

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2524-2003 (O&M)

Date of decision: 15.11.2022

Satya Narain Sharma

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Virender Punia, Advocate for
Mr. Vikram Singh, Advocate,
For the petitioner.

Mr. R.D.Sharma, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for setting aside the order dated 11.06.2002 (Annexure P-3) vide which the petitioner was compulsorily retired from service as Clerk at the age of 55 years.

2. Petition was admitted for hearing on 14.02.2003.

3. It seems that by sheer effluxion of time and pendency of the writ petition for more than 19 years before this Court, either it has been rendered infructuous or even otherwise the petitioner seems to have lost interest in pursuing the same.

4. In any case, from a perusal of record/pleadings, it appears that even on merits, claim of the petitioner is not admissible. Reference may be had in particular to the stand taken in Para 1 to 6 of the preliminary objection of the written statement filed on behalf of respondents No.1 to 3 and the same reads as under:-

“1. That the petitioner was apprehended by the D.S.P. State Vigilance Bureau Karnal on 28-9-93 while accepting a sum of Rs.400/- as illegal gratification from Sh Om Parkash Pump Operator of Public Health Division Karnal. Necessary FIR No.16 dated 28-9-93 under section 7/13 of Prevention of Corruption Act, 1988 was registered in the Police Station, Vigilance Bureau Karnal against the petitioner as he accepted and obtained Rs.400/-(Rs. Four Hundred only) as illegal gratification from Sh Om Parkash complainant with a motive for doing or showing favour to him in connection with departmental enquiry pending against him with regards to vacation of Govt quarter and thus indulged in criminal misconduct and committed an offence punishable under Section 7/13 of Prevention of Corruption Act 1988.

2. That the Ld Special Judge, Karnal vide his order dated 23-12-98 awarded sentence of Rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/- In default of payment of fine, he shall further undergo Rigorous imprisonment for a period of three months. Fine has been paid by the petitioner.

3. That the petitioner made an appeal against the order dated 23-12-98 passed by the Ld. Special Judge Karnal in the Hon'ble Punjab & Haryana High Court bearing Misc No.1158 of 1999 in criminal Appeal No.49-SB dated 1999 and the Hon'ble High Court passed orders dated 18-1-99 that during the pendency of the appeal, the sentence is suspended. Recovery of fine, if any is not stayed.

4. That the petitioner was charge sheeted under rule-7 civil Services(Punishment & Appeal)Rules, 1987 vide respondent No.2 office memo No.3969-PH/ES (4) dated 9.9.1999 on the charges that he is guilty. of violation of rules 3(1) of Govt. Employees Conduct Rules, 1966 by accepting illegal gratification.

5. That the Government is competent to retire any class-III employee after the age of 55 years under rule 5.32 A(c) of C.S.R. Vol.11 and Rule 3.26(d) of CSR Vol.1 Part-1.

6. That the petitioner has challenged the order annexure P-3 vide which he has been compulsorily retired by the Competent authority. In this regard it is submitted that the petitioner has not leveled any allegation of malafide, arbitrariness or competency of the authority in passing the order Annexure P-3. Rule 5.32A(c) of CSR Volume II & 3.26(d) of CSR Volume-1 Part-1, clearly bestow an absolute right upon the competent authority keeping in view the overall service record of the petitioner which is the subjective satisfaction of the competent authority. The Hon'ble Supreme Court has repeatedly held that subjective satisfaction of the competent authority could not be interfered by the Hon'ble

Court as the courts are not Appellate Authority until and unless there are allegations of malafide and arbitrariness and competency in passing the order of compulsory retirement.

That the petitioner was involved in a corruption case and he was facing trial in the Trial court and after conviction awarded by the Trial Court, the petitioner filed an appeal in the Hon'ble High Court and his sentence has been suspended by this Hon'ble Court but conviction is not stayed, therefore, he was rightly compulsorily retired as provided under the rules and as such the order annexure P-3 is legal and sustainable in the eyes of law.

That the petitioner was charge-sheeted for taking illegal gratification and charge sheet was duly served on the petitioner vide Annexure P-1 and due to the pending litigation. Enquiry Officer was appointed on 5-9-2002 and the petitioner was compulsorily retired on 16th of September 2002. Therefore, the Enquiry Officer was appointed after the conviction of the petitioner. Otherwise also there is no bar for initiating enquiry proceedings after retirement of an employee on superannuation."

5. Learned State counsel has canvassed arguments on similar lines as the stand taken in the written statement.

6. Neither any replication has been filed to the afore-noted stand of the respondents nor any additional affidavit of any kind to controvert the same. Therefore, factual narrative remains uncontroverted. In any case, trite it is to say and it is settled position in law that compulsory retirement is neither a punishment nor is continuation of service beyond the age of superannuation i.e., 55 years a matter of right.

7. In any case, Rule 56 (1) of the Fundamental Rules which is applicable to the petitioner also envisages that the competent authority has an absolute right to retire an official from Government service on attaining a particular age though, of course, the said right is not to be used arbitrarily, which is not the case herein. In light of the chequered service record of the

petitioner reproduced herein above and as reflected in the stand taken in the

written statement, I see no irregularity of any kind committed by the Department as to warrant any judicial intervention of this Court.

- 8. In view of the aforesaid, no grounds are made out to interfere.
- 9. Dismissed.

(ARUN MONGA)
JUDGE

November 15, 2022
Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No