

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 475 OF 1996

DATE OF DECISION: 18.04.2022

Dr. Telu Ram Garg

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R. K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. R. K. S. Brar, Addl. AG, Haryana.

ARUN MONGA, J. (ORAL)

Grievance of the petitioner, an octogenarian now, who had filed this writ petition in the year 1996 when he was 56-years old, was that he had been compulsorily retired from service two years prior to his attaining the age of superannuation, and is *inter-alia* against the adverse Annual Confidential Report (hereinafter referred to as "ACR") pertaining to the year 1988-89. Said adverse remarks were in turn based on remarks made by the then Deputy Commissioner of the District.

2. Petitioner at the relevant time was posted as Senior Medical Officer "SMO". The adverse ACR in question led to his

premature compulsory retirement which was ordered by invoking Rule 5.32 A (c) of Punjab Civil Services (Vol. II) read with Rule 3.26 (d) of Punjab Civil Services (Vol.I Part1) as applicable at the relevant time to the employees of State of Haryana.

3. Succinct facts first. Petitioner joined as Medical Officer initially on *ad hoc* basis on 02.11.1970. He was regularized after successfully completing one year period of probation in Class 1 service in April, 1986. Vide order dated 28.03.1992 (Annexure P-1) petitioner was awarded a minor punishment of recorded warning with additional punishment of down-gradation of the confidential report for the year 1988-89 by one step. He received two memos dated 13.03.1991 (Annexures P-2 and P-3) regarding adverse remarks in his ACRs for the years 1988-89 and 1989-90 respectively.

4. Petitioner submitted representation (Annexure P-4) followed by another representation (Annexure P-5) against the adverse remarks for the years 1988-89 and 1990-91 respectively. However, it was only nearly two years later that vide order dated 20.01.1993 (Annexure P-6), his representation against the adverse report for the year 1988-89 was rejected without assigning any reason. Thereafter, petitioner was served with a notice of premature retirement vide notice dated 21.05.1993 (Annexure P-8) and was prematurely retired from service vide impugned order dated 05.01.1996 (Annexure P-14).

5. Feeling aggrieved, petitioner filed writ petition against the aforesaid order and vide order dated 10.01.1996, the said order was stayed. Petitioner rejoined as SMO on 11.01.1996 (FN). Subsequently, the said interim stay was vacated in terms of the order dated 08.03.1996, and the petitioner was relieved from his services on 07.04.1996 (AN). Petitioner claimed that he is entitled to pay and allowances for the period he worked along with all retiral benefits. In this regard, notice dated 09.10.1996 was served by the petitioner. The respondents made partial payments of pension and delayed all other retiral benefits.

6. In the premise, a civil suit for declaration was also subsequently filed by petitioner on 19.03.1997 *inter alia* seeking payment of outstanding dues and full retiral benefits along with interest for the delay, claiming that he was illegally retired from the post of S.M.O., G.H. Hansi on 07.01.1996 (AN) as per order dated 05.01.1996.

7. Learned trial Court vide order and judgment dated 10.08.1999 decreed the suit to the effect that plaintiff/petitioner was entitled to recover the outstanding dues and full retirement benefit with interest for delay and delayed payment for compulsory retirement as S.M.O. G.H. Hansi. Appeal filed by the State against the same was partly allowed vide order dated 08.04.2000. The finding of learned trial Court was modified in first appeal only to the extent that petitioner/plaintiff would not be entitled to salary for the

period from 08.01.1996 to 07.09.1996 and further salary for three months thereafter in lieu of notice period. However, the direction regarding granting interest on delayed payment was upheld by learned First Appellate Court.

8. Aggrieved against the abovementioned order, petitioner preferred regular second appeal before this Court bearing No.3097 of 2000, which was admitted vide order dated 08.05.2003 with the direction to be heard along with the instant writ petition which was filed way prior in time i.e. in the year 1996. In the premise, I may like to add here since the merits of the case are being collectively dealt with in the present writ petition, the instant order/judgment shall accordingly govern the outcome of the Regular Second Appeal.

9. In return filed by the respondents, a stand has been taken as has also been argued by learned State counsel that since the nature of adverse remarks was serious i.e. honesty and integrity was not above board, the competent authority rightly decided to retire the petitioner prematurely.

10. Learned State counsel relies on the then applicable Rule 3.26 (d) read with Rule 5.32 A (c) of the Punjab Civil Services Rules, which is reproduced herein below for ready reference:

“Rule 3.26 (d) of Civil Services Rules Vol.I, Part-I

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 month's pay and allowances in lieu of such notice.

i) If he is in Class-I or 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-III 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.

Rule 5.32 A (c) of Civil Services Rules Volume-II

(c) A retiring pension is also granted to a government servant other than Class-IV servant:

(i) Who is retiring by the appointing authority on or after he attains the age of 55 years by giving him not less than 3 months' notice and

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Note: *Appointing authority retains an absolute right to retire any government servant, except Class-IV 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."*

11. Learned State counsel further points out that not once but the case of the petitioner was examined and re-examined twice over and pursuant to his representation, the competent authority passed a fresh order dated 20.12.1995/05.01.1996 (Annexure P-14) reaffirming the earlier decision dated 20.05.1993 to retire the petitioner. He, therefore, strenuously argues that it cannot be

suggested that there was non-application of mind by the competent authority.

12. Having heard rival contentions of learned counsels for the parties, I shall now render my opinion thereof along with reasons herein after.

13. Perusal of the record reveals that adverse remarks of the Deputy Commissioner were indeed the very reason for downgrading the ACR of the petitioner for the year 1988-89 and the same was made as 'Good' as against 'Very Good' for the previous year. Intriguingly, the petitioner was not conveyed the said adverse ACR though the same had been recorded in his service book until, almost two years later, i.e 31.03.1993 vide Annexure P-2, though ACR for the year 1988-89 is supposed to be recorded on or before 31.03.1989. To that extent, I am in agreement with the argument of learned senior counsel that ordinarily, delay in communicating adverse remarks is *per se* fatal to maintaining such an adverse ACR since it takes away the vested right of an employee to challenge the same. Ordinarily, on this ground alone, the ACR need not be taken into consideration for subsequently visiting any adverse consequences on an employee.

14. In support of his argument, learned senior counsel has placed reliance upon a judgment dated 05.07.1996 passed by this Court in RSA No. 1664 of 1989 titled ***State of Haryana V. Prem***

Parkash Gupta, ADA, Kurukshetra, the relevant extract of para 9 thereof is as under:

“9.....A glance at Exhibit D8 and D9 would show that in the columns of ‘Defect, if any’ the only remark is that the plaintiff required improvement in handwriting and the column of “Defect, if any” relating to the ACR for the year 1982-83 is silent. If the above three relevant ACRs are scrutinized in the light of the instructions, there is no hesitation on the part of this Court to hold that there was practically no complaint of dishonesty or corruption against the plaintiff and his honesty could not be doubted so as to deprive him of the benefit of selection grade and for consideration of his case for promotion. No doubt promotion cannot be claimed as a matter of right and the releasing of selection grade is not an automatic right which vests in the employee, but equally it is true that a judicious/quasi-judicious approach is supposed to be required on the part of the employer while recording sensitive remarks against the column of integrity, efficiency and honesty. The plaintiff was rated just average in the matter of work and honesty in the years 1980-81 (ExhibitD8) and 1981-82 (Exhibit.D9) and the word ‘Just Average’ have to be rated and understood distinctly from the words ‘Below Average’ and ‘Integrity Doubtful’. Even these remarks ‘Just Average/Average’ have not been awarded in the light of the instructions of the Government itself. The only ACR (Ex.D7) for the period 1.4.1971 to 31.3.1972 cannot be availed of by the State because against the column of Honesty it has been mentioned “Although no specific instance, his reputation is not upto the mark”. No basis has been disclosed while commenting upon the reputation of the employee. Such stale and unfounded ACRs could not stand in the way of the plaintiff or the determination of his case for the release of the selection grade and for consideration for promotion.”

15. Apart from the aforesaid, the record herein also reflects that upon being conveyed the adverse ACR, the petitioner immediately represented qua the same and based on that representation, the matter was referred for comments of Deputy

Commissioner once again. Upon reconsideration of the matter, the then Deputy Commissioner favourably recommended the case of petitioner. Learned senior counsel further points out that no response has been filed to the following specific stand taken in para 12 of the petition which is reproduced herein below:

“12. That the petitioner, with full responsibility, submits that the then Deputy Commissioner, Hisar, in his written comments sent on the representation Annexure P-4, specifically admitted that there was no documentary evidence with him to substantiate the adverse remarks. He is also stated to have mentioned that the performance of the petitioner in the Family Planning Front was excellent and that he had made the adverse remarks due to the fact that he recollected that there was something wrong in one or two cases of Family Planning. The petitioner has every reason to believe that the Deputy Commissioner further mentioned that “he has no objection if the remarks are expunged from the record of the petitioner”.

16. A perusal of the corresponding part of the written statement would reveal that not only para 12 is not denied but it is merely stated that reply to para 9 of the writ petition is reiterated. Whereas para 9 of the written statement simply mentions that adverse remarks about his integrity were conveyed to the petitioner on 13.03.1991 and on receipt of the representation of petitioner, it was fully examined and rejected. It nowhere controverts the averment contained in para 12 of the writ petition that no documentary evidence was available with the then Deputy Commissioner in order to substantiate his adverse remarks and he had no objection if the remarks were expunged.

17. In the premise, the impugned orders dated 20.01.1993 (Annexure P-6) and 05.01.1996 (Annexure P-14) are set aside. It transpires that during the pendency of writ proceedings, which were filed in the year 1996 and now have come up for hearing in 2022 after more than a quarter of a century, the petitioner cannot get benefit of being reinstated in service. However, the respondents are expected to pass appropriate orders regarding re-fixation of his pay and pension as if he had retired at the age of 58 years.

18. It is made clear that the petitioner shall not be entitled to any salary for the period he would have worked had he retired at 58 years but he is entitled to re-fixation of his pay as if he had retired at the age of 58 years.

19. Needful be done within a period of three months. Arrears be also paid accordingly along with interest @ 5% per annum.

APRIL 18, 2022
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No