

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-4916-1999 (O&M)

Date of decision: May 10, 2022

Smt. Kamlesh Jain, State Government Analyst

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Pawan Kumar, Senior Advocate with
Mr. Amrit Paul, 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 to quash order dated 22.03.1999 (Annexure P-32) whereby two representations of the petitioner against the adverse remarks in her ACRs for the years 1986-87 and 1987-88 (Annexures P-12 and P-13 respectively) have been rejected, and to also quash order dated 30.03.1999 (Annexure P-34) vide which the petitioner has been compulsorily retired from service.

2. Matter was heard at quite some length by the then Division Bench of this Court before it was admitted to be heard by a Single Bench. Speaking for Division Bench of this Court G.S.Singhvi, J. (as he then was in this Court) following order was passed on 09.04.1999:

“Heard learned counsel for the petitioner and the learned Deputy Advocate General.

The petitioner has challenged the order Annexure P-34 dated 30.03.1999 issued by the State Government under Rule 5.32 of the Punjab Civil Services Rules, Volume II read with Rule 3.26 (d) of the Punjab Civil Services Rules, Volume-I, Part-I (hereinafter referred to as ‘the Rules’) retiring her from service after attaining the age of 50 years.

Shri Jaswant Singh, learned Deputy Advocate General has, on the basis of instructions given by the officials of the department,

made available the A.C.R. dossier of the petitioner and the file, in which the petitioner's representations against the adverse remarks recorded in the petitioner's A.C.Rs. of the years 1986-87 and 1987-88 have been dealt with and decided. He also produced the file in which the petitioner's case for extension of service beyond 50 years was dealt with by the Officers Committee.

Since the respondents are yet to file written statement, we do not consider it proper to express a final opinion at this stage on the merits of the contentions urged on behalf of the petitioner that exercise of power for pre-mature retirement is vitiated by malafides, but at the same time, we consider it necessary to notice three starking facts revealed from the record produced by Shri Jaswant Singh.

Firstly, the A.C.R. of the petitioner for the year 1997-98 was not placed before the Officers Committee. Shri Jaswant Singh tried to explain this glaring omission by stating that the case of the petitioner was forwarded to the government by the Director in the year 1997, but at the same time he conceded that the service profile of the petitioner, which was placed before the Officers Committee, was prepared in February, 1999. This shows that the latest A.C.R. of the petitioner was not made available to the Officers Committee for evaluation of the petitioner's record for the purpose of extension of her service.

Secondly, a bare reading of the A.C.R. dossier of the petitioner shows that in her entire service career commencing from 1972, the petitioner has earned 'Good', 'Very Good' and 'Outstanding' reports except the two adverse reports relating to the years 1986-87 and 1987-88. In the 10 years preceding the order of consideration, she has earned 'Good' and 'Very Good' reports. It, however, appears that the latest report of the petitioner was withheld from the Officers Committee and it was given out that she has earned adverse report in the year 1987-88 casting reflection on her integrity.

Thirdly, the representations submitted by the petitioner on 21.04.1989 and 12.05.1989 against the adverse A.C.Rs of the years 1986-87 and 1987-88 which were communicated to the petitioner in the year 1989, were kept pending by the government for a period of almost one decade. The notings recorded in the file show that the representations were processed at different levels from 1989 to 1993. Then there was a gap of 6 years and the file was taken up in March, 1999 after the Officers Committee had decided to retire the petitioner under Rule 3.26 (d) of the Rules. The notings recorded in March, 1999 show that there is no consideration of the petitioner's representations on merit and the only reason for rejecting the same after 10 years of the submission thereof is that the petitioner is likely to challenge her pre-mature retirement in a Court and if her representations are accepted, then the government's case will be weakened.

The primary and fundamental object of pre-mature retirement/non-extension of the tenure of the employee after he/she attains the particular age is to maintain the efficiency in the public services. The Courts have recognized the prerogative of the employer and more particularly of the public employer to screen out

the dead wood in the services. In other words, periodical review of the service record of an employee is required to be undertaken to assess whether he/she continues to be fit to be retained in service or useful for public services. However, at the same time, it has been judicially recognized that the employer does not have the unbridled right to retire an employee from service and further that in appropriate cases the Court will exercise the power of judicial review to invalidate the exercise of this power.

After perusing the record produced by the learned Deputy Advocate General, we are prima facie satisfied that the decision taken by the government to retire the petitioner from service is legally unsustainable. To us, it appears that the Officers Committee which considered the record of the petitioner was not apprised of the full facts. It also appears that the Committee was greatly influenced by the fact that in one of her A.C.Rs the petitioner's integrity has been doubted and a departmental enquiry is pending against him. However, the fact that the representations made by the petitioner against the adverse remarks recorded in her A.C.Rs. were kept pending for 10 years and the fact that the departmental enquiry which was initiated in 1987 had remained pending for almost 12 years without any contribution on the part of the petitioner to delay the same have been over-looked by the Committee justifying an inference that the decision to retire the petitioner is not fair. The manner in which the representations submitted by the petitioner in 1989 have been dealt with and decided leaves much to be desired.

On the basis of above discussion, we accept the petitioner's prayer for grant of interim relief and direct that operation of the order dated 30.03.1999 shall remain stayed till the final decision of the writ petition.

Reply to the writ petition be filed within 3 weeks. Replication, if any, be filed within 10 days thereafter.

The case be listed for arguments on 09.07.1999.

Copy of the order be given dasti to the counsel for the parties by the Bench Secretary after due attestation under her signatures."

3. Having gone through the return filed by the respondents, I am unable to dissuade myself from the interim view taken by the Division Bench. In the premise, the interim observations made by Division Bench are made absolute.
4. Petitioner shall be accorded benefit of having rendered full length of service including all the pensionary benefits as per the applicable Rules together with admissibility of revised pension, if any.
5. It also transpires that during the long interregnum during pendency of the writ proceedings, the disciplinary proceedings against the petitioner were

also dropped vide order dated 08.09.2008, copy of which has been tendered in course of hearing and the same is taken on record and marked as Annexure ‘A’.

6. On either front, be it on merits or even otherwise, the impugned orders do not survive judicial scrutiny by this Court and same are rendered infructuous in view of the department itself having withdrawn the charges.

7. Disposed of accordingly.

(ARUN MONGA)
JUDGE

May 10, 2022

vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No