IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6308-2015 (O&M)
Date of decision : 01.03.2019

D.S. Gill

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Vijay Pal and Mr. Sachin Dhull, Advocates, for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant petition, *inter alia,* is for issuance of a writ of Certiorari for quashing the order dated 22.10.2014 (Annexure P-1), whereby, the petitioner had been compulsorily/prematurely retired from service and further to issue directions to the respondents to reinstate the petitioner in service.

It is contended that the impugned order (Annexure P-1) is illegal and arbitrary, being against the provisions laid down in Rule 3 of the Punjab Civil Services (Pre-mature Retirement) Rules, 1975 inasmuch as at the time of passing of the said order, the petitioner was less than 50 years of age. The said Rule was amended vide notification dated 05.09.2014 which was published on 15.09.2014 (Annexure P-8), whereas, the notice for pre-mature retirement had been issued to the petitioner on 12.09.2014 (Annexure P-6), therefore, the same is not applicable to the petitioner. It is further submitted that in pursuance of charge-sheet dated 11.06.2012 (Annexure P-9), the order of stoppage of one annual increment without cumulative effect had already been passed against the petitioner which is a minor punishment, therefore, on the same allegation, major punishment of compulsory retirement amounts to double jeopardy. As regards charge sheet dated 27.06.2012 (Annexure P-13), the petitioner was awarded punishment of stoppage of one annual increment with cumulative effect which again is a major punishment. It has also been stated in the impugned order that ACR reports for the years 1992-93, 1993-94, 1994-95, 1997-98, 1998-99, 2001-02 and 2011-12 are recorded as 'average', however, the same were never conveyed to the petitioner, therefore, cannot be taken against him. Furthermore, the petitioner was served show cause notice regarding pre-mature retirement before he had attained the age of 50 years which is against the mandate of Rule III of Punjab Civil Services (Premature Retirement) Rules, 1975. Moreover, there is a requirement of three months' notice which has also not been complied with as only 15 days' notice was issued to the petitioner. Cites ***G.S. Sidhu Vs. State of Punjab and others,*** CWP-21052-2017, decided on 21.09.2018; ***Ravinder Singh Vs. High Court of Punjab and Haryana, Chandigarh and another,*** CWP-1161-2014 decided on 19.07.2018; and ***Manjinder Singh Vs. State of Punjab and another,*** CWP-22529-2014 decided on 16.08.2018.

On the other hand, learned State counsel submits that a meeting was held under the Chairmanship of the Financial Commissioner (Taxation), Punjab on 13.03.2014 with regard to continuity of service of Class A and Class B officers/employees of the State Government after verifying their record on completion of 15, 20, 25, 30 and 35 years of service in accordance with directions issued vide letter dated 16.07.2013 and letter dated 28.08.2012. After considering the entire service report of the petitioner, he was issued a notice dated 12.09.2014 (Annexure P-6) stating that the committee after examining the service record, did not find the same satisfactory and therefore, has recommended to grant him compulsory retirement. The petitioner submitted reply to the said notice which was considered and vide detailed and speaking impugned order dated 22.10.2014 (Annexure P-1), the petitioner was rightly compulsorily retired from service with immediate effect.

Heard.

A perusal of the record reveals that in pursuance of instructions issued by the State Government vide letters dated 28.08.2012 and 16.07.2013, a meeting of the competent committee was held on 13.03.2014, regarding premature retirement of Class A and Class B Officers/employees, on completion of 15, 20, 25, 30 and 35 years of service. In the said meeting, service records of 190 employees including the petitioner were reviewed. The service record of the petitioner was not found satisfactory for the detailed reasons enumerated in the impugned order (Annexure P-1), which read thus:-

> *"a) The officer as per orders of the senior authorities transferred the cases of Rice Shellers of Kapurthala District to Shri Rajesh Verma, Excise and Taxation Officer, in place of transferring the same to Smt. Rajwinder Kaur Bajwa, ETO. Therefore, you were charge sheeted in the above case on 11.06.2012 and*

after charge sheeting, as per rules one annual increment of the officer has been stopped without cumulative effect.

b) The officer had not intimated the Head Office about taking the official vehicle out of the jurisdiction and regarding accident of the vehicle. Therefore, you are served upon with charge sheet on 27.06.2012. The regular inquiry of this case was got conducted through Shri K.S. Mainy, IAS (Retd.). The inquiry officer proved the charges levelled against you. Therefore, it was decided to stop one annual increment of the officer with cumulative effect.

c) The officer released wrong refund to M/s RF Overseas Private Limited during the year 2005-06, 2006-07 and 2007-08. You were issued charge sheet on 11.02.2004. After that regular inquiry of the case was conducted and the inquiry officer found you accused for making unauthorized refund of Rs.37,74,625/-. Therefore, it was decided to stop one annual increment of the officer with cumulative effect.

