

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

CWP No.8527of 2019(O&M)

Reserved on:31.10.2022

Date of Decision.14.11.2022

Dharambir Singh

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Varun Veer Chauhan, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

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JAISHREE THAKUR J.

1. The petitioner herein approached this Court under Articles 226/227 of the Constitution of India praying for quashing of the order dated 14.03.2019 (Annexure P-2) whereby the petitioner has been compulsorily retired w.e.f. 15.03.2019.

2. In brief, facts as culled out from the petition are that the petitioner was appointed as a Constable on 01.08.1985 and with passage of time, promoted to the post of Head Constable, Assistant Sub Inspector, Sub Inspector and Inspector on 07.02.1989, 23.02.2001, 20.08.2002 and 26.06.2007 respectively. In his entire service career, he was never conveyed any adverse confidential report except for the period from 01.04.2014 to 22.11.2014 and 22.11.2014 to 31.03.2015 wherein his integrity was remarked as 'doubtful'. Aggrieved against the adverse confidential report from 01.04.2014 to 22.11.2014 and 22.11.2014 to 31.03.2015, the petitioner has filed CWP No.24950 of 2018 which is pending consideration.

3. On 20.02.2019, the petitioner was issued three months' notice of compulsory retirement under Rule 9.18 (1) (c) of Punjab Police Rules, 1934. However, on 14.03.2019, a fresh order was passed by which the petitioner was compulsorily retired w.e.f. 15.03.2019. Hence, the writ petition.

4. Mr. R.K. Malik, learned senior counsel assisted by Mr. Verun Veer Chauhan, Advocate appearing for the petitioner would submit that the order dated 15.03.2019 is in the teeth of Rule 9.18 (1) (c), according to which, an employee can be retired by the appointing authority on or after he attains the age of 55 years by giving him no less than three months' notice. In the present case, three months' notice was issued to the petitioner on 20.02.2019 whereas the petitioner was retired compulsorily w.e.f. 15.03.2019 i.e. before completion of three months' notice period, therefore, the impugned order is liable to be set aside. He relies upon the judgment passed by this Court in CWP No.12204 of 2012 titled as ***Sub Inspector Ram Kishore Vs. State of Haryana and others*** decided on 20.11.2017 wherein the order passed compulsorily retiring the petitioner therein without giving three months' notice was quashed. To the same effect, reliance has been placed upon judgment passed by this Court in CWP No.22020 of 2013 titled as ***Dinesh Kumar Vs. State of Haryana and others*** decided on 23.03.2017.

5. It is further argued that before compulsorily retiring an enrolled police officer by the Inspector General of Police, prior approval of the government is mandatory, which is absent in this case. In this regard, reliance has been placed upon Note 2 of Rule 9.18 (2) of the Punjab Police Rules, 1934 as applicable to the State of Haryana. Further reliance has also

been placed upon the judgment rendered by this Court in CWP No.8138 of 2012 titled as *ASI Krishan Singh Vs. State of Haryana* decided on 15.01.2014, which stood upheld by the Hon'ble Division Bench in LPA No.725 of 2014 titled as *State of Haryana and others Vs. ASI Krishan Singh* decided on 14.01.2015. It is further contended that the order under challenge is also liable to be set aside being stigmatic in nature and therefore, without holding an enquiry, petitioner cannot be compulsorily retired.

6. Learned counsel appearing for the respondent-State would submit that vide order dated 20.02.2019, the petitioner was given three months' notice and therefore, the instant writ petition is liable to be dismissed.

7. I have heard learned counsel for the parties and have perused the paper book. Admittedly, a three months' notice was served upon the petitioner on 20.02.2019 but the order compulsorily retiring the petitioner was passed on 14.03.2019, retiring the petitioner w.e.f. 15.03.2019 i.e. before completion of three months period as stipulated in Rule 9.18.(1) (c) of the Punjab Police Rules, 1934 as applicable to the State of Haryana. In such an eventuality, the moot question before this Court is whether the order dated 14.03.2019 retiring the petitioner compulsorily on his attaining the age of 55 years by exercising the provision contained in Rule 9.18 (1) (c) of the 1934 Rules, as applicable to the State of Haryana without completing the period of three months' notice, is illegal *per se* and liable to be set aside on this ground only? Before answering the said question, it is apt to reproduce Rule 9.18 (1) (c) of the 1934 Rules, which is as under:-

“9.18 Retiring Pension:- (1) Notwithstanding anything contained in these rules, a retiring pension is granted to an officer.

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(c) who is retired by the appointing authority on or before he attains the age of 55 years, by giving him not less than three months’ notice.

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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 date of fifty five years is attained.”

8. A plain reading of the aforesaid provision would manifest that three months’ notice is to be given to an officer, who is ordered to be retired in the public interest on or before he attains the age of 55 years. Further the proviso attached thereto, reads that the said notice shall be given effect to from a date not earlier than the date on which the age of fifty five years is attained. It is undisputed fact that the petitioner was served a three months’ notice on 20.02.2019 and therefore, both the provisions i.e. service of three months’ notice and that notice was to be given effect to from a date not earlier than the date on which the age of fifty years is attained were complied with. The relevant portion of said notice is reproduced as under:-

*“You are, therefore, served upon with this three months’ notice for compulsory retirement. **After the expiry of this period***

notice of three months or after attaining the age of 55 years, you will be treated to be retired from service.”

