

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGRH**

Letters Patent Appeal No.1890 of 2018 (O&M)

Date of Decision: 22.01.2019

Ram Dhari

..Appellant

Versus

State of Haryana and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.**

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

KRISHNA MUMARI, CHIEF JUSTICE (oral)

This intra court appeal under Clause X of the Letters Patent is directed against the judgment and order of the learned Single Judge dated 27.08.2018 dismissing the writ petition filed by the appellant herein challenging the order dated 02.10.2015 passed by respondent No.4-Superintendent of Police, District Jind. Further relief sought in the writ petition was to quash the adverse entry in the Annual Confidential Report for the period w.e.f. 01.04.2006 to 31.03.2017 as also the order dated 28.01.2009 passed by respondent No.2-Director General of Police, Police Head Quarter, Panchkula, Haryana, rejecting the representation made against the adverse entry recorded in the Annual Confidential Report.

2. The issue arising for consideration is whether the order compulsory retiring the petitioner is in violation of Rule 9.18(2) of the Punjab Police Rules, Volume-1, (adopted and made applicable in State of Haryana).

3. The issue for consideration noticed hereinabove arises in the backdrop of the following facts:-

The appellant-petitioner was recruited in the Haryana Police as a Constable on 07.12.1986 and was promoted upto the rank of the Sub Inspector. He was communicated regarding adverse entry of 'honesty being doubtful' recorded in his ACR for the period 01.04.2006 to 31.03.2007 vide letter dated 27.08.2007. A representation dated 28.09.2007 was made by the appellant-petitioner before respondent No.3-Inspector General of Police, Hisar Range, Hisar, which was rejected vide order dated 28.05.2008. Another representation was made before respondent No.2, Director General of Police, Police Head Quarter, Panchkula, Haryana, which also came to be rejected vide order dated 28.01.2009. The appellant made yet another representation dated 17.03.2009 before respondent No.1-Financial Commissioner and Principal Secretary to Government of Haryana, Home Department, which according to him remains undecided. Subsequently he was served with a three months notice dated 16.07.2015 for retirement from service and finally vide the impugned order dated 02.10.2015 he was retired from service.

4. The learned Single Judge vide order impugned in this intra court appeal dismissed the writ petition holding that since the appellant-petitioner has retired on attaining the age of 55 years, as such the sanction from the State Government was not required and there was no violation of

the Punjab Police Rules and the subsequent representation dated 17.03.2009 since was not statutorily provided, hence it was not required to be decided.

5. Learned counsel for the appellant contends that the learned Single Judge has erred in law in holding that no previous sanction of the State Government was required before compulsorily retiring the appellant and the conclusion arrived at is based on misinterpretation of Rule 9.18 of the Punjab Police Rules. It is further submitted that the action of the respondents in retiring the appellant-petitioner pre-maturely merely on the basis of adverse entry in the ACR is arbitrary, discriminatory, illegal, unconstitutional and in violation of the Punjab Police Rules. It is next submitted that the order of pre-mature retirement during the pendency of the representation of the appellant-petitioner before respondent No.1 against the adverse entry in the ACR could not have been passed till final disposal of the representation.

6. We have considered the arguments advanced by learned counsel for the appellant and perused the record.

7. For an effective adjudication of the issue raised before us, it may be relevant to reproduce the provisions of Rule 9.18 of the Punjab Police Rules, which reads as under:-

“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 as 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) (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 compulsory 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.

Note 3:- 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.”

8. A bare perusal of Rule 9.18 quoted hereinabove goes to show that it makes a provision for payment of pension to a retiring employee in three contingencies:-

- i) An employee who is permitted to retire from service after completing qualifying service for 25 years or such lesser period as may, for any class of officer be prescribed; or
- ii) who is compulsorily retired under sub-rule (2) after completing 25 years of qualifying service; or
- iii) 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.

Likewise a police official can also seek retirement after attaining the age of 55 years by giving notice of three months of his intention to retire. The note appended to the Rule 1 makes it abundantly clear that the Appointing Authority has an absolute right to retire any police official on or after he attains the age of 55 years without assigning any reason. The corresponding right is available to the police official to seek retirement on or after he attains the age of 55 years. Thus Rule 9.18 of the Rules itself carves out a distinction between retirement of a police officer at the age of 55 years and compulsory retirement on completion of 25 years of qualifying service, the first being postulated in Sub Rule 1(C) and second in Sub Rule 2.

9. It is only in case of compulsory retirement under Sub Rule (2) the previous approval of the State Government is required. Different procedure envisaged in the contingency of retirement of a police official on

attaining the age of 55 years or at any time thereafter and retirement of a police official on completion of 25 years of qualifying service admits no ambiguity.

10. Note appended to Sub Rule 1 makes it abundantly clear that for retiring a police official on or after he attains the age of 55 years, whosoever may be the Appointing Authority, has an absolute right of retiring him without assigning any reason. Any previous sanction from the Government is not stipulated in this contingency. However, if the police official is to be retired on completion of 25 years of service, then sub rule (2) comes into operation which empowers the Inspector General of Police to compulsory retire the police official only after seeking previous sanction of the State Government.

