

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CWP-7462-2020 (O&M)
Date of Decision:-12.6.2020

Davinder Kumar ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Sameer Sachdeva, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

*(the aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in Virtual Court)*

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GURVINDER SINGH GILL, J.(Oral)

1. The petitioner challenges order dated 17.3.2020 (Annexure P-4) vide which he has been ordered to be retired prematurely.
2. The learned counsel for the petitioner has submitted that the petitioner was initially appointed as Constable on 26.10.1990 in Punjab Police and was promoted to Assistant Sub Inspector (ASI) in local rank in the year 2016 initially for six months and had been given extensions repeatedly of six months each and as of now has 30 years of service to his credit.
3. It has been submitted that a notice dated 13.12.2019 (Annexure P-1) regarding compulsory retirement was issued to the petitioner, wherein it was stated that upon expiry of 90 days of the said notice, the petitioner would

stand retired compulsorily. However, subsequent to issuance of the aforesaid notice, the petitioner was also considered for regular promotion as ASI and was deputed for attending 'Intermediate School Course' as per report dated 31.1.2020(Annexure P-2). The learned counsel has submitted that somehow despite the fact that the petitioner was sent for 'Intermediate School Course', he has later been ordered to be prematurely retired in an abrupt manner vide impugned order dated 17.3.2020(Annexure P-4).

4. While assailing the impugned order dated 17.3.2020(Annexure P-4), the learned counsel made the following submissions:
- (i) that the said deputation of the petitioner for attending the said course for the purpose of promotion as ASI virtually had the effect of negating the show cause notice as the entire service record is considered at the time of consideration of promotion;
 - (ii) that although the peittioner has been ordered to retire prematurely on the basis of his misconduct in the shape of instances of his absence but infact the petitioner had already been imposed penalties for the said absence and, as such, the order of his premature retirement virtually amounts to double jeopardy;
 - (iii) that as per guidelines issued by Government of Punjab vide letter dated 28.8.2012(Annexure P-6), it is only if an employee is incapable as well as corrupt that he may be compulsorily retired and that since there is no allegation of corruption against the petitioner, the impugned order suffers from serious infirmity and, as such, deserves to be quashed.
 - (iv) that vide order dated 19.8.2019(annexure P-7), passed in CWP No.21698 of 2019, a co-ordinate Bench of this Court while issuing notice of motion in case of premature retirement, has issued interim directions regarding maintenance of *status-quo*.

5. Opposing the petition, the learned State counsel has referred to the reply, which has been sent through 'whatsapp', a copy whereof has been printed by Reader of this Court. In the said reply various instances of absence of petitioner of the petitioner have been stated as follows:

Sr. No.	Dates for which Absent	Time period of Absent	Punishment awarded
1.	22.12.1999 to 02.07.2000	192 days 20 hours and 25 minutes	Non duty period
2.	19.10.2000 to 21.11.2000	33 days 02 hours and 30 minutes	Service of one year forfeited permanently
3.	16.01.2001 to 16.02.2001	31 days	Non duty period
4.	6.04.2001 to 9.10.2001	186 days 07 hours and 15 minutes	Non duty period
5.	22.10.2001 to 20.12.2001	58 days 19 hours and 45 minutes	Non duty period
6.	29.07.2002 to 11.09.2002	44 days 05 hours and 50 minutes	Non duty period
7.	15.11.2002 to 03.01.2003	44 days 04 hours and 45 minutes	Non duty period
8.	01.10.2003 to 18.12.2003	78 days 22 hours and 20 minutes	Service of 3 years forfeited permanently
9.	04.03.2004 to 29.04.2004	56 days 17 hours and 30 minutes	Service of 2 years forfeited permanently
10.	30.03.2005 to 9.6.2005	72 days	Service of one year forfeited permanently
11.	08.11.2011 to 20.01.2012	72 days 23 hours and 30 minutes	Service of one year forfeited permanently
12.	14.04.2012 to 10.06.2012	57 days 02 hours	Non duty period
13.	15.01.2014 to 28.04.2014	104 days 10 minutes	Service of 2 years forfeited temporarily
14.	18.06.2014 to 19.08.2014	58 days 14 hours and 05 minutes (total 59 days)	Non duty period

15.	29.08.2014 to 16.10.2014	47 days 23 hours 05 minutes	Service of one year forfeited temporarily
16.	05.10.2015 to 06.11.2015	32 days 30 minutes	Absent period treated as earned leave
17.	27.11.2015 to 15.01.2016	48 days 15 hours 30 minutes (total 49 days)	Service of one year forfeited temporarily
18.	02.04.2017 to 19.06.2017	78 days 07 hours 30 minutes	Service of one year forfeited permanently
19.	16.11.2017 to 24.02.2018	100 days 08 hours and 30 minutes	Absent period treated as earned leave
20.	05.04.2018 to 23.05.2018	47 days 22 hours 30 minutes	Service of one year forfeited permanently

