

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

**CWP-8311 of 2020(O&M)
Date of Decision: 24.02.2021.**

EHC Rajpal

...Petitioner

Versus

State of Haryana &Ors.

....Respondents

CORAM: HON'BLE MR JUSTICE ARUN MONGA

**Present : Mr. R.S. Malik, Advocate
for the petitioner.**

**Mr. Harsh Vardhan, AAG Haryana
(Presence marked through video conference).**

ARUN MONGA, J. (ORAL)

1. This is second foray of the petitioner before this Court. Earlier one vide CWP No. 2068 of 2020 was, *inter alia*, for quashing notice/ order dated 30.10.2019 passed by Superintendent of Police, Sonapat to retire the petitioner (Head Constable) from service with effect from 01.02.2020, on completion of 55 years of age.

2. Said earlier writ petition was disposed of vide order dated 30.01.2020(Annexure P/15) passed by my learned Brother Girish Agnihotri, J. with directions to the competent authority to reconsider the matter, in following terms:-

“Therefore, this Court is of the considered view that the matter needs to be re-considered by the Competent Authority i.e. Superintendent of Police who has passed the impugned order/notice dated 30.10.2019, whereby, on expiry of three months the petitioner has been ordered to be treated as retired from 01.02.2020. This Court also deems it appropriate to direct respondent No.2 to examine this fact and depute a concerned officer to examine all the three issues namely,

(i) whether to upgrade the adverse remarks in the confidential report for the period from 17.11.2016 to 31.03.2017;

(ii) secondly, to examine as to whether in view of the punishment of stoppage of two future increments with permanent effect substituted by warning vide order dated 04.05.2018 (Annexure P-11) would have bearing on the decision by the Competent Authority to retain the petitioner in service or to retire in pursuance to the order dated 30.10.2019; (iii) thirdly, the Competent Authority may also consider the factum of similarity and the role of the petitioner being a Head Constable and Driver of the vehicle in which his senior SI Ramesh Kumar was along with him on the date of alleged incident and yet since, the said SI had also been given punishment of censure vide order dated 29.11.2018 and the application of order passed by this Court dated 28.05.2019, staying the impugned compulsory retirement order.

All these issues be examined forthwith by the Competent Authority as expeditiously as possible. Further considering the fact that in the notice it has been mentioned that he would retire w.e.f. 01.02.2020, this Court deems it appropriate to direct that till the decision so taken by the Competent Authority, status quo regarding his services as on today, be maintained till the expiry of four working days from the date of any adverse order afresh, if any, passed by the Competent Authority. Accordingly, the present writ petition is disposed of.”

2. As a consequence of the aforesaid, impugned order dated 04.06.2020 (Annexure P/16) has now been passed by respondent No.3. Thereby, issues No. (i), (ii) and (iii) *ibid*, framed by this Court vide order dated 30.01.2020 (Annexure P/15) were decided against the petitioner. Fresh impugned order dated 11.06.2020 (Annexure P/17) was thus passed by respondent No. 4 to retire the petitioner from service with effect from 01.02.2020.

3. In the instant writ petition, under challenge are two orders i.e. one dated 04.06.2020 (Annexure P/16) passed by respondent No. 3 and

second is the adverse order dated 11.06.2020 Annexure P/17 passed by respondent No. 4 (punishing authority).

4. Grievance of the petitioner, *inter alia*, is that he has been discriminated by the Department viz-a-viz the other officials who were allegedly also involved in the same acts of omission and commission. That apart, the petitioner was initially awarded punishment of stoppage of 5 increments, which was later reduced to stoppage of 2 increments. However, while exercising the revisional powers, the Director General of Police modified the punishment and warned him to remain careful in future. Still, the authorities passed the impugned orders and compulsorily retired him, in gross violation to the directions of this Court, *ibid*.

5. The respondents have resisted the claim of the petitioner on the ground that the State enjoys unfettered powers under Rule 9.18(1)(c) of the Punjab Police Rules, 1934, as applicable to State of Haryana to retire any employee on attaining the age of 55 years by giving him three months' notice. According to respondents, following an adverse entry in the ACR for the period 17.11.2016 to 31.03.2017 viz. "integrity-dishonest and indisciplined", the petitioner was rightly retired compulsorily as his retention in Government service beyond the age of 55 years was not in the public interest.

6. I have heard learned counsel for the parties and have perused the paper-book.

7. Learned State counsel strenuously opposes the writ petition. He relies on a Division Bench judgment rendered by this Court in **Shamsher**

Singh Vs. State of Haryana & Ors.¹ and argues that as per Rule 9.18(c), petitioner has merely been retired prematurely. The impugned order, not being stigmatic, cannot be interfered as the same is not punitive. To sum up, he submits that it is not a case of compulsory retirement, but merely that of premature retirement and the State has unfettered powers under the aforesaid rules to retire any employee on attaining the age of 55 years in case his services are not found either suitable or otherwise unwarranted in view of his past service record. He argues that petitioner does not have clean service record. Due to adverse entry in his service record he has been retired.

8. Learned counsel for the petitioner vehemently argues that impugned orders are illegal and liable to be set aside.

9. In order to appreciate the rival contentions and for adjudication of the *lis* in its true perspective, firstly it is pertinent to go to the relevant parts of order/notice dated 30.10.2019 Annexure P/13 and order dated 11.06.2020 Annexure P/17 passed by the punishing authority.

The same are reproduced below:

ORDER/NOTICE DATED 30.10.2019 ANNEXURE P/13:

“You, EHC Rajpal No.1050/SPI of this district will attain the age of 55 years on 01.02.2020 being date of Birth 02.02.1965. His extension beyond the age of 55 years has not allowed vide this office Order No. 55916-21 dated 26.10.19. Your services are no more required after the age of 55 years on the basis of your chequered service record (ACR for the period from 17.11.2016 to 31.03.2017 integrity dishonest and discipline-Indiscipline)

You are hereby served with a three months retirement notice as required under rule 9.18(1)(c) of PPR of CSR Vol-I Part-1 after the expiry of the period of this notice from the date of receipt, you will be treated as retired w.e.f. 01.02.2020 A.N. from service as per rule mentioned above.”

ORDER DATED 11.06.2020 ANNEXURE P/17.

“This order is in reference to the order of Hon’ble High Court, passed vide order dated 30.01.2020, wherein in view of the directions of the Hon’ble High Court, the Competent Authority i.e. Worthy Addl. Director General of Police-cum-Inspector General of Police, Rohtak Range Rohtak vide order dated 04.06.2020, has decided all the issues as directed by the Hon’ble High Court, wherein, one of the issue which is hereby addressed, is with reference to the legality of the notice of Compulsory Retirement given vide dated 30.10.2019 to EHC Rajpal No. 1050/SPT, wherein the competent Authority, after examination of the issue in detail has upheld the notice of Compulsory Retirement, vide dated 30.10.2019, wherein, as a natural corollary, the EHC Rajpal, No. 1050/SPT is to be Compulsory retired as per the direction of the Hon’ble High Court in view of the order of Competent Authority.

The Hon’ble High Court has passed the order of status quo regarding the services of EHC Rajpal No. 1050/SPT, till the expiry of four working days from the date of order of the Competent Authority, therefore, the Competent Authority has passed the order in compliance with the directions of the Hon’ble High Court on dated 04.06.2020, which came into force after the expiry of four working days i.e. on 11.06.2020

Therefore, EHC Rajpal No. 1050/SPT is hereby compulsory retire from service on today i.e. 11.06.2020 AN after the expiry of four working days in accordance with the under rule 9.18(1)(c) of PPR of CSR Vol-I Part-I as well as HCS Rules.”

10. Impugned order dated 11.06.2020, Annexure P/17, no doubt is silent about the chequered service record (ACR for the period from 17.11.2016 to 31.03.2017, integrity- dishonest and discipline-indiscipline). Perusal thereof would show that in essence and reality, it is not an independent order, but is in the nature of a supplement to the previous order/notice dated 30.10.2019 for retirement. Vide fresh order dated 11.06.2020, the punishing authority simply re-activated its previous order/notice dated 30.10.2019 for retirement. In the said previous notice/order, it had been stated that the petitioner’s services were no more required after the age of 55 years on the basis of his chequered service record (ACR for the period from 17.11.2016 to 31.03.2017, integrity-

dishonest and discipline-indiscipline). During the interregnum, the previous order dated 30.10.2019 passed the punishing authority just remained in abeyance as per status quo directed by this Court vide order dated 30.01.2020 (Annexure P/15).

11. This being the position, notice for retirement, in reality, seems to comprise of two parts- the first and, in fact the main part and foundation being the order/ notice dated 30.10.2019, wherein it was stated that the petitioner's services were no more required after the age of 55 years on the basis of his chequered service record (ACR for the period from 17.11.2016 to 31.03.2017, integrity- dishonest and discipline-indiscipline); and second part of the notice for retirement being the fresh adverse order dated 11.06.2020. The real import of this second part seems only to be re-iterating and re-conveying the earlier decision taken by the punishing authority at the time of issuing the previous notice dated 30.10.2019. The fresh adverse order dated 11.06.2020 is hence to be read and treated as the part and parcel of the previous order/notice dated 30.10.2019 passed by the punishing authority. These two parts of the orders/notice of retirement (Annexure P/13 and Annexure P/17) have to be read together to constitute the complete notice/order for the petitioner's retirement.

12. Viewed in that perspective, therefore, in essence and reality, the petitioner has been prematurely retired from service giving reasons as "the chequered service record (ACR for the period from 17.11.2016 to 31.03.2017, integrity- dishonest and discipline-indiscipline)".

13. The argument of learned State counsel that it is not a stigmatic order, on the face of it, is not correct. The order/notice dated 30.10.2019

Annexure P/13, which in reality is part and parcel of the impugned order

11.06.2020 Annexure P/17, clearly spells out that the petitioner has been retired compulsorily owing to the adverse entries in the ACR, and is per se stigmatic and punitive in nature. What has to be seen is the substance, net effect and the nature of the orders so passed. As observed above, here the order for petitioner's premature retirement comprises of two parts-first part being the order dated 30.10.2019 and the second part being the order 11.06.2020. Both these orders have, therefore, to stand or fall together.

14. Having held above that the order for petitioner's retirement is stigmatic and punitive in nature, I am of the view that procedure prescribed in the Service Rules for imposing penalty was not followed. Being so, the order Annexure P/13 and the impugned order dated Annexure P/17 for petitioner's premature retirement cannot be sustained in law.

15. Viewed from different angle, no cogent explanation is forthcoming as to why different yardsticks have been adopted in the case of the petitioner vis-a-vis the other delinquent, namely, HC Anil. Not only this, concededly, the punishment awarded to the petitioner of stoppage of two increments was reduced/ modified by the DGP, Haryana and instead thereof, he was administered warning to remain careful in future. The said order passed by DGP, Haryana has already attained finality. Thus, once the punishment awarded to the petitioner is non existent, the same cannot be made basis for recording adverse entry leading to issuing notice to the petitioner for retiring him prematurely.

16. The adverse ACR seems to be the entire edifice, based on which, the impugned order dated 04.06.2020, retiring the petitioner from service, has been steadfastly defended. Heavy reliance is on Rule 9.18(1)(c) of the Punjab Police Rules, so as to take refuge under its interpretation to

contend that State is empowered with unconstrained limits to oust any employee who has earned adverse entry in his service record, particularly of the nature where his integrity has been found to be dishonest and he has the reputation of being in-disciplined. It becomes imperative for this Court to test the said defence on the touchstone of genuineness and the judicial veracity of the adverse remarks recorded qua petitioner vis-a-vis his purported delinquency.

17. It is alleged that the petitioner on the fateful day i.e. 17.08.2016 was on duty along with Sub Inspector Ramesh and Head Constable Anil at Sonepat. An overloaded truck coming on the G.T. Road was intercepted by them. But they took money from its driver, allowed the overloaded truck to go and thus misused their official position. No charge-sheet was filed against the Head Constable for some inexplicable reasons though he was initially suspended from service and eventually reinstated. On the other hand, petitioner alleges that discriminatory attitude was adopted against him. Departmental proceedings were initiated against petitioner. He was ultimately exonerated by the enquiry officer vide enquiry report dated 02.11.2016, *inter alia*, observing that neither there was any complaint on behalf of the driver of the truck nor was there any complaint by any other person regarding taking bribe by petitioner from the driver, in any manner, nor was the registration number of the truck divulged during course of the enquiry proceedings. Enquiry Officer also held that there was no proof or evidence regarding weight of the goods having been weighed, after weighing it on a machine to prove that alleged truck was overloaded. However, the punishing authority disagreed with findings of the enquiry officer and awarded punishment of stoppage of 5 annual increments with

permanent effect. Original punishment order eventually subsumed into the final revision order dated 04.05.2018 passed by the DGP whereby the petitioner was merely given a warning to be careful in future.

18. It is noteworthy here is that the same very allegations, qua which departmental proceedings were initiated on 22.08.2016 and which culminated into order dated 04.05.2018 passed by the DGP vide which the petitioner was given warning to remain careful in future, have been made the very basis of adverse remarks in the petitioner's confidential report for the period 17.11.2016 to 31.03.2017 i.e. 5 months. One would have thought that once the highest authority at administrative level i.e. DGP had let off the petitioner with a mere warning, it would be a quietus to any further action with respect to the same event and consequential proceedings against the delinquent. Petitioner, perhaps must have had sigh of relief, thinking that he would now be accorded the benefit of the order passed by the DGP. On the other hand, quiet a travesty of the fate it turned out to be, in as much as, while two other similarly situated persons i.e. SI Ramesh and HC Anil, who were accompanying the petitioner at the relevant time of delinquency got off the hook but the petitioner continues to suffer the tremors of same incident. The accompanying HC Anil was left off by the department itself. SI Ramesh filed writ petition challenging his charge-sheet, wherein the further impugned proceedings were stayed by this Court before admitting the writ petition and thus by virtue of fortuitous circumstances he continued in service till his superannuation.

19. During pendency of the present writ proceedings before this Court, my learned Brother Jitender Chauhan, J. while hearing this case on 16.09.2020 had in fact passed the following order:-

“The matter has been taken up through video-conferencing in the light of the pandemic Covid-19 situation and as per instructions. At this stage, it is not clear whether the ACR of the petitioner during the period from 17.11.2016 to 31.3.2017 has been upgraded or not. Post again on 1.12.2020.”

Subsequently, vide remand order dated 30.01.2020 my learned Brother Girish Agnihotri, J. had specifically directed to address the issue “whether to upgrade the adverse remarks in the confidential report for the period from 17.11.2016 to 31.03.2017.” While passing the impugned order dated 04.06.2020, not only this issue which was specifically required to be addressed was given short shrift, even the observations in order dated 16.09.2020 reproduced above have not been met. Though an affidavit dated 20.11.2020 has been filed to justify the adverse ACR, its retention and non up-gradation. In the affidavit, replying on impugned order dated 4.6.2020, it has very baldly been recited that since the charges in the departmental enquiry were not related to taking legal action in the matter of overloaded truck but instead they related to taking bribe to release the truck and therefore it is a very serious charge of misconduct. It has been stated that since the charges are grave, having bearing on the integrity of the official, it was a fit case for retention of adverse remarks in the ACR for the period 17.11.2016 to 31.03.2017.

20. I am unable to persuade myself to accept with the reasoning adopted by the department qua the petitioner. I am constrained to say that it seems to be a case of clear prejudice against the petitioner, to make sure that somehow or the other he does not get the benefit of exoneration of charge in departmental proceedings culminating into final order of warning passed by the DGP and, which has attained finality and since it was not challenged by the department.

21. The conduct of the department flies in the face of the final order passed by the DGP and it ought not have retained the adverse entries in the service record once the petitioner was exonerated of the charge by the enquiry officer followed by the order of DGP.

22. In the instant writ petition, there is no formal prayer for setting aside the order dated 11.9.2017 (Annexure P/12) and the order dated 30.10.2019 (Annexure P/13). That does not relieve this Court of its duty to exercise jurisdiction under Article 226/227 of the Constitution of India to pass appropriate order warranted in the interest of justice.

23. In the premise, impugned order dated 04.6.2020 which, *inter alia*, retained the adverse entry cannot be sustained and is hereby set aside. The respondents are directed to delete the said adverse entries from the service record of the petitioner.

24. As an upshot of discussion above, writ petition is allowed. Both the impugned orders dated 04.06.2020 (Annexure P-16), 11.06.2020 (Annexure P/17) as also the order dated 30.10.2019 (Annexure P/13) are quashed. Petitioner is ordered to be reinstated into service within one week of his approaching the department along with web print of this order. For the period the petitioner has remained out of service, he shall not be entitled to any financial benefits on the principle of “no work no pay”. However, he shall be entitled to all other benefits including seniority and continuity of service.

February 24, 2021

Jiten

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(ARUN MONGA)

JUDGE