9. The language of the aforesaid notice is crystal clear that the petitioner will be treated to be retired from service after the expiry of the period of three months notice or after attaining the age of 55 years. Meaning thereby, the petitioner will be treated to be retired from service after attaining the age of 55 years, irrespective of the fact that the period of three months notice is completed or not. Admittedly, the petitioner did not challenge the aforesaid notice dated 20.03.2019. It is in this background, when the petitioner attained the age of 55 years on 15.03.2019, his date of birth being 16.03.1964, he was ordered to be retired w.e.f. 15.03.2019, even before completion of three months' notice period. Therefore, in the opinion of the Court, there was no requirement to wait for completion of three months' notice period, as provisions of Rule 9.18 (1) (c) of the 1934 Rules have been complied with: (i) three months' notice was given and (ii) 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. The respondent-State had given effect to the notice of compulsory retirement of the petitioner on the date of his deemed date of retirement on attaining age of 55 years and therefore, there is no illegality in the impugned order. The aforesaid finding of mine also gains strength from the judgment passed by a Full Bench of this Court in ***Punjab State Vs. Mohan Singh Mahli AIR 1970 PH 419*** wherein a reference was made to the Full Bench with respect to Rule 5.32 of the Punjab Civil Services Rules (Vol. II), akin to Rule 9.18 (1) (c) of the 1934 Rules, as the argument

raised on behalf of the aggrieved employee was that he did not receive notice of three months as per Rule 5.32 (c) before ordering him to be retired compulsorily and the precise question referred to the Full Bench for determination was *'if the government in lieu of three months' notice mentioned in Rule 5.32 (c) gives three months' salary and allowances to its employee, will it be a compliance with the Rule or not?* The majority view of the Full Bench while answering the aforesaid question is as under:-

“(20) As I have already said, we are concerned with the interpretation of rule 5.32(c) and there are only two decisions in Chaman Lal Kapur's case and that of Mohan Singh, both by Tek Chand, J., where this rule was the subject-matter of discussion. In Chamm Lal Kapur's case, the government servant was made to retire on payment of three months' pay and allowances in lieu of notice required by rule 5.32 (c). The learned Judge came to the conclusion that he had not received a valid notice, because under the relevant rule a notice for a period of three months was essential. The learned Judge, if I may say so with respect, had not given any reasons for coming to that conclusion. He merely relied on my decision in Khazan Chand Dhamija's case. But as I have already said, in that authority the point whether the Government was entitled to give three months' salary and allowances in lieu of three months' notice did not arise for consideration.

(21) We are then left with Mohan Singh's case, where Tek Chand, J., has given reasons, which I have mentioned in extenso above, for coming to the conclusion that there was no alternative provision that in lieu of notice, three months' pay could be given by the Government.

(22) It is now to be seen as to what is the correct interpretation of rule 5.32 (c). This undoubtedly is a statutory rule having

been made under Article 309 of the Constitution and must be given due effect. Under it, as is apparent from the note appended thereto, the appointing authority has got an absolute right to retire any government servant, except, of course, one belonging to Class IV, on or after he has attained the age of 55 years without assigning any reason. Similarly, the Government servant is also entitled to seek retirement on or after reaching that age. It follows, therefore, that the only right that the government servant possesses is that he cannot be retired before he reaches the age of 55 years and if that happens, the order would attract the applicability of Article 311 of the Constitution. But that would occur only in the case of permanent employees. So far as temporary hands are concerned, they would be governed by the terms of their employment. Under this rule, the government servant has no inherent right to stick to the job after he has attained the age of 55 years. All that he can claim is three months' notice. Now the question is—cannot the government give him three months' salary and allowance in lieu of the said notice? I do not see any reason as to why it cannot do so.....The giving of not less than three months' notice mentioned is, in my opinion, not such a condition, the non-compliance of which would result in the retirement order becoming void. If the required notice is not given or even if the three months' salary and allowances are not paid, the retirement order would not become illegal, because, in my opinion, that is not a condition precedent for retiring a government servant after he has attained the age of 55 years....”

10. In view of the *ratio decidendi* culled out from the judgment passed by the Full Bench as referred to above, the petitioner at the most would be entitled to salary and allowances for the period from 14.3.2019 to 19.05.2019, however, he would be deemed to be retired from 15.03.2019.

The order under challenge has been passed by the respondents based on the adverse confidential reports, which have been challenged by the petitioner in CWP No.24950 of 2018 and is pending consideration.

11. As regards the judgment as relied upon by the learned senior counsel in ***Sub Inspector Ram Kishore's case*** (supra), this Court differs with the finding rendered by the Coordinate Bench. It is settled law that retention of an employee on or after he attains the age of 55 years on the basis of his service record, is absolutely in the domain of the appointing authority. It is the employer who can best judge the competence/ability of an employee and if the employer after assessing the service record/performance of an employee comes to the conclusion that the said employee has become deadwood for the department, the authority has absolute right to weed out the same. Judicial intervention in such matters is limited unless the decision taken by the appointing authority is so patently illegal that it shakes the conscience of the Court. The absence of three months' notice to an employee does not make the retirement order *void ab initio* and cannot be set aside simplicitor for want of such notice. The purpose of giving three months' notice is that the employee who served the department for such a long period is not thrown suddenly on the street and he may have some time to make arrangements for his re-employment elsewhere or some other programme for his future. It is not a condition precedent for retiring a government service after he has attained the age of 55 years.

12. As regards the other arguments raised by the petitioner, the same have been dealt with by this Court extensively in the judgment passed

in CWP No.1745 of 2022 titled as *Raj Bala Vs. State of Haryana and others* decided on 24.03.2022 and rejected being devoid of merit. The findings are not being repeated in this order, for the sake of brevity.

13. As an upshot of my finding, the impugned order is set aside to the very limited extent that the petitioner would be entitled to salary and allowances for the period from 14.03.2019 to 19.05.2019 in lieu of notice for the said period, however, he would be deemed to be retired from 15.03.2019 as per order dated 14.03.2019. The writ petition stands disposed of in above terms.

(JAISHREE THAKUR)
JUDGE

November 14, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No