

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.1745 of 2022 (O&M)
Date of Decision:24.03.2022

Raj Bala

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Pawan Kumar, Senior Advocate with
Mr. Surya Kumar, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

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JAISHREE THAKUR J.

1. The petitioner, Raj Bala, approached this High Court by way of instant writ petition under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 13.01.2022 (Annexure P-14) whereby the petitioner has been prematurely retired from service upon attaining the age of 55 years, with a further prayer to issue a writ in the nature of mandamus, directing the respondents to restore the petitioner into service with all consequential benefits.

2. In brief, the facts are that the petitioner had joined Haryana Police as a Constable on 04.06.1991 and stood promoted as Head Constable, Assistant Sub Inspector and L/Sub Inspector on 13.07.2004, 12.09.2008 and 12.02.2012 respectively. On 03.10.2018, when the petitioner was entrusted with the investigation in FIR No.384 dated 24.12.2014 registered at Police Station, Sector 40, Gurugram, the accused therein made a complaint against the petitioner that she demanded Rs.2 lakhs from the accused, out of which Rs.1 lakh was already given, however, she continued investigation under the order of Additional

Sessions Judge, Gurugram. Based on the aforesaid complaint, a departmental enquiry was initiated by ACP, Pataudi, Gurugam, who submitted his report dated 05.09.2019, exonerating the petitioner from all the allegations levelled in the said complaint. However, DCP (Headquarter), Gurugram (hereinafter referred to as the disciplinary authority) did not concur with the enquiry report as submitted by the enquiry officer and rendered his own finding in the form of disagreement note dated 30.09.2019 wherein the petitioner had been held guilty of misconduct. A show cause notice was served upon her on the same day to show cause as to why a penalty of stoppage of four future annual increments with permanent effect may not be imposed upon her. The petitioner replied to the said show cause notice by refuting the allegations levelled against her and responded that she asked for a loan from the accused for treatment of her brother, which she did not take. The reply filed by the petitioner was duly considered by the disciplinary authority and vide order dated 25.10.2019 it was opined that the only misconduct proved against the petitioner is that she asked for loan from an accused person and therefore, keeping in mind her unblemished service record for more than 29 years and the fact that it was maiden omission on her part, she was warned to be careful in future.

3. The petitioner's promotion to the post of Inspector was due, however, her name did not find mentioned in list dated 01.08.2020 and she was shocked to know that her promotion to the post of Inspector was withheld in view of the order dated 25.10.2019 passed by the disciplinary authority and her juniors were given promotion over and above her. Aggrieved against the same, the petitioner filed a suit before the trial court and vide order dated 07.09.2020 ACJ(SD), Gurugram, directed the competent authority to consider the plaint filed by the petitioner as representation and decide the same within a period of three weeks of passing the order by passing a speaking order. It was further observed

that the petitioner shall be at liberty to file a fresh suit, if she still feels aggrieved by the orders of defendants. In compliance of the order passed by the ACJ(SD), Gurugram, the representation of the petitioner was considered and the same was dismissed by the then Commissioner of Police, Gurugram, arrayed as respondent No.6 vide order dated 25.09.2020, by holding that no representation lies against the punishment of warning.

4. On 08.10.2020, petitioner received another show cause notice dated 06.10.2020 issued by the Commissioner of Police, Gurugram, who, while exercising the power conferred under Rule 16.28 of the Punjab Police Rules (as applicable to Haryana) *suo motu* reviewed the order passed by the disciplinary authority and disagreeing with the said order, directed the petitioner to show cause as to why a punishment of stoppage of four future annual increment with permanent effect may not be imposed upon her within a period of 7 days from the date of receipt of the said notice. Against the show cause notice dated 06.10.2020, the petitioner again approached the Civil Court and vide an interim order dated 19.10.2020 passed by the Civil Court, defendants were restrained from proceedings with the show cause notice dated 06.10.2020. The suit filed by the petitioner was decreed on 01.12.2020, declaring the order dated 25.10.2019 as null and void and the petitioner was directed to be promoted to the rank of Inspector within a period of two months. However, the said judgment passed by the trial court was challenged in appeal by the respondent-department and the appellate court vide order dated 03.02.2021 remanded the case to the trial court to decide the suit afresh and the same is still pending consideration before the trial court.

