

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 116 of 2021

Date of Decision: 06.01.2021

Suman Bala

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Dr. Suresh Kumar Redhu, Advocate
for the petitioner.

Anil Kshetarpal, J.

Through this writ petition under Article 226 of the Constitution of India, the petitioner has sought the following substantive relief:

“a) Issue a writ in nature of certiorari to quash the impugned order No. 36396-98 dated 12.11.2018 (P-1) finding dated 30.04.2019 (P-2) being based on surmises and conjectures, impugned order No. 1759-61/Steno dated 01.07.2019 (P-6) vide which punishment of stoppage of two annual increments with temporary effect awarded, Letter No. 3095/Steno dated 29.11.2019 (P-8) vide which adverse remarks conveyed, Letter No. 705/Steno dated 03.03.2020 (P-10) vide which representation against adverse remarks rejected by totally non speaking orders, Letter No. 2820/A-1 dated 13.02.2020 (P-11) extension beyond 55 years rejected by totally non-speaking orders and compulsory retirement notice No. 31192 dated

02.11.2020 (Annexure P-16) conveyed to the petitioner on 03.11.2020 proposing to compulsorily retiring her w.e.f. 01.02.2021 on expiry of three months period being contrary to Haryana Government's instructions No. 32/06/2018-4GSI dated 05.02.2019 (P-13) and settled principles of law in view of rule PPR 9.18 (1)(c) and further issue a writ of mandamus directing the respondents to retain her in service after the age of 55 years till the date of superannuation with all consequential benefits".

The petitioner is sought to be retired under Rule 9.18 of the Punjab Police Rules, 1934 as applicable to the State of Haryana on or after she attained the age of 55 years. The petitioner has reproduced the aforesaid Rule, which is extracted as under:

"9.18 (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 for twenty five years or such lesser period as may, for any class of officer 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”.

The petitioner was recruited as Constable on 05.03.1984. Thereafter, she was promoted as Head Constable on 14.08.1992, officiating Assistant Sub Inspector on 08.10.1997 and Sub Inspector on 27.10.2016. In a departmental proceedings initiated, she was awarded punishment of stoppage of two future annual increments with temporary effect vide order dated 01.07.2019. It was found that the petitioner received bribe of ₹20,000/- which was later on returned to the complainant. Further, in the Annual Confidential Report with respect to the period from 24.04.2018 to 31.03.2019 the petitioner has been reported as average. In the column of general remarks, it has been mentioned that she needs to improve. The representation made by the petitioner, against the remarks in Annual Confidential Report, has already been rejected by the Inspector General of Police on 03.03.2020.

The case of the petitioner for extension in the service beyond

the age of 55 years has been considered and it has been decided that she should be retired from service in accordance with Rule 9.18 of the Punjab Police Rules, which has been extracted above.

Before passing order, the petitioner has been granted an opportunity by serving a notice (Annexure P16) which read as under:

NOTICE

You, W/SI Suman Bala No. 190/SRS of this district have attained the age of 55 years on 04.03.2020, your date of birth being is 05.03.1965. The overall service record including ACRs with regards to capacity to investigation, discipline and general reputation etc. have been minutely examined and taken into consideration. It has been found that your overall performances is not upto the required standard, so as to allow you to continue in further service according to the following details mentioned below:

Sr. No.	Period of ACR	Remarks
1	01.04.15 to 05.10.15	Defect, if any, whether the same have been brought to the notice of the concerned officer with any communication – Yes, awarded a censure for negligence in duty vide order dated 03.07.15.
2	26.05.18 to 31.03.19	Honesty – Average Moral Character – Average Moral courage & readiness to expose the malpractices of subordinates – Average Reputation for fair dealing with the public and accessibility to the public – Average Reliability – Average Defect, if any, and whether the same have been brought to the notice of the concerned officer

<i>Sr. No.</i>	<i>Period of ACR</i>	<i>Remarks</i>
		with any communication – Average General Remarks – Needs to improve Category or report (Outstanding, Very Good, Average and below) - Average

3. In addition to the above adverse remarks recorded in her ACR, the following punishment have also been awarded to her:-

- (i) Censure in 1994 for dereliction in duty.
- (ii) Censure on 15.03.1998 for misbehaving with duty in-charge.
- (iii) Censure on 03.07.2015 for negligence in duty.
- (iv) Warning on 13.01.2016 for negligence in investigation.
- (v) Awarded a punishment of stoppage of two annual increments with temporary effect on 01.07.2019 in a departmental enquiry for illegal gratification.

