

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6959-2020

Date of decision: 18.03.2020

ESI Varender Sharma @ Birender Singh

.....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. S.K. Kaushik, Advocate for the petitioner.

GIRISH AGNIHOTRI, J. (Oral)

Petitioner-ESI Varender Sharma @ Birender Singh has filed the present writ petition *inter alia* with a prayer to quash the order dated 20.01.2020 (Annexure P-10).

Learned counsel for the petitioner submits that vide order dated 20.01.2020, the Competent Authority has taken a decision that the petitioner's services are not required by the Department beyond the age of 55 years. He further submits that in this memo dated 21.01.2020, it has been made clear that the petitioner shall stand retired from service on the dates mentioned in the said memo. Learned counsel makes various submissions. Firstly, he submits that mere registration of FIR as mentioned in the memo, could be no valid ground to retire the petitioner. In this regard, he places reliance on two Division Bench judgments i.e. dated 24.12.2008, passed in CWP-8403-2006 titled as Ranbir Singh vs. State of

Haryana and others and also judgment dated 06.03.2001, passed in CWP-11878-1999 titled as ASI Radhey Shyam vs. State of Haryana. Para 14 of the said judgment is reproduced hereunder:-

*“14.The contention on behalf of the State Government is that compulsory retirement is not a punishment and it is a matter by which the establishment could dispense with dead wood and compulsory retirement ought not to be understood as casting of any aspersion at all. Counsel for the petitioner responds to this argument by pointing out that compulsory retirement itself is indeed a form of punishment if it is inflicted on the basis of pendency of a criminal cas. The Court is bound to examine whether the relevant materials have been taken into account at the time when the order is passed. We have already pointed out to the fact that the only relevant consideration at the time taken up as a subject of compulsory retirement is the pendency of the criminal case and the acquittal by the criminal court and the ultimate exoneration of the petitioner in the departmental proceedings are not even in the file. The Hon'ble Supreme Court said in **State of Gujrat versus Suryakant Chunilal Shah** (1999) SCC 529 that pendency of criminal cases was not sufficient to doubt a person's integrity. It depended on the nature of criminal case. It interfered with the decision of compulsory retirement, holding, however, that there was a collateral purpose of removing the employee. This Court has cautioned in **Amrik Singh versus State of Haryana** 1995 (4) RSJ that there is an onerous obligation placed on the reporting or other authority, who makes adverse remarks regarding integrity of an officer and he has to be extracautious, careful, while making adverse entry pertaining to integrity. It is indeed doubtful whether the Superintendent of Police had even properly noticed the adverse entries, since his note to the IG of Police refers to them as for the period from 01-04-2004 to 03-12-2004, when actually it is for the period from 01-04-2001 to 03-12-2001. Even if this was to be taken merely clerical error, it would still be seen that the ultimate acquittal of the petitioner in the criminal case had not been communicated to his Superior Officer at all. Even the fact that the departmental enquiry exonerated him does not find mention in the note sent to the Inspector General of Police. Having regard to the fact that the only incident of pendency of criminal case had formed the solitary basis both for the adverse entry as well as for the order*

affecting compulsory retirement, we find that non consideration of acquittal in the criminal case and the exoneration of the charges in the departmental proceedings vitiates the ultimate decision.”

Second submission of learned counsel for the petitioner is that vide order dated 04.03.2020 in **CRR-180-2020** titled as **Jasmer Singh and another vs. State of Haryana**, this Court has stayed further proceedings before the trial Court in the said FIR. Third submission of learned counsel for the petitioner is that the departmental enquiry (was sought to be initiated on an earlier occasion but relying on the same/similar allegations, as in the present FIR) was challenged in CWP-23246-2017 before this Court. On 01.11.2017, this Court had ordered that departmental proceedings initiated against the petitioner are ordered to be held in abeyance with liberty to the respondents to seek sanction of the District Magistrate for proceedings against the petitioner departmentally. It has been further ordered that statements of witnesses should not be recorded in the disciplinary proceedings till those witnesses (if they are witnesses in the criminal proceedings) have testified in such criminal proceedings. Copy of this order is also attached as Annexure P-5 with the present writ petition. The next contention of learned counsel for the petitioner is that the impugned ACR (Annexure P-2) as well as the rejection order dated 14.10.2017 (Annexure P-4), are also liable to set aside because the said adverse comments and rejection of the representation are in violation of the judgment of the Hon'ble Supreme Court of India in State of Gujarat vs. Suryakant Chunilal Shah, 1999(1) SCT 208, wherein, the Hon'ble Supreme Court of India has observed that pendency of the criminal cases was not sufficient to doubt a

person's integrity. In this view of the matter, the petitioner, if so advised, may file an appeal/revision/review before the Competent Authority.

Learned counsel for the petitioner based on the above submissions, submits that in view of the above, the impugned memo dated 20.01.2020, is not only unwarranted, but amounts to violation of the orders of this Court and even amounts to contempt of Court.

Notice of motion.

Mr. Jagbir Malik, Addl. A.G., Haryana accepts notice on behalf of the respondents. He submits that apart from the FIR, there is an ACR of the petitioner as well, where his integrity is doubted.

Learned counsel for the petitioner however submits that the said ACR is also of the same period and regarding the same allegation as in the aforementioned FIR. He once again relies on Para 14 of the judgment dated 24.12.2008, passed by this Court, to submit that pendency of criminal case is not sufficient to doubt a person's integrity.

The present writ petition is disposed of with the following directions:-

- (i) The petitioner counsel as undertakes, may submit a representation against the memo/notice dated 21.01.2020 for retirement, within a period of one week from the date of receipt of certified copy of this order.
- (ii) The Competent Authority i.e. respondent No.4, is directed to examine the submissions made by counsel for the petitioner as noticed above and also submissions made in the detailed representation and decide the same expeditiously.
- (iii) Till the expiry of one week from the date of

communication of the order to the petitioner, respondents are directed to maintain status quo regarding services of the petitioner.

- (iv) The petitioner, if advised, files his appeal/revision/review against the impugned ACR within a period of one week from the date of receipt of certified copy of this order, the Competent Authority shall consider and decide the same keeping in view the judgments as submitted by counsel in accordance with law on merits without insisting on the issue of the delay, *de hors* the earlier rejection order dated 14.10.2017.

(GIRISH AGNIHOTRI)
JUDGE

18.03.2020

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No