5. Thereafter, the petitioner has been conveyed of the adverse remarks in her ACR for the period from 26.09.2020 to 31.03.2021 vide letter dated 20.04.2021 issued by the Deputy Commissioner of Police, West-Gurugram.

Against the said order, petitioner had made a representation to respondent No.6, which was rejected by him vide order dated 10.06.2021. The petitioner filed another suit challenging the orders dated 20.04.2021 and 10.06.2021, which is also pending consideration. On 11.01.2022, the petitioner received a notice for retirement stating therein that her case for extension to serve beyond the age of 55 years was considered by the IGP, South Range Rewari and since, she did not fulfill the parameter for extension beyond the age of 55 years and her services were not required by the department in public interest, she was served upon a notice for retirement of three months in pursuance of the provisions contained in Rule 9.18(1) (C) of the Punjab Police Rules, as applicable to the State of Haryana. Thereafter, vide order dated 13.01.2022 issued by the Dy. Commissioner of Police, HQ, Gurugram the petitioner was ordered to be retired from service w.e.f. 14.04.2022 A.N. Aggrieved against the order dated 13.01.2022, petitioner filed the instant petition.

6. Mr. Pawan Kumar, learned Senior Advocate assisted by Mr. Surya Kumar, Advocate, appearing for the petitioner, while assailing the impugned order dated 13.01.2022, has raised the following three-fold arguments:-

- (i) Firstly, it is argued that the impugned order dated 13.01.2022 whereby the petitioner has been compulsorily/prematurely retired upon attaining the age of 55 years, has been passed without affording adequate opportunity of making any representation and *without prior sanction* from the State Government. In support of his contention, learned senior counsel for the petitioner heavily relied upon Note 2 of Rule 9.18 (2) of the Punjab Police Rules (as applicable to Haryana), which mandates that the officer shall be given an adequate opportunity of making any representation that he

may desire to make against the proposed action and such representation shall be taken into consideration before his compulsory retirement is ordered and in all cases of compulsory retirement of enrolled officers, the Inspector General of Police shall effect such retirement only with the previous approval of the State Government. He further relied upon the judgment rendered by a Single Judge of this High Court in ***ASI Krishan Singh vs. State of Haryana and others*** passed in CWP No.8138 of 2012 decided on 15.01.2014 wherein the notice issued to the petitioner therein for compulsorily retiring him from service after attaining the age of 55 years, had been quashed by holding that in the absence of approval of the State Government prior to compulsorily retiring the petitioner by the Inspector General of Police, the impugned notice cannot sustain. The aforesaid judgment passed by the Single Judge was upheld by the Division Bench in LPA No.725 of 2014 titled as ***The State of Haryana and others Vs. ASI Krishan Singh*** decided on 14.01.2015.

Further reliance has also been placed upon a judgment passed by the Division Bench of this High Court in ***ASI Harinder Singh Vs. State of Haryana and others 1995 (3) PLR 540*** wherein it has been held that power to compulsorily retire an Assistant Sub Inspector of Police on completion of 25 years' service is with the Inspector General of Police under Rule 9.18 (2) which he can exercise only with the prior approval of the State Government in public interest only. It has also been held that final order of compulsory retirement

based on adverse entries, which were not mentioned in the show cause notice, is illegal and violative of the mandate of rules.

- (ii) Secondly, it is argued that while exercising power conferred under Rule 16.28 of the Punjab Police Rules, respondent No.6 with a mala fide intention *suo motu* reviewed the order passed by the disciplinary authority whereby the petitioner had only been issued a warning to be careful in future, that too after a period of one year of the passing of the said order and without assigning any cogent reason, came to the conclusion that the petitioner is guilty of charges and deserved to be punished. Consequently, show cause notice dated 06.10.2020 was served upon the petitioner to show cause as to why a punishment of stoppage of 4 future annual increments with permanent effect be not imposed upon her. It is further argued that the said show cause notice was challenged before the Civil Court, which vide zimni order dated 19.10.2020 observed that *'...bias against the plaintiff for her approaching the court is writ large as has been revealed from the sequence of events unfolded in this case. The plaintiff cannot be left remedy-less and she cannot be browbeaten for the only fault of her approaching this Court.....All this prima facie shows an unholy attempt by the Commissioner of Police, Gurugram, to defeat the rights of the plaintiff and further to browbeat her...'* The respondent No.6 herein was also directed to file an affidavit in the Court deposing that in how many cases he has *suo motu* reviewed the decisions of the

