh (IAS retd) was appointed as Enquiry Officer, however, the enquiry report dated 05.10.2018 (Anenxure P-8) contains no role of petitioner in the embezzlement done by Manju Sharma but only charge of negligence was attributed. On 11.02.2019 (Annexure P-9), petitioner received a notice of retirement from service by not granting extension of service beyond 55 years, which was represented vide representation dated 26.04.2019 (Annexure P-10) but without taking into consideration same and provisions of law, impugned order dated 21.05.2019 (Anenxure P-11) has been passed, which is not sustainable in the eyes of law, as till date of impugned order, petitioner has not received any Annual

Confidential Report (ACR) of doubtful integrity nor there is any adverse entry in any of the ACRs. The impugned order is not sustainable in terms of provisions of Rules 144 and 145 of 2016 Rules, As the Government failed to take approval of Council of Ministers, as the petitioner is a gazetted government employee, much less, of Haryana Public Service Commission. Prior to promulgation of the 2016 Rules, Instructions (Annexure P-12) with regard to compulsory retirement were in vogue but the same could not have been made applicable, owing to Rules as the impugned order is post-applicability of 2016 Rules.

In catena of judgments, it has been laid down that compulsory retirement without any communication of ACR of doubtful integrity is stigmatic and has been set aside. In support of contention, relied upon judgment of Hon'ble Supreme Court in *Tejpal Singh Vs. State of U.P.* Rendered in Civil Appeal No.1243 of 1972 decided on 5.8.1986, *Dev Dutt Vs. Union of India and others 2008 (3) SCT 429* and Division Bench judgment of this Court in *S.B. Panihar Vs. Haryana Vidyut Prasaran Nigam Limited 2001 (3) SCT 320.*

Per contra, Mr. Harish Nain, AAG, Haryana supported the impugned order by countenancing the argument of Mr. Nehra that no doubt the petitioner was not involved in the embezzlement and decree is only against Manju Sharma but in the enquiry report was found negligent and therefore, has not been retained in service. As regards approval of Council of Ministers, it was stated that three month's notice dated 11.02.2019 was issued and thereafter, impugned order dated 21.05.2019 (Annexure P-11) was passed, however, there was Code of Conduct due to General Elections of Lok Sabha from 10.03.2019 to 28.05.2019. Though post-election, first

meeting of Council of Ministers was held on 25.06.2019 but decision with regard to Post Facto Approval was not taken, which is likely to be taken up in the next meeting and as well as similar concurrence, regarding premature retirement of petitioner, from Haryana Public Service Commission has also not been taken so far. He relied upon judgment of Hon'ble Supreme Court in **Ashok Kumar Das and others Vs. University of Burdwan and others 2010 (3) SCC 616** whereby provision of Burdwan University Act envisage approval of Executive Council post facto was upheld, thus, urges this Court for dismissal of the writ petition.

In rebuttal, Mr. Nehra submitted that Post Facto Approval cannot be taken by the authority, which is not permitted in the statutory rules. Applicability of Instructions (Annexure R-1) cannot come into play as it cannot partake the statutory rules.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submission of Mr. Nehra. It would be apt to reproduce Note No.3 of Rule 144 of the Haryana Civil Services (General Rules), 2016 and para 7 of the written statement:-

“144. Premature retirement after attaining the prescribed age of or qualifying service.-

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Note 3.- *The Government employee shall be given a reasonable opportunity to show cause against the proposed premature retirement under this rule. In case of gazetted Government employee, approval of Council of Ministers shall be obtained and in the case of non-gazetted Government employee, the Head of Departments shall effect such retirement with the previous approval of the Administrative Department. In all cases of such retirement the Haryana Public Service Commission or Haryana Staff Selection Commission, as the*

case may be, shall be consulted.

Para 7 of written statement.

“7. That pursuant to the above decision, three month's notice (P-9) was issued to the petitioner mentioning therein the intentions of the Government to retire him prematurely from the service. On expiry of three month's notice, retirement order dated 21.05.2019 (P-11) was issued to the petitioner. It is also relevant to mention that the Model Code of Conduct due to General Elections to Lok Sabha was in force from 10th March, 2019 to 28th May, 2019 and as such no meeting of Council of Ministers was held during this period. Therefore, approval of Council of Ministers could not be obtained. However, in the very first meeting of the Council of Ministers after Lok Sabha elections, held on 25.06.2019, the matter regarding ex post facto approval to retire the petitioner prematurely with effect from 17.5.2019 was submitted to the Cabinet branch but it could not be taken up in the meeting and the same is likely to be taken up in the next meeting. Similarly, vide letter vide 28.06.2019 the matter has already been referred to the Haryana Public Service Commission for ex post facto concurrence to the premature retirement order of the petitioner.

In view of the above made submissions, the present petition is liable to be dismissed.”

On conjoint reading of same, it is evident that prior approval of Council of Ministers, which is mandatory in respect of gazetted officer has not been taken, which fact has not been denied by respondents so far nor of Haryana Public Service Commission. Instructions dated 12.12.1988, which reads as under, cannot partake the statutory rules:-

“I am directed to invite your attention to the instructions issued vide this Department letters Nos.5846-4GSI-74/27622 dated 22-11-74 and No.3575-4GSI-75/24237 dated 9-8-75 on the subject noted above according to which for integrity of an

employee, the record of his whole career is required to be taken in consideration and if integrity has been suspected at any stage of his career, the case should be placed before the Officers Committee for decision. The matter regarding laying down the criteria for determining the element of integrity in the disciplinary cases pending against the officials has further been considered by Government. It has been decided in the following kind of cases of disciplinary proceedings, the integrity may be considered as doubtful and the cases may be placed before the Officer Committee:-

- 1. The cases in which chargesheet have been issued/court cases are pending where the charges are such which cast aspersions on the integrity of the employee;*
- 2. the case, in which, punishment have been awarded on the basis of charges, which reflect on integrity of employee; and*
- 3. the cases where integrity has been doubted at any stage of career and mention thereof has been made in the ACR.”*

In the absence of amendment in Rules, it is settled law that instructions cannot substitute implementation/applicability of the Rules promulgated in 2016. The law with regard to taking *post facto* approval has been pondered in various judgments. In **Dev Dutt's case** (supra), the issue involved before the Hon'ble Supreme Court was that principle of fairness and transparency in public administration requires that all entries whether poor, fair, average, good or very good in the Annual Confidential Report of a public servant are to be communicated within a reasonable period so that he is able to submit representation qua upgradation. The written statement of respondent is silent about specific averment supported by argument regarding non-communication of any ACR of doubtful integrity. In **S.B.**

Panihar's case (supra), interpreting Rule 3.26 (d) of Punjab Civil Service Rules, Division Bench of this Court found order of compulsory retirement punitive and stigmatic, thus, was quashed. There was no occasion for the respondents to relate event of alleged embezzlement with conduct of the petitioner in the absence of any communication of ACR qua his integrity nor the enquiry reveals the same.

In am afraid that para 10 of judgment replied upon by Mr. Nain in **Ashok Kumar Das** (supra) would not apply for the purpose of supporting the order of compulsory retirement in not considering the case of petitioner beyond of age of 58 years after having obtained *post facto* approval for simple reason that controversy was only with regard to some “permission” and not of compulsory retirement. Permission *vis-a-vis* compulsory retirement are poles apart as it affects career and efficiency of the officer.

As an upshot of my finding, impugned order is not sustainable in law and is hereby set aside. The writ petition stands allowed.

(AMIT RAWAL)
JUDGE

August 28, 2019

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No