You are, therefore, hereby served the three months notice for retirement on pension under the powers mentioned in the police rule 9.18 in the public interest.

In case you want to make a representation relating against this notice, you are entitled to submit the same within the period of three weeks from receipt of this notice, failing which order will be passed accordingly.

Sd/-
Superintendent of Police,
Rohtak. 2/11/20”

The petitioner has already submitted reply to the notice.

This Court has heard learned counsel for the petitioner and with his able assistance, gone through the paper-book.

Learned counsel while relying upon a judgment passed in *Azad Singh v. State of Haryana (Civil Writ Petition No. 6969 of 2009, decided on 26.09.2012)* contends that the adverse remarks, recorded with respect to period from 24.08.2018 to 31.03.2019, are not sustainable being vague. He further submitted that these remarks are in violation of the instructions issued by the Government.

This Court has carefully read the judgment relied upon by learned counsel for the petitioner. In the aforesaid case, the petitioner in that writ petition had challenged the orders by which adverse remarks, for a short period i.e. from 02.10.2003 to 28.01.2004, had been sustained. The Court noticed that except for a short period, the petitioner has earned good reports. The Court also noticed that even during this short period in the integrity and reliability column, the petitioner in the aforesaid case was reported to be average. It was also noticed that the aforesaid confidential report was recorded after a period of more than 4½ years.

Keeping in view the aforesaid facts, the Court allowed the writ petition.

In view of the aforesaid, it is apparent that in the facts of the case in *Azad Singh (supra)*, the Court held that the adverse remarks, in the Annual Confidential Reports, are not appropriate. However, in the present case, it is apt to notice that the period for which the report has been recorded is for more than 10 months. Still further, the petitioner has been censured in

1994, 1998 and 2015. She was warned in 2016. Thereafter, she has been awarded a punishment of stoppage of two annual increments with temporary effect, after she was found guilty in a departmental inquiry for receiving illegal gratification.

Keeping in view the aforesaid facts, this Court does not find that the judgment passed in *Azad Singh (supra)* is of any help to the petitioner. It would be noted here that against the order of punishment, appeal filed by the petitioner is pending.

Keeping in view the aforesaid facts, it would not be appropriate for this Court to finally form any opinion.

On careful reading of a note appended to Rule 9.18, it is apparent that the appointing authority retains absolute right to retire any Government servant on or after he or she has attained the age of 55 years without assigning any reason. In the present case, the appointing authority has chosen to exercise the same. The retirement on or after attaining the age of 55 years does not carry any stigma. Such decisions can be taken in the interest of the department or the Government. The High Court, in such circumstances, has a very limited jurisdiction.

It is important to note that the petitioner has challenged initiation of the departmental proceedings, the final report submitted in the same and the order by which she was awarded the punishment of stoppage of two annual increments with temporary effect. Since appeal is pending, therefore, the petitioner is relegated to the remedy of appeal without giving any final opinion. The petitioner has also challenged the communication by which she was conveyed adverse remarks as also the order rejecting her

representation. This Court has carefully read the order passed by the Inspector General of Police, Rohtak Range, Rohtak, rejecting the representation. On bare reading of the same, it is apparent that the order passed is not a non-speaking order. Learned counsel for the petitioner failed to draw attention of the Court to the material which was not considered by the authority. Keeping in view the aforesaid facts, this Court does not find it appropriate to interfere.

In view of the aforesaid, there is no ground to issue the writ, as prayed for and hence, the same is dismissed in *limine*.

(Anil Kshetarpal)
Judge

January 06, 2021

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No