11. In the case in hand it is undisputed that the appellant-petitioner had attained the age of 55 years and the impugned three months notice dated 16.07.2015 for retirement was issued to him in exercise of the powers conferred by Rule 9.18(1)(C) of the Punjab Police Rules, Volume-1.

12. The irresistible conclusion in the facts and analysis of Rule 9.18 is that there was no requirement of any previous sanction from the Government and notice was validly issued and the impugned order 02.10.2015 retiring the appellant-petitioner from service is not visited with any illegality for want of any previous sanction from the State Government. Thus the first argument advanced by learned counsel for the appellant does not merit any consideration.

13. In so far as the submission advanced with respect to retirement on the basis of only one adverse entry in ACR being bad in law and illegal is also without any substance. A perusal of the adverse remarks recorded in the ACR of the appellant-petitioner for the period from 01.04.2006 to

31.03.2007 specifically shows that his integrity during the period is doubtful. It is well settled that if integrity of an employee is in doubt even once, then such employee is a dead wood needing to be chopped off, in larger public interest. The proposition stands well settled by the pronouncement of the Hon'ble Apex Court in the case of ***Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another 1992(2) SCC 299.*** The Hon'ble Apex Court after reviewing the earlier case laws on the subject carved out the following five propositions in paragraph 34 of the reports.

“34. The following principles emerge from the above discussion:

- (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
- (iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter — of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.
- (v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.”

14. The issue of compulsory retirement of an employee after he attains the age of 55 years by giving three months' notice without assigning any reason has again been the subject matter of consideration before the Hon'ble Apex Court in ***National Aviation Company of India v. SMK Khan (2009) 5 Supreme Court Cases 732***. In the said case the consideration was being made of Regulation 12 of the Indian Airlines Employees Service Regulations which is almost para-materia to Rule 9.18(C) of the Punjab Police Rules. It may be relevant to extract Regulation 12 of the Indian Airlines Employees Service Regulations which reads as under:-

“An employee shall retire from the service of the Corporation on attaining the age of 58 years provided that the competent authority may ask an employee to retire after he attains the age of 55 years on giving three months' notice without assigning any reason”.

Analyzing the aforesaid Rule, the Hon'ble Apex Court observed as under:-

“13. 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.

14. *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 dead wood 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.*

15. *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 mala fide or arbitrary or not based on any background material at all relating to unsatisfactory service, justifying the premature retirement.*

16. *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 : 1993 SCC (L&S) 521 :*

(1992) 21 ATC 649] , Allahabad Bank Officers' Assn. v. Allahabad Bank [(1996) 4 SCC 504 : 1996 SCC (L&S) 1037] , I.K. Mishra v. Union of India [(1997) 6 SCC 228 : 1997 SCC (L&S) 1654] , State of U.P. v. Lalsa Ram[(2001) 3 SCC 389 : 2001 SCC (L&S) 593] and M.L. Binjolkar v. State of M.P. [(2005) 6 SCC 224 : 2005 SCC (L&S) 827]"

15. The third argument advanced by learned counsel for the appellant that the order of compulsory retirement could not have been passed during pendency of the representation made against the adverse entry in the ACR has also no legs to stand. It is undisputed that the representation made by the appellant-petitioner against the adverse remarks was rejected by respondent No.3-Inspector General of Police vide order dated 28.09.2007. The instructions dated 22.03.1971 issued by the State Government in respect of making representation against an adverse ACR provide only one opportunity of making a representation and the decision thereof has not only been attributed finality but the second representation against the adverse remarks has specifically been barred. It may be apt to reproduce the relevant instructions:-

“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.”

16. Even though the decision on the first representation was final, still another representation dated 27.06.2008 made by the appellant-petitioner was entertained and rejected by the Director General of Police,

Haryana, an authority superior to respondent No.3-Inspector General of Police. The third representation made by the appellant-petitioner is not statutorily provided and an unsolicited and non-statutory representation cannot be made the basis for postponing the decision in respect of the compulsory retirement nor pendency of any such representation would vitiate any decision taken by the employer in this regard.

17. The challenge made to adverse entry and the orders rejecting the representation must also fail for the simple reason that it has been made after inordinate delay of almost more than 10 years and thus the same is barred by delay and laches.

18. The impugned order compulsory retiring the appellant-petitioner on attaining the age of 55 years when tested on the touch stone of the test and principles discussed hereinabove carved out from various pronouncements of the Hon'ble Apex Court as also the Rule itself, the inescapable conclusion is that it is valid and not open to challenge.

19. Thus there exists no infirmity or illegality in the impugned judgment passed by the learned Single Judge in dismissing the writ petition which may require any interference.

The appeal accordingly fails and stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

22.01.2019
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No