

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

L.P.A. No.1293 of 2016 in
Civil Writ Petition No.21742 of 2015
Reserved on : August 19, 2019
Date of decision: September 30, 2019

Punjab and Haryana High Court Chandigarh

...Appellant

Versus

Banke Lal and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Vikas Chatrath, Advocate for the appellant.

Mr. Namit Kumar, Advocate for the respondents.

HARINDER SINGH SIDHU, J.

1. This Letters Patent Appeal has been filed against the judgment dated 25.04.2016 of the learned Single Judge whereby CWP No.21742 of 2015 titled as Banke Lal vs. Punjab and Haryana High Court, Chandigarh and others, filed by respondent No.1 challenging his order of compulsory retirement has been allowed.

2. Respondent No.1 joined the service of the Establishment of this Court as Chowkidar on 05.05.1990. He was designated as a Peon on 11.07.1990. He was promoted as Usher on 14.01.2014.

3. FIR No.326 dated 15.09.2007 under Sections 406/420 IPC was registered against him and his wife Indira on the allegations of committing fraud by performing a committee and grabbing huge amount belonging to the committee members which were deposited every month with him. He was arrested in the said case. Consequently, he was placed under suspension w.e.f. 23.09.2007 i.e. the date of his arrest. He was acquitted by the Chief Judicial Magistrate, SAS Nagar, Mohali vide judgment dated 11.12.2013. His wife, however, was convicted. Later on, she was acquitted in appeal by the judgment dated 05.06.2015 rendered by the Additional Sessions Judge, SAS Nagar, Mohali.

4. Respondent No.1 was compulsorily retired vide order dated 30.04.2015/02.05.2015. He submitted representation dated 15.05.2015 against the order of compulsory retirement. The same was rejected vide order dated 28.05.2015. He submitted a mercy petition dated 15.06.2015, which was rejected vide order dated 11.09.2015. Aggrieved, he filed the Writ Petition which has been allowed.

5. In recommending his case for compulsory retirement the concerned Committee took note of the following punishments awarded to him:-

(i) *Stoppage of one increment without cumulative effect vide order dated 15.07.1993;*

(ii) *'Censure' vide order dated 15.02.1994;*

(iii) *Warned to be careful in future vide order dated 24.05.2004;*

(iv) *Stoppage of one increment without cumulative effect, vide order dated 22.08.2009;*

- (v) *'Censure' vide order dated 05.07.2011;*
- (vi) *'Censure' vide order dated 05.07.2011;*
- (vii) *Stoppage of two increments without cumulative effect, vide order dated 18.07.2011;”*

6. Based on the above punishments it was concluded that he was not likely to be a useful employee and that it would be in the public interest that he is not retained in service beyond 25 years of qualifying service (due date 30.06.2015). It was recommended that he be not retained in service and be retired w.e.f., 30.06.2015. The recommendation was approved by Hon'ble Acting Chief Justice on 30.04.2015 and thereafter the order dated 30.04.2015 for his compulsory retirement was passed.

7. The order has been passed under Rule 33(4) of the 'High Court Establishment (Appointment and Conditions of Service) Rules 1973' which reads as under:-

“Rule 33(4) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973, for the employees beyond the age of 50 years:-

i) The case of every employee shall be reviewed for the purpose of rule 33(4) of the Rules ibid three months before each of the following occasions namely ;

a) when he is due to complete 25 years' qualifying service if it is earlier than his completion of 50 years of age or when he is to attain the age of 50 years, as the case may be ;

b) when he is to attain the age of 55 years.

ii) All those employees who complete 25 years qualifying service or attain 50 years of age be conveyed the grading 'B' (Average/satisfactory) or below earned by them in any year.

iii) The suitability for retention in service at the time of each

review may be determined in the light of the entire service record with particular reference to such record pertaining to preceding ten years of service and, where necessary a report about the work and conduct of the employee concerned may be obtained from the Hon'ble Judge or the Officer concerned.

a) Out of preceding ten years of service, a minimum seven grading of 'B' (Average/Satisfactory) or above would be necessary for retention of an employee beyond the age of 50 years to 55 years or after putting in 25 years qualify service.

b) Out of preceding five years of service, a minimum three grading of 'B' (Average/Satisfactory) and two gradings of 'B' + (Good) of better would be necessary for retention in service beyond the age of 55 years and upto 58 years."