6. The learned State counsel has submitted that the aforesaid large number of instances shows that the petitioner was habitually absenting from duties and, as such, cannot be said to be fit enough to be further retained in service beyond the age of 50 years. The learned State counsel has also drawn the attention of this Court to para Nos.4 to 6 of the preliminary objection in the reply, which are extracted below:

“4. That after reviewing the service record of employees, who have qualifying service of 15, 20, 25, 30, 35 years, the committee submitted a list of 40 employees including petitioner, whose service record was bad and the committee recommended to retire them prematurely from service. The copy of the report of the committee is annexed as **Annexure R-4.**

5. After the receipt of the report of above committee, the respondent No.3 called each of these 40 persons on different dates. The petitioner was also heard personally on 23-11-2019.

After hearing them their cases were decided according to their merits. Out of 40 persons 23 were allowed to continue in service, 9 were

retired prematurely (Forced Retirement), 5 took voluntary retirement, 1 already got retired and 2 were dismissed from service.

6. After this a prior notice No.160202/CRC dated 19.12.2019 of 90 days was served to all the 9 persons chosen for premature retirement including the petitioner under Rule 3(1) (a) (b) of Punjab Civil Services (Premature Retirements) Rules 1975. The copy of the notice is annexed as **Annexure R-5**. On completion of period of 90 days the petitioner was retired prematurely from the department vide order No.32881-88/CRC dated 17.03.2020. The copy of order is annexed as **Annexure R-6.**”
7. The aforesaid position indicates that the impugned order cannot be said to have been passed in a hurried manner and rather the cases were considered meticulously and opportunity of personal hearing was also afforded before issuance of three months' notice on 13.12.2019.
8. As far as the order dated 19.8.2019 (Annexure P-7) passed in respect of some other petitioner is concerned, a perusal of the same would show that the facts are distinct inasmuch as in the said case it has been observed that the petitioner was not served with any prior notice before passing the impugned order. In any case, the said order was passed only at the stage of notice of motion and cannot be said to be any kind of binding precedent.
9. As regards the contention of the petitioner to the effect that since he is not stated to be corrupt, therefore, he cannot be compulsorily retired in view of the instructions dated 28.8.2012 (Annexure P-6), the relevant extract from the said instructions reads as follows:-

“1. I am instructed to bring in your kind attention towards the Letter No.6520-2SII-75/38581 Dated 26.09.1975 issued by this department and amendments made time to time therein under which Punjab Civil Services (Premature Retirement) Rules 1975, direction has been issued to compulsory retire the incapable and corrupt officers/employees and

further instructed to say that the Govt. is committed to provide an active and good governance, therefore, clean, honest and for providing a efficacious governance, and after considering all the aspects, it has been decided by the Govt. that on the completion of service of 15, 20, 25, 30, 35 years, the cases of the Officers/Employees shall be considered under Rule 3(1)(a) of Punjab Civil Services (Premature Retirement) Rules 1975 for the continuation of their services. The amended sub sections in the Punjab Civil Services (Premature Retirement) Rules 1975 will be taken later.

2. The Govt. has constituted a committee for consideration of the cases of P.C.S./P.P.S. and Class A and Class B officers of the State as per procedure and the amendments made time to time as per the directions No.6520-2SII-75/38581 Dated 26.09.1975

3.”

10. By no stretch of imagination the aforesaid instructions can be interpreted to mean that a person whose conduct has not been above board and who has regularly been absenting cannot be compulsorily retired and that it is only in case an employee is 'incapable and corrupt' that such a measure is to be taken. In the matter of conduct in a disciplined force no aberration in respect of the conduct of a member of the disciplined force can be overlooked. Thus, the contention regarding proposed interpretation of the instructions dated 26.09.1975 is devoid of merits and cannot be accepted.
11. The petitioner is a member of the disciplined force and his previous record of absenteeism on as many as 20 occasions shows that he is incorrigible and has been repeatedly absenting himself. Such like conduct in a disciplined force certainly cannot be tolerated. The fact that he was imposed penalties on account of the said absenteeism cannot be interpreted to mean that the act of retiring him prematurely in view of his conduct would amount to double jeopardy. The State is well within its rights not to retain any of his employee

beyond the age of 50 in case it is of the opinion that such employee is not fit to be retained beyond the said age and can thus chose to compulsorily retire him as has been done in the present case.

12. The above mentioned conduct leaves no room for taking any lenient view in the matter. Consequently, the impugned order cannot said to be suffering from any kind of infirmity.
13. The petition, as such, is sans merit and is hereby dismissed.

12.6.2020

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No