disciplinary authorities subordinate to him and in how many such cases this was done when the *lis* was pending before Court. It is submitted that in view of the aforesaid, mala fide of respondent No.6 against the petitioner is writ large and therefore, the impugned order is liable to be quashed, as this Court can interfere in cases where it is satisfied that order is passed with (i) a mala fide intent; (ii) based on no evidence and (iii) it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material, in short, if it is found to be a perverse order. To corroborate this argument, learned senior counsel for the petitioner relied upon the judgment rendered by the Hon'ble Supreme Court in ***Baikuntha Nath Dass and another vs. Chief District Medical Officer, Baripada and another (1992) 2 SCC 299.***

- (iii) Thirdly, it is argued that the Haryana Government has issued instructions dated 05.02.2019 regarding premature retirement on attaining the age of 50/55 years or on completion of 25 years qualifying service-revised policy/guidelines and as per sub-clause (c) of Clause III, which deals with parameters for premature retirement, service record of last 10 years should be taken into account and out of this 50% ACR in case of retention beyond 50 years and 70% ACRs in case of retention beyond 55 years or on completion of 25 years qualifying service, should be 'Good' or above. In the present case, respondents without taking into consideration the aforesaid instructions, passed the impugned order prematurely retiring the petitioner, based on the ACR recorded for the period from

26.09.2020 to 31.03.2021 and thus, the same is not sustainable and liable to be quashed.

7. Per contra, learned counsel appearing for the respondent-State, Mr. Tapan Kumar Yadav, argued that the impugned order has been passed under Rule 9.18 (1) (c) of the Punjab Police Rules ordering premature retirement of the petitioner on her attaining the age of 55 years in public interest and as per the Note appended to the Rule 9.18(1), the 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. It is further argued that Note 2 of Rule 9.18(2) as relied upon by the petitioner has no relevance to the present case. Rule 9.18 (2) talks about compulsory retirement of any police officer, who has completed 25 years' qualifying service and the Inspector General of Police has to obtain previous approval of the State Government while doing so. Note 2 of Rule 9.18(2) of Punjab Police Rules gives an opportunity to such officer of making any representation that he may desire to make against the proposed action and such representation shall be taken into consideration before his compulsory retirement is ordered and in all cases of compulsory retirement of enrolled police officers, the Inspector General of Police shall effect such retirement only with the previous approval of the State Government in accordance with the instructions, if any, issued by the Government on the subject from time to time. The impugned order has been passed under clause (c) of Sub-Rule (1) of Rule 9.18 and therefore, reliance of the petitioner on Note 2 of Rule 9.18(2) is wholly misconceived. In support of his argument, he relied upon the judgment rendered by a Single Bench of this Court in ***Balwant Singh Vs. The State of Haryana and others*** passed in CWP No.13021 of 2014 on 05.02.2018 wherein it has been held that premature retirement of police officer upon attaining the age of 55 years is not required to be preceded by approval of State

Government. Approval of the Government is necessary only before ordering compulsory retirement of officer after completion of 25 years of qualifying service. The view taken in *Balwant Singh's case* (supra) has been followed in the judgment rendered by this High Court *Ram Dhari Vs. State of Haryana and others 2019(1) SCT 98* and further upheld by the Division Bench in judgment rendered in LPA No.1890 of 2018 decided on 22.01.2019.

8. Learned counsel for the respondent-State further argued that there was no mala fide intent on behalf of respondent No.6 against the petitioner, as there is no material available on record to substantiate the allegations raised by the petitioner against him. All the orders passed by respondent No.6 were passed by him in the capacity of competent authority in accordance with law. The show cause notice dated 06.10.2020 was issued to the petitioner after examining the departmental enquiry file in detail by respondent No.6 while exercising power conferred upon him under Rule 16.28 of the Punjab Police Rules. The said show cause notice was challenged by the petitioner in Civil Court, which was decreed. However, in the appeal preferred by the respondent-State, the Appellate Court set aside the judgment passed by the trial court and remanded the matter back to decide the suit afresh, which is still pending consideration. The case of the petitioner for extension in service beyond 55 years was considered by the competent authority after taking into consideration her service record and the ACR in the light of provisions of Rule 9.18(1) (c) of the Punjab Police Rules as applicable to Haryana and rightly came to the conclusion that services of the petitioner are not required by the department in public interest. It was submitted that the instant writ petition filed by the petitioner is devoid of merit and therefore, prayed for dismissal of the same.

9. I have heard learned counsel for the parties and have perused the entire pleadings as well as the case laws cited. The first argument raised by

learned senior counsel for the petitioner that the impugned order is *per se* illegal as the same has been passed in contravention to the provisions of Rule 9.18 (2) of the Punjab Police Rules where before compulsory retiring any police officer, who has completed 25 years' qualifying service, previous approval of the State Government is mandatory, falls flat. Admittedly, the petitioner herein had 29 years of service and the impugned order dated 13.01.2022 has been passed by the competent authority in pursuance to the provisions contained in Rule 9.18 (1) (c) of the Punjab Police Rules i.e. upon attaining the age of 55 years and not after completion of 25 years' qualifying service. It would be apt to reproduce relevant Rule 9.18 of the Punjab Police Rules as applicable to Haryana:-

“Rule 9.18 reads as follows:-

9.18. Retiring pension. (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 of twenty-five years or such lesser period of as may, for any class of officers, 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.*

(2) The Inspector-General of Police may, with the previous approval of the State Government, compulsorily retire any Police Officer, other than an officer belonging to Indian Police Service or Haryana State Police Service who has completed twenty-five years' qualifying service, without giving any reasons. An officer who is so compulsorily retired will not be entitled to claim any special compensation for his retirement.

Note:- *The right to retire compulsorily shall not be exercised when it is in the public interest to dispense with the further services of an officer on grounds such as inefficiency, dishonesty, corruption or infamous conduct.*

Thus the rule is intended for use-

(i) against an officer 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 as officer'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 allowance. It is not the intention to use the provisions of this rule as a financial weapon that is to say the provisions should be used in only the case of an officer who is considered unfit for retention on personal as opposed to financial grounds.

(ii) in case where reputation for corruption, dishonesty or infamous conduct is clearly established even though no specific instance is likely to be proved.

Note 2:- *The officer shall be given an adequate opportunity of making any representation that he may desire to make against the proposed action and such representation shall be taken into consideration before his compulsory retirement is ordered. In all cases of compulsorily retirement of enrolled police officers, the Inspector-General of police shall effect such retirement only with the previous approval of the State Government in accordance with the instructions, if any, issued by the Government on the subject from time to time.*

Note 3:- *The officer whose duty it would be to fill the post if vacant,*

shall record his orders on the application to retire, which, if in vernacular, should be accompanied by a translation in English. If the officer who applies for pension is permitted to retire, the application shall be forwarded with the pension papers.”

10. A bare perusal of Rule 9.18 of the rules of 1934 makes it clear that it is only in case of compulsory retirement of an officer upon attaining the age of 25 years’ qualifying service under Sub Rule (2), previous approval of the State Government is required and not where an officer 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, as has been postulated in clause (c) of Sub Rule 1. Note 2 is appended to Sub-Rule (2) and it cannot be read in conjunction with Sub-Rule (1). The difference between the applicability of the two provisions i.e ordering premature retirement of the petitioner on her attaining the age of 55 years in public interest by invoking Rule 9.18 (1)(c) and by compulsorily retiring a person on completing 25 years qualifying service has been dealt in detail in the judgment rendered in **Balwant Singh’s case** (supra). The Coordinate Bench while discussing the judgments rendered in **ASI Krishan Singh’s case** and **ASI Harinder’s case** (supra) has held that premature retirement of police officer at attaining the age of 55 years is not required to be preceded by approval of the State Government. Approval of the Government is necessary only before ordering compulsory retirement of officer after completion of 25 years of service. Similar distinction has been carved out by a Division Bench of this High Court in **Ram Dhari’s case** (supra). The relevant paragraphs of the same are reproduced as under:-

“9. It is only in case of compulsory retirement under Sub Rule (2) the previous approval of the State Government is required. Different procedure envisaged in the contingency of retirement of a police official on attaining the age of 55 years or at any time thereafter and retirement of a police official on completion of 25 years of qualifying service admits no ambiguity.

10. Note appended to Sub Rule 1 makes it abundantly clear that for retiring a police official on or after he attains the age of 55 years, whosoever may be the Appointing Authority, has an absolute right of retiring him without assigning any reason. Any previous sanction from the Government is not stipulated in this contingency. However, if the police official is to be retired on completion of 25 years of service, then sub rule (2) comes into operation which empowers the Inspector General of Police to compulsory retire the police official only after seeking previous sanction of the State Government.

11. In the case in hand it is undisputed that the appellant-petitioner had attained the age of 55 years and the impugned three months notice dated 16.07.2015 for retirement was issued to him in exercise of the powers conferred by Rule 9.18(1)(C) of the Punjab Police Rules, Volume-1.

12. The irresistible conclusion in the facts and analysis of Rule 9.18 is that there was no requirement of any previous sanction from the Government and notice was validly issued and the impugned order 02.10.2015 retiring the appellant-petitioner from service is not visited with any illegality for want of any previous sanction from the State Government. Thus the first argument advanced by learned counsel for the appellant does not merit any consideration.”

In view of the *ratio decidendi* culled out in **Balwant Singh's case** (supra) and **Ram Dhari's case** (supra), this Court has no doubt in holding that there is no illegality in the impugned order passed by the respondent-State whereby the petitioner herein has been ordered to be retired prematurely upon attaining the age of 55 years in exercise of power conferred by Rule 9.18 (1) (c) of the Punjab Police Rules. Requisite three months notice stands given.

11. As regards the argument alleging mala fide against respondent No.6, there is no specific allegation of mala fide mentioned against him and the only allegation levelled is that respondent No.6 acted in a biased manner against the petitioner only on account of the fact that she approached the Civil Court. All the orders passed by respondent No.6 were in the capacity of competent authority in accordance with law and against such orders the petitioner has already availed legal remedies available to her. Even the zimni order dated 19.10.2020 passed by the trial court in suit filed by the petitioner challenging the show cause notice

06.10.2020 issued by respondent No.6 to the petitioner, whereupon the learned senior counsel has laid great emphasis, has been merged into the final judgment passed by the trial court, decreeing the suit of the petitioner. However, the said judgment passed by the Civil Court has been set aside by the Appellate Court and remanded the matter back to the trial court to decide the suit afresh as per law, which is still pending consideration and therefore, the said issue is *sub judice* before the trial court. The only question to be considered before this Court is whether the impugned order passed by the respondents is valid in the eyes of law, which this Court has answered in positive.

12. The third limb of arguments raised by the learned senior counsel for the petitioner that the instructions dated 05.02.2019 issued by the General Administration Department, Chief Secretary's office were not followed while passing the impugned order has also no force. These instructions are related to the provisions existed in Rule 144 & 145 of Haryana Civil Services (General) Rules, 2016 and do not relate in any manner to the provisions as exist in Rule 9.18 of the Punjab Police Rules, which are applicable to the case in hand. In fact, notice for retirement dated 11.01.2022 issued by the Deputy Commissioner of Police specifically mentions that the '*case of the petitioner for extension to serve beyond the age of 55 years has been considered by the Inspector General of Police, South Range, Rewari as per the Govt. Instructions in view of the fresh directions/guidelines issued by the Director General of Police, Haryana, Panchkula.*' Neither such instructions as has been issued by the Director General of Police, Haryana, Panchkula has been placed on record nor has the learned senior counsel for the petitioner been able to point out that the impugned order has been passed in contravention to the said instructions and the same were not taken into consideration while passing the impugned order.

13. The impugned order has been passed by the respondents after taking into consideration the service record of the petitioner upon her attaining the age of 55 years and decided to not to extend her service beyond the age of 55 years. Moreover, it is a settled law that premature retirement at the age of 55 years by the appointing authority is not by way of a punishment and does not cast any stigma. Therefore, in view of the findings rendered above, this Court does not find any reason to interfere with the impugned order and the same is upheld. Consequently, the instant writ petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

March 24, 2022
Pankaj*

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