

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.8248 of 2021 (O&M)

Date of Decision: 29.07.2022

Jasbir Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Dr. Sumati Jund, Advocate for the petitioner.

Mr. Ayush Sarna, A.A.G., Punjab for the respondent(s).

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for quashing the impugned order dated 31.03.2021/01.04.2021 (P-4), vide which petitioner was prematurely retired under Rule 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975 (*for short '1975 Rules'*) before seven months of her retirement. Further prayer is for directing the respondent(s) to reinstate the petitioner in service w.e.f. 01.04.2021 i.e. the date of impugned order and allow her to continue on the same post till she attains the age of superannuation in due course.

(2) Briefly stated, the petitioner while working on the post of Principal, Govt. Senior Secondary School, Boparai Kalan, Ludhiana (*for short 'GSSS, Boparai Kalan'*) was promoted as District Education Officer (E.E.), Barnala,

vide order dated 20.11.2020; she worked as such till 31.03.2021. Her working was appreciated by respondent No.1, vide letter dated 18.01.2021 (P-1). She was issued a Show Cause Notice dated 01.01.2021 (P-2) by appropriate authority for premature retirement after expiry of three months' period from the date of notice. In response thereto, petitioner submitted her detailed reply on 27.01.2021 (P-3), requesting for consideration of entire service records before taking any decision in the matter. Instead of considering the service records of petitioner and without conducting any regular departmental enquiry in terms of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (*for short 'Rules of 1970'*). The impugned order was passed seven months prior to her retirement. Hence, the present writ petition.

(3) It is contended by learned Counsel for the petitioner that neither from Show Cause Notice; nor the impugned order, name of complainant is discernible regarding allegations leveled against the petitioner. Even the date(s) of alleged incidents have not been mentioned, thus, the action taken on the basis of mere assumptions is not sustainable.

Further contended that respondent No.1 while passing the impugned order has completely overlooked the fact that on earlier occasion also, such types of false and unsubstantiated allegations were leveled against petitioner by some unscrupulous elements just to tarnish her image, but they could not succeed in their design.

Also contended that earlier complaints (P-6 to P-9) were either withdrawn or the perpetrators were charge-sheeted or barred from filing RTI

applications on account of ill-conceived motives, but this aspect of the matter has completely been ignored by the competent authority.

Lastly contended that impugned order is not only stigmatic in nature; rather a major punishment of removal from service has been imposed against the petitioner in violation of the Rules of 1970.

On the other hand, learned State Counsel submitted that prior to passing of the impugned order, a Show Cause Notice was duly served upon the petitioner on 01.01.2021.

Further submitted that a complaint was received from the staff of GSSS, Boparai Kalan, where petitioner was earlier posted as Principal and serious allegations were leveled regarding her insulting behaviour while extending open threat to the staff members.

Also submitted that in the complaint, it was alleged that petitioner was demanding ₹ 500/- per month from every staff members for clearing their bills apart from ₹ 1000/- for sanction of leave; thus, petitioner has rightly been prematurely retired from service. Again submitted that petitioner handed over the charge of District Education Officer (E.E.), Barnala to Deputy District Education Officer (E.E.), Barnala at her own level without prior approval of the competent authorities.

Lastly submitted that since the petitioner has violated the conduct Rules and as such, impugned order of premature retirement is perfectly legal & valid and does not require any interference by this Court while exercising jurisdiction under Article 226 of the Constitution.

(4) Heard learned Counsel for the parties and perused the paper-book.

(5) It transpires that petitioner was given a Show Cause Notice on 01.01.2021 and thereafter, her services were appreciated by the same very officer being the appropriate authority i.e. Secretary, Government of Punjab, Department of School Education on 18.01.2021 and for reference, Appreciation Letter reads as under:-

*“Krishan Kumar, IAS
Secretary,
Government of Punjab,
Department of School Education*

Telephone No.0172-5212313 Date 18.01.2021

To,

*Smt. Jasveer Kaur
District Education Officer (E.E.)
Barnala*

- 1.0 I am very glad to know that you have completed the constructions of approved Class Rooms under NABARD XIII Project in the Government Schools of your District.*
- 2.0 While appreciating the efforts made by you for the development of basic infrastructure of the Government Schools, Education Departments feeling glad to issue you this appreciation letter.*
- 3.0 I hope that in future also you shall continue to make such efforts for the development of basic infrastructure of the Government Schools.*

Best Wishes

*Sd/-
Krishan Kumar”*

(6) During the course of hearing, learned State Counsel on instructions from the official present was not able to dispute that on attaining the age of 55 years, case of petitioner was duly considered by the competent authority and she was allowed to continue in service. Concededly, seven months prior to her superannuation in due course at the age of 58 years, petitioner has been prematurely retired while passing the impugned order.

