

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-15057-2020

Date of Decision: February 12, 2021

Yogender Kumar

.....Petitioner

versus

The District and Sessions Judge, Hisar

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sunil Panwar, Advocate with
Mr. Dhruv Singh, Advocate
for the petitioner.

Mr. Vikas Chatrath, Advocate with
Mr. Sahil Matharoo, Advocate
for respondent

Sudhir Mittal, J. (Oral)

The petitioner was serving as Superintendent Grade-II in the Judicial Branch in District and Session Court, Hisar. He is aggrieved because he has been ordered to be prematurely retired vide order dated 24.07.2020, a copy of which is on record as Annexure P-35.

2. Learned counsel for the petitioner has raised two basic arguments relying upon Rule 144 of the Haryana Civil Services (General Rules) 2016 (hereinafter referred to as the rules).

3. The first argument is that an employee can be prematurely retired if it is in the public interest and if he is inefficient. Inefficiency would justify premature retirement as it is not in the public interest to retain such an employee in Government service. Thus, there must be a finding that the efficiency of an employee is impaired and he has a reputation of corruption and dishonesty, which must be clearly established. The record of the petitioner has been tabulated at pages 6 and 7 of the writ petition, according to which the ACR of the year 2016 is poor

whereas all other ACRs are either outstanding, very good or good. Thus, it has been submitted that the impugned order deserves to be set aside on the ground that it is contrary to Rule 144 which pre-supposes a finding of inefficiency or corruption. The second argument that has been raised is that before passing an order of premature retirement, a reasonable opportunity to show cause has to be given. No such opportunity has been given in the instant case and, thus, impugned order is liable to be set aside as being violative of principles of natural justice.

4. In response, learned counsel for the respondent has placed reliance upon a letter dated 05.02.2019 issued by the office of Chief Secretary, whereby revised policy/guidelines regarding premature retirement have been issued. He has submitted that terms of Clauses XV, XVI and XVIII of the said policy decision do not envisage issue of show cause notice. This is in accordance with the judgment delivered by the Supreme Court of India. Only post-decisional hearing is contemplated under the said provisions. Further, in terms of Clause XXI of the said policy decision, the existing instructions/guidelines on the subject stand overruled. The last line of the instructions 'necessary amendments in the Haryana Civil Services Rules will be made in due course' makes it abundantly clear that the Government intended to amend the relevant service rules so that the policy decision would be in consonance therewith. This makes the intention of the State Government very clear and even if the relevant rules have not been amended, the action can be taken on the basis of the revised guidelines as intention to amend the rules is evident. He places reliance upon a judgment of the Supreme Court in ***High Court of Gujarat vs. Gujarat Kishan Mazdoor Panchayat 2003 (4) SCC 712.***

5. Rule 144 of the Rules is as follows:

“144. Premature retirement after attaining the prescribed age or qualifying service.— The appointing authority shall, in

public interest, have the absolute right to retire prematurely a Government employee of any Group, other than of Group D, on account of inefficiency after attaining the prescribed age irrespective of his length of service or after completion of twenty years' qualifying service irrespective of his age, by giving him a notice of not less than three months in writing or pay and allowances in lieu of notice period. The minimum age prescribed for the purpose, except in case of twenty years' qualifying service, is— (i) 50 years for the Government employees who are working on a post of Group 'A' or 'B' and joined service on any post before attaining the age of thirty five years; (ii) 55 years for the Government employees who are working on a post of Group 'A' or 'B' and joined service on any post after attaining the age of thirty five years; and (iii) 55 years for Government employees working on Group C posts : Provided that in the case of Judicial Officer, the case for retention in service beyond the age of fifty-eight years shall be considered by the competent authority before he attains such age, irrespective of his date of entry into Government service.

Note 1.— (i) The provision of this rule may be initiated against a Government employee whose efficiency is impaired but against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient (i.e. when a Government employee's value is clearly incommensurate with the pay which he draws) but not to such a degree as to warrant his retirement on a compassionate ground. It is not the

intension to use the provisions of this rule as a financial weapon, that is to say, the provision shall be used only in the case of Government employees who are considered unfit for retention on personal as opposed to financial grounds; and

(ii) in cases where reputation for corruption, dishonesty or infamous conduct is clearly established even though no specific instance is likely to be proved under the Haryana Civil Services (Punishment and Appeal) Rules, 2016 or the Public Servants (Inquiries) Act, 1850 (37 of 1850).

Note 2.— Authority competent to retire under this rule shall carefully examine the record of the Government employee whether he has completed prescribed age or qualifying service, as the case may be, with particular reference to his integrity or otherwise; and if it is desirable in the public interest that he should be retired, action shall be taken accordingly.

Note 3.— The Government employee shall be given a reasonable opportunity to show cause against the proposed premature retirement under this rule. In case of gazetted Government employee, approval of Council of Ministers shall be obtained and in the case of non-gazetted Government employee the Head of Departments shall effect such retirement with the previous approval of the Administrative Department. In all cases of such retirement the Haryana Public Service Commission or Haryana Staff Selection Commission, as the case may be, shall be consulted.

Note 4.— Heads of Departments shall report to Government in each quarter, the action taken under this rule.”

6. The aforementioned rule permits the appointing authority to prematurely retire a Government employee, if he is inefficient and public interest so requires. For this purpose notice of not less than three months in writing is necessary. Notes appended to the rule dilates upon the intent behind it. Note 1 says that the provision may be invoked where the efficiency of an employee is impaired but it is not desirable to charge him for inefficiency. This implies that continuation of such an employee would not be in public interest as he does not contribute to the output of his office. The said note further envisages that apart from inefficiency, the employee must be proved to have reputation of corruption, dishonest and infamous conduct.

7. Thus, the question arises whether on the basis of the record of the petitioner, it can be concluded that he has a reputation of corruption or dishonesty or that his efficiency is impaired?

8. His service record reproduced on pages 6 and 7 of the writ petition is not disputed. Thus, to brand him inefficient or corrupt on the basis of the Annual Confidential Report of the year 2016 would not be justified especially when the said report is under challenge in this Court in CWP No.36354 of 2019. I have been told that the ground of challenge in the said writ petition is that the official who initiated the ACR was not competent to do so. Although, in the said ACR, it has been endorsed that the integrity of the petitioner is doubtful, a singular instance in my considered opinion would not be sufficient to conclude that from the record it stands established that the petitioner is corrupt or dishonest.

9. Note 3 of Rule 144 also makes it incumbent upon the concerned authority to give a reasonable opportunity to show cause against the proposal to

prematurely retire an employee. Thus, the submission of learned counsel for the respondent that revised policy guidelines issued vide communication dated 05.02.2019 would be applicable, cannot be accepted. Although the revised policy guidelines do not envisage issuance of show cause notice prior to issuance of notice of three months and they only incorporate a provision of post-decisional hearing, they cannot prevail over the Statutory Rules. The policy guidelines are nothing more than executive instructions and it is settled law that Statutory Rules cannot be supplanted by such instructions. Although, the said guidelines contain an intention on the part of the Government to amend the relevant rules, there is nothing on record to indicate that the said intention has been acted upon. The judgment relied upon in Gujarat Kishan Mazdoor Panchayat (supra) by learned counsel for the respondent cannot help him in any manner as in the said case, draft rules had been made which provided for nomination as a mode of appointment. That apart, the existing recruitment rules also provided for nomination as a mode of appointment and in this fact situation the judgment of the Supreme Court is distinguishable.

10. For the aforementioned reasons, the writ petition is allowed. Impugned order dated 24.07.2020 (Annexure P-35) is quashed. Resultantly, the petitioner would be entitled to reinstatement with effect from the date he demitted office.

11. However, the respondent shall be at liberty to pass a fresh order in accordance with the Rules after grant of opportunity of hearing.

February 12, 2021

Poonam Negi

[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No