8. The primary contention on behalf of respondent No.1 was that his over all record of service was good which had not been taken note of by the Committee. He relied on his ACRs which were as under:

2000 A-Very Good
2001 B+Good
2002 B+Good
2003 B+Good
2004 A-Very Good
2005 B+Good
2006 B+Good
2007 B+Good
2008 B+Good
2009 B+Good
2010 B+Good
2011 B+Good
2012 B+Good

2013 B+Good

2014 Not received

9. It was his contention that the punishments awarded to him were minor punishments. They could not form the basis of the order in view of his overall record and the fact that after the punishments he had been granted the benefit of proficiency step up and also promoted as Usher.

10. The Learned Single Judge accepted the contention of respondent No.1. that his overall service record was good. Ld. Single Judge noted that he had been given proficiency step up on completion of 16 years of service vide order dated 11.12.2013. He was promoted to the post of Usher on 14.01.2014. This clearly showed that authorities had taken into consideration the minor punishments awarded to him before that date which included the punishment of stoppage of two increments without cumulative effect in connection with the allegations in FIR No.326 dated 15.09.2007 under Sections 406/420 IPC. He was acquitted in the FIR 326 dated 15.09.2007 under Sections 406/420 IPC vide judgment dated 11.12.2013. His last ten years' ACRs were B+. There was no adverse entry in his ACRs. Even for promotion an employee is required to have seventy percent good record which he had. It was noted that the competent Authority while passing the order of compulsory retirement had taken into account the minor punishments awarded to respondent No.1 whereas his overall record was required to be seen. Consequently, the order of compulsory retirement was set aside and respondent No.1 was directed to be reinstated with all consequential benefits.

11. Assailing the order of the Ld. Single Judge, Sh. Vikas

Chatrath Advocate for the appellant contended that before taking a decision on premature retirement, the entire service record of the employee is to be taken into consideration. Any adverse entry prior to earning promotion or crossing the proficiency bar is not wiped out but can be taken into consideration to decide whether it would be in public interest to retain him in service. In this regard he referred to **State of Punjab Vs. Gurdas Singh 1988 (4) SCC 92.**, **State of Orissa Vs. Ram Chandra Dass 1996(5) SCC 331.**

12. There is no dispute with the aforesaid proposition. But it is equally well settled that the recent conduct of the public servant is more relevant than the old adverse entries.

13. The Ld. Single Judge relied on the decision of Hon'ble Supreme Court in **State of Gujarat v. Umedbhai M. Patel, (2001) 3 SCC 314**, where the principles relating to compulsory retirement were summarized as under:

“11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the

officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.”

14. Hon'ble Supreme Court has held that once an officer is given promotion despite the adverse entries that is a fact in his favour.

15. In **Baldev Raj Chadha v. Union of India, (1980) 4 SCC 321** Hon'ble Supreme Court had held that poor record from the remote past could not be used to justify the order of compulsory retirement. It was observed thus:

“.....One wonders how an officer whose continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for five years immediately before the compulsory retirement, could be cashiered on the score that long years ago, his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms. A short cut may often be a wrong cut. The order of compulsory retirement fails because vital material, relevant to the decision, has been ignored and obsolete material,

less relevant to the decision, has influenced the decision. Any order which materially suffers from the blemish of overlooking or ignoring, wilfully or otherwise, vital facts bearing on the decision is bad in law. Likewise, any action which irrationally digs up obsolete circumstances and obsessively reaches a decision based thereon, cannot be sustained. Legality depends on regard of the totality of material facts viewed in a holistic perspective. For these reasons, the order challenged is obviously bad and we quash it. It is, however, open to the AG to take a fresh decision based on legal material and guided by legal principles. The appellant has, by now, reached the age of superannuation in the normal course. The result is that the consequence of any fresh order may only be financial. It is for the AG to consider whether in the circumstances, a fresh evaluation for the purpose of compulsory retirement is called for. We merely allow the appeals quash the order of compulsory retirement and leave the law to take its course. The appellant will be entitled to costs which we quantify at Rs.2000.”

16. In the present case, the Ld. Single Judge has noticed that respondent No.1 has been compulsorily retired solely taking note of the punishments awarded to him without taking note of the fact that thereafter he had been allowed proficiency step up on completion of 16 years of service vide order dated 11.12.2013 and promoted as Usher on 14.01.2014 and that his ACRs for the last ten years are B+. There is no adverse remark in his ACRs. There is no question mark on his integrity.

17. We find no reason to disagree with the determination of the Ld.

Single Judge.

18. Accordingly, there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
ACTING CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

September 30, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No