(7) There is no quarrel that appropriate authority may prematurely retire a government employee in terms of Rule 3(1)(a) of 1975 Rules, but it is well settled that in case such an order is stigmatic or punitive in nature, then certainly, its legality and validity can be examined. Reference in this regard can be made to judgment of the Hon'ble Supreme Court in '**State of Gujarat Versus Umedbhai M. Patel**', (2001) 3 SCC, 314 and para 11 thereof reads as under:-

"11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised:

- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest. (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.*
- (iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.*
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.*

- (v) *Even uncommunicated entries in the confidential record can also be taken into consideration.*
- (vi) *The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.*
- (vii) *If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.*
- (viii) *Compulsory retirement shall not be imposed as a punitive measure.”*

(8) This Court after going through the impugned order is fully satisfied that appropriate authority wanted to get rid off from the petitioner, but did not follow the proper course.

(9) A perusal of impugned order reveals that opinion to retire petitioner prematurely is based on serious allegations and which can be summarized as under:-

- (i) *when petitioner was posted as Principal, GSSS, Boparai Kalan, then entire staff made a complaint against her that she used to insult teachers by calling them in her Office.*
- (ii) *she is a corrupt officer;*
- (iii) *she used to demand ₹ 500/- monthly per person for clearing the pay bills;*
- (iv) *she used to demand ₹ 1000/- for granting leave to staff members;*
- (v) *she used to pilferage from fuel expenses of School and also to steal food out of mid-day meal;*
- (vi) *she used to order free milk and vegetables from teacher(s) working in the School;*
- (vii) *she used to mark her attendance of previous date(s) while coming on next day;*
- (viii) *students were compelled to clean the courtyard of the School;*

- (ix) some employees were called at home for housekeeping, washing of clothes and cleaning utensils till late night;*
- (x) she tried to deploy the police in the School;*
- (xi) she handed over the charge of District Education Officer (EE), Barnala at her own level to Deputy District Education Officer (EE), Barnala without approval of authorities and as such, petitioner has refused to accept the higher responsibilities, which shows her incompetence.*

(10) Although, response of petitioner was solicited with regard to above allegations and which she duly replied, but the appropriate authority did not consider the same; rather made serious observations against her without following the proper procedure in terms of Rules of 1970.

(11) The appropriate authority has opined that petitioner “without seeking approval of any senior Officer handed over charge of District Education Officer (EE), Barnala at her own level to Deputy District Education Officer (EE), Barnala”, thus, “she has clearly refused to take over higher responsibility, which goes to show that Smt. Jasbir Kaur is incompetent officer”.

It is further observed that “Smt. Jasbir Kaur has misused her position” and “instead of performing her duty well, created a distrustful atmosphere in the School due to her actions of spoiling the comfortable atmosphere of educational institution”.

Again observed that the “officer could not satisfactorily discharge her higher responsibilities” and if “she is retained in the government service, her irresponsible behaviour is likely to adversely affect the efficiency of other govt. employees working in the educational institution.”

The authority has also observed that “it is not in the public interest to keep such an officer in government service” and in case “she stays in the government job, the future of school children may be jeopardized”.

At the end, it is observed that the “officer has been found completely incompetent to perform her services in proper manner” and “due to these reasons, the above officer has become a source of headache for the department and her irresponsible behaviour is likely to affect the efficiency of other employees working in the educational institution”, thus, “continuing the officer in government service is not in the public interest”.

(12) From the observations, recapitulated hereinabove, it is more than clear that same are stigmatic in nature and by no stretch of imagination, the impugned order could be termed as premature retirement of the petitioner.

(13) In the opinion of this Court, the observations made by the appropriate authority while passing the impugned order are utterly perverse, based upon no evidence, thus, cannot be accepted in the absence of any regular enquiry in terms of Rules of 1970.

(14) In view of the above, there is no hesitation to hold that impugned order has been passed not for premature retirement of the petitioner; rather it amounts to imposition of major punishment of removal from service under Rule 5(vii) of the Rules of 1970; without following proper procedure.

In such a scenario, the irresistible conclusion would be that officer concerned while passing the impugned order has completely negated the rule of law.

(15) As a result thereof, there is no option except to allow the writ petition. Consequently, writ petition is allowed; the impugned order dated 31.03.2021/01.04.2021 (P-4) is quashed and set aside with costs of ₹ 25,000/- to be paid by the respondent(s) to the petitioner.

It is made clear that petitioner shall be deemed to continue in service on the post of District Education Officer (Elementary Education) till her attaining the age of 58 years and she would be entitled to all consequential benefits in a manner that there was no order of premature retirement at all.

Also clarified that the Government would be at liberty to recover the costs from the erring Officer.

(16) Pending application(s), if any, shall also stand disposed off.

July 29, 2022
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes