

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

CWP No.7767 of 2020
Date of decision: 28th July, 2020

Hawa Singh Bhambhu

... Petitioner

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Kannan Malik, Advocate for the petitioner.

Mr. Ravinder Dhull, Addl. Advocate General, Haryana
for the respondents/State.

FATEH DEEP SINGH, J.

Petitioner Hawa Singh Bhambhu, who happens to have risen from the post of Patwari where he was recruited on 24.04.1986, was promoted as Kanungo on 28.11.2000 and became Naib Tehsildar with effect from 28.10.2016 vide orders dated 09.01.2017, has invoked civil writ jurisdiction of this Court under Articles 226/227 of the Constitution of India. The petitioner is aggrieved and seeks writ in the nature of certiorari for quashing notice/order dated 01.04.2020 (Annexure P5) by virtue of which he has been ordered to retire prematurely after attaining the age of 55 years with effect from 22.07.2020 upon serving three months' prior notice of this relinquishment from service. It is the claim of the petitioner that he has unblemished excellent service record on account of which he has been repeatedly promoted, alleging that on 21.02.2018 he was issued a

chargesheet on the allegations of delay in filing of an appeal before the High Court, from which he stood exonerated vide orders dated 18.04.2019 (Annexure P2). It is by another quirk of fate that he was issued another chargesheet earlier on 13.02.2018 on account of dereliction of duty for wrong registration of mutation in the year 2009 while working as a Kanungo. It is claimed that in this mutation, petitioner had no role to play and was wrongly awarded major punishment of stoppage of two annual increments with cumulative effect vide order dated 20.05.2019 (Annexure P3). It is pleaded that the petitioner needs to be adjudged keeping in view the overall service record and that the premature retirement policy of the respondents by way of Rule 144 of the Haryana Civil Services (General) Rules, 2016 (hereinafter referred to as, 'the Rules') which lays down parameters of such a situation, was never followed and thus, terming the orders to be illegal and mala fide, in utter disregard to the own policy of the respondent/State, was by way of vengeance being used as a tool to throw out the petitioner on flimsy grounds, and hence the relief in question.

The respondents in their joint written reply, besides taking preliminary objections, do not displace the appointment, promotion of the petitioner during the tenure of his service and subsequent issuance of chargesheets and the fact that he has been awarded major punishment of withholding of two annual increments with cumulative effect. It is claimed that under the Premature Retirement Policy

applicable to the State of Haryana, the appointing authority in public interest have the absolute right to retire prematurely a Govt. employee on account of insufficiency after attaining an age which is 55 years in the case of the petitioner and which is based on rationale grounds duly supported by evidence and records. The petitioner being retrogressive to the interest of the State, the Committee of the respondents considered the case of the petitioner and recommended to retire him in public interest on attaining the age of 55 years on 04.06.2018 based the findings due to 'doubtful infamous conduct' of the petitioner which amounts to moral turpitude.

The respondents have denied each and every averment of the petitioner's counsel and reiterated the claim of the respondent/State that the petitioner on account of his corrupt conduct was likely to be detrimental to the State interest and therefore, it was decided to do away with his services. Terming that there was no cause for the petitioner to invoke extraordinary jurisdiction of this Court, sought dismissal of the petition.

Heard Mr. D.S. Patwalia, Senior Advocate assisted by Mr.Kannan Malik, Advocate for the petitioner; Mr. Ravinder Dhull, Addl. Advocate General, Haryana representing the respondents/State and perused the records of the case.

The Haryana Civil Services (General) Rules, 2016 which were given effect to, have laid down that the appointing authority shall in public interest have the absolute right to retire prematurely a Govt.

employee on account of insufficiency after attaining the prescribed age irrespective of his length of service or upon completion of 20 years of qualifying service irrespective of his age by giving him not less than three months' notice in writing or pay him allowances in lieu of the notice period. The main object of this policy decision was to provide clean administration, improving efficiency and strengthening administrative machinery at all levels and to weed out dead wood especially for all those employees whose integrity is doubtful.

The Supreme Court of India in '**Union of India vs. M.E. Reddy and another**' AIR 1980 SC 563, has upheld the object of such Rules so framed holding that the object of these Rules is to weed out the dead wood to facilitate maintenance of a high standard of efficiency, and has held that the same was in public interest and is not passed by way of punishment. Furthermore, it is well enunciated principle of law that though judicial scrutiny is not altogether excluded in respect of an order of premature retirement but at the same time the Court is not supposed to sit over such a matter as a Court of appeal. However, in the case of the petitioner, it is not in any manner displaced that the petitioner because of his irresponsible conduct on two instances was administratively dealt with, though in one of the cases he stood exonerated but in the second a major punishment of stoppage of two annual grade increments with cumulative effect has been passed against him and which as per the admission of learned counsel for the petitioner has since then attained finality. It is with much force and

vehemence learned counsel for the petitioner Mr. D.S. Patwalia, Senior Advocate assisted by Mr.Kannan Malik, Advocate has sought to prevail upon the Court that the order under challenge is stigmatic and therefore, does not sustain. Though on the face of it, the arguments appear to be highly impressive, however, the Supreme Court in case of **‘Union of India vs. Col. J.N. Sinha and another’ AIR 1971 SC 40** upholding such Rules has observed that where an appropriate authority bona fidely forms an opinion that it is in public interest to retire an office in exercise of the powers conferred by the provisions and is not based on arbitrary decision or on any collateral grounds, such an order needs to be upheld.

The impugned orders placed on the records whereby Officers Committee headed by the Chief Secretary Haryana considered on 10.02.2020 the proposal of the Department and concurred with the decision recommending to retire the petitioner prematurely in public interest as he had already attained 55 years of age on 04.06.2018. It is based on the records where reputation for corruption, dishonesty or infamous conduct was found to be clearly established by the authority and taking the same to affect moral turpitude of the officer, had decided to retire him prematurely, and therefore the arguments that have been sought to be raised that it was a stigmatic order does not augur well for the petitioner. The claim that is sought to be raised that earlier for these allegations the petitioner has been administratively dealt with and cannot be again considered for forming an opinion or arriving at a

decision to prematurely retire the petitioner, does not sustain in the eyes of law and does not impress the Court much. The Commissioner has minutely perused the records and has observed that the authorities keeping in view the overall conduct of the petitioner in his service throughout which it considered that the same was not in public interest, has passed orders prematurely retiring him, and therefore cannot be termed to be stigmatic or that the same was for vexing him twice for the same very allegations. This Court does not concur with the submissions of learned counsel for the petitioner that the orders were not sustainable. More so, under Clause XVIII of the Policy of Premature Retirement, a Government employee who has been served with a notice/order of premature retirement under these provisions, may submit a representation within three weeks from the date of service of such notice/order. However, the petitioner nowhere speaks or claims having done so and his utter failure to do so with the efflux of time also renders the impugned findings to have attained finality. In the light of what has been detailed and discussed above, there is no merit in the instant petition and the same stand dismissed.

(FATEH DEEP SINGH)
JUDGE

July 28, 2020

rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No