d) Regarding wrong assessment of M/s. RF Overseas Private Limited and refund for the year 2007-08, 2008-09 and 2009-10 you were served upon with charge sheet on 04.03.2014 and the matter is under process for taking action against officer.

e) The officer was issued show cause notice vide Government letter No.2/71/2004-ECI(2)/5914 dated 24.06.2005 for not conducting the assessment of M/s Dashmesh Paper Mill, Jalandhar for the year 2002-03 as per rules. Regarding which vide Government letter no.2/71/2004-ECI(2)/4642 dated 25.06.2007. The officer was granted punishment of censure regarding show cause notice.

f) The officer has not submitted any property return *till date except property return for the year 2000-01. This property return was also not approved due to discrepancies. The officer was asked to explain vide government letter No.8/77/2013EC1(8)6712 dated 02.05.2013.*

g) In the annual confidential report of the officer from the year 1989-90 to 2012-13, the confidential report for the year 1992-93, 1993-94, 1994-95, 1997-98, 1998-99, 2001-02, 2011-12 are of average grade."

The grouse of the petitioner, in nutshell, is that against some of the allegations referred to in the impugned order, action had already been taken against him which included imposition of minor as well as major punishments, whereas, some of the matters were still under consideration of the competent authority. Therefore, passing of the impugned order on the strength thereof, amounts to double jeopardy. However, the contention raised by learned counsel for the petitioner is misplaced *inasmuch* as the impugned order had been passed on the recommendations of the committee constituted in accordance with the instructions issued vide letters dated 28.08.2012 and 16.07.2013 to consider the cases of Class A and Class B officers/employees of the State Government for continuation in service on completion of 15, 20, 25, 30 and 35 years of service. The service record of the petitioner was considered and after recording in detail, found to be unsatisfactory and he was found not fit to continue in service. Thus, the action of the respondents, as such, cannot be said to be a double jeopardy as asserted by the petitioner. He was afforded due opportunity to file reply to the notice for premature retirement before passing of the impugned order.

It has also been pleaded on behalf of the petitioner that the notice for premature retirement was issued to him prior to his attaining the age of 50 years. However, as per Rule 3 ibid, it is not necessary for the employee either to have completed 25 years of service or attained 50 years of age. Rather, he can be retired on the date on which he completes 25 years of qualifying service or attains the age of 50 years. Rules 3 ibid reads thus:-

> *"**3. Premature Retirement.** - (1)(a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.*
>
> *(b) The period of such notice shall not be less than three months :*
>
> *Provided that where at least three months' notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, at the same rates at which he was drawing them immediately before the date of retirement, for a period of three months or, as the case may be, for the period by which such notice falls short of three months.*
>
> *(2) Any Government employee may, after giving at least three months' previous notice in writing to the appropriate authority retire from service on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:*
>
> *Provided that no employee under suspension shall retire*

from service except with the specific approval of the appropriate authority.

(3) (a) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than three months in writing to the appropriate authority, retire from service.

(b) The notice of voluntary retirement given under this sub-rule shall require acceptance by the appropriate authority.

(c) Where the appropriate authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(4) The employee, who has elected to retire under sub-rule (2) or sub-rule(3) and has given the necessary notice to that effect to the appropriate authority, shall be precluded from withdrawing his notice except with the specific approval of the appropriate authority :

Provided that the request for withdrawal shall be made before the intended date of his retirement.

Note 1 - A notice of less than three months may also be accepted by the appropriate authority in deserving cases, with the concurrence of the State Government in the Department of Personnel and Administrative Reforms.

Note 2 - If an employee retires under sub-rule (2) or (3) above while he is on leave not due, without returning to duty, the retirement shall take effect from the date of commencement of the leave not due and the leave salary paid in respect of such leave shall be recovered as provided in rule 8.119 (d) of the Punjab Civil Services Rules, Volume I, Part I.

Note 3 - In computing the notice period of three months referred to in rule 3, the date of service of the notice and the date of its expiry shall be excluded."

In this case, the petitioner had already completed 25 years of qualifying service. Even otherwise, the whole exercise is carried out to ascertain an employee's suitability to continue in service beyond particular stage i.e. on completion of 15, 20, 25, 30 and 35 years of service. If the exercise is to be initiated after an employee completes such period of service, as asserted by the petitioner, the whole purpose of the scheme would be defeated. The case law cited by learned counsel for the petitioner is not applicable to the facts of the instant case and are distinguishable.

The authorities, after taking cumulative effect of the service record of the petitioner, have specifically recorded that the service record of the petitioner is unsatisfactory and recorded the conclusion that he was not fit for retaining in service and accordingly, the impugned order of premature retirement was passed. This Court does not find any illegality or perversity in the impugned order, Annexure P-1, and the same is hereby, affirmed. The writ petition is, consequently, dismissed.

Dismissed.

01.03.2019 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No