

CWP No. 18045 of 1995

Date of Decision: 23.08.2022

Dr. Harmohinder Singh Dua

.....Petitioner

Vs.

State of Haryana and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioner.

Mr. R.D.Sharma, D.A.G., Haryana.

ARUN MONGA, J. (ORAL)

1. By this petition, the petitioner seeks quashing of the order dated 28.11.1995 (Annexure P-9) whereby he has been compulsorily retired from service at the age of 51. He was working as a Veterinary Surgeon in the Department of Animal Husbandry, Haryana.

2. As per the applicable service rules, continuation of service after 50 years would not be a matter of right.

Reference may had in this respect to the applicable Rule 3.26 (d) of the Punjab Civil Services Rules, Volume I, which is extracted hereinbelow:-

“(d) The appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government employee other than Class IV Government employee by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notices:

(i) If he is in Class I and Class II Service or post and had entered Government service, before attaining the

age of thirty-five years, after he has attained the age of fifty years; and

(ii)(a) If he is in class I or class II Service or post, or

(b) If he is Class I or Class II Service or post and entered Government service after attaining the age of thirty-five years; after he has attained the age of fifty-five years.

[Provided that in the case of a member of the Judicial Service, if he had entered Government service before or after attaining the age of thirty-five years, his case for retention in service beyond the age of fifty-eight years, shall be considered before he attains such age.]

[Provided that in the case of member of the Judicial Service, he shall have the option to retire at the age of fifty-eight years, which should be exercised by him in writing before he attains the age of fifty-seven years. A member who does not exercise such option before he attains the age of fifty seven years, would be deemed to have opted for continuing in service till the superannuation age of sixty years with the liability to compulsory retirement at the age of fifty-eight years;

The Government employee would stand retired immediately on payment three months pay and allowance in lieu of the notice period and will not be in service thereafter.””

3. Service record of the petitioner tested on the touchstone of the statutory parameters did not inspire confidence of the employer and on this premise the impugned order was passed.

4. As regards, his past service record, which is not disputed, the same is borne out from the record file from which it transpires that a criminal case under Section 5(2)-47 of the P.C. Act and 409/420/120-B of the IPC

was registered against the petitioner and he remained under suspension from 11.01.1984 to 09.09.1991. The Sub-Divisional Judicial Magistrate, Rewari on appreciation of the entire evidence sentenced the petitioner to two years rigorous imprisonment. The petitioner went in appeal and was acquitted by the Additional Sessions Judge, Rewari, on the ground of want of sanction under Section 197 of the Cr.P.C. The petitioner, therefore, was reinstated in service on 09.09.1991. It is, however, pertinent to mention here that disciplinary action under Rule 7 of the Haryana Civil Service (Punishment & Appeal) Rules, 1987, was initiated against the petitioner for which charge-sheet was duly served upon him on 20.07.1994.

5. In reply to para 4 of the writ petition, the respondent Department strongly denies the averment of the petitioner that a false and frivolous FIR was registered against petitioner and states that a criminal case was registered on the recommendations of the Vigilance Department, Haryana, under Section 5 (2)-47 P.C. Act and 420/409/120-B of the IPC, in which the trial court awarded the punishment of two years rigorous imprisonment and a fine of Rs. 100/-. However, the petitioner was acquitted in appeal by Additional District & Sessions Judge, Rewari, only for want of sanction under Section 197 of the Cr.P.C. (the Code of Criminal Procedure).

6. No doubt, the petitioner was subsequently acquitted by the court of the learned Additional District & Sessions Judge, though at the first instance he was convicted by the trial court which led to his reinstatement in the service.

7. Furthermore, even acquittal of the petitioner was not on merits but rather on certain technicalities inasmuch as prior sanction of the

Government for prosecution of the petitioner was necessary but the Vigilance Department faulted by not obtaining prior permission from the Department/Government.

8. In fact the department also issued a charge-sheet to the petitioner under Rule 7 and initiated departmental proceedings but later on in view of the impugned order passed by the Administrative Secretary of the Department, the pending departmental proceedings were rendered otiose and the petitioner was compulsorily retired.

9. Be that as it may, I find no irregularity either in fact or in law in the decision of the employer in not granting the benefit of further continuation in service after 51 years age since even sans the acquittal as aforesaid, the record of the petitioner is not unblemished.

10. In view of the aforesaid, no grounds are made out to interfere.

11. Dismissed.

August 23, 2022
nitin

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No