

Sr.No.205

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

CWP No.8330 of 2017 (O&M)

Date of Decision: 07.12.2022

Mahender Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. P.L. Verma, Advocate
for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

ARUN MONGA, J.(ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing premature retirement order dated 26.02.2015 (Annexure P-2), whereby the petitioner stood retired w.e.f. 03.03.2015 at the age of 55 years.

2. Succinct facts first, as pleaded in the petition. Petitioner was initially enrolled as Constable on 28.02.1979 in the police department. He was promoted as Head Constable in 2003 and further promoted as Assistant Sub Inspector in 2012. In 2014, he was further promoted as Sub Inspector (O.R.P). During his 35 years of service the petitioner had earned more than 70% good or above reports and a number of commendation certificates along with cash award. However, once his rank was reduced from S.I. (O.R.P) to A.S.I. as a punishment and in appeal vide order dated 23.07.2014 the said punishment was reduced to

stoppage of 5 annual increments with permanent effect. But on 27.11.2014, a notice was issued to the petitioner whereby he was informed that his services were not required by the respondents beyond the age of 55 years in pursuance to the provisions contained in Rule 3.26(d) of Punjab Civil Services Rules Vol. Part-I and Rule 9.18(1)(c) of the Punjab Police Rules as applicable to the State of Haryana and served three months' notice in public interest. Vide impugned order dated 26.02.2015 (Annexure P-2), the petitioner got retired from service w.e.f. 03.03.2015. Hence, the present petition.

3. While issuing notice, my learned Brother P.B. Bajanthri, J. (as he then was in this Court) had passed the following order on 24.04.2017:-

“Notice of motion for 27.7.2017.

The petitioner has questioned the premature retirement order dated 20.2.2015 (Annexure P-2). Such a decision taken by the official respondents on the score that the petitioner was involved in a criminal case. On 13.12.2016, he has been acquitted in the criminal case. Hence, the present petition.

The official respondents are directed to file short reply on the next date of hearing submitting therein as to what is the material has been taken into consideration for the purpose of retiring the petitioner prematurely. They are also directed to produce original record relating to Annexure P-2.”

4. *Apropos*, short reply dated 19.07.2017 was filed on behalf of the State by way of affidavit of Sandeep Khirwar, IPS, Commissioner of Police, Gurugram, wherein following stand was taken:-

“xxxx xxxx xxxx

At the time of consideration of the case of the petitioner for extension in service beyond the age of 55 years criminal case VI No. 35% dated 13.11.2010 under section 366, 376, 384, 506, 120-1), 342, 217, 221, 34 IPC Police Station Sohna Gurugram was pending against him and the Ld. Trial Court

has also charge sheeted the petitioner at that time. The allegations of charges levelled against the petitioner come into the category of moral turpitude offences.

It is further submitted that the petitioner had also been awarded major punishment i.e. reduction to the rank of Assistant Sub Inspector from his present rank of Sub Inspector (ORP) by the punishing authority i.e. Joint Commissioner of Police, Headquarters, Gurugram vide order No. 502-507/Steno dated 23.07.2014(copy of the same is annexed herewith as Annexure R-1) in a regular departmental enquiry which was initiated against him for having been involved in case FIR No. 358 dated 13.11.2010 under section 366, 376, 384, 506, 120-B, 342, 217, 221, 34 IPC Police Station Sohna Gurugram. However later on in appeal filed by the petitioner against the above said punishment, the Commissioner of Police, Gurugram vide his orders dated 09.06.2016 the punishment of reduction in rank has set aside and reduced to stoppage of five annual increments with permanent effect (copy of the same is annexed herewith as Annexure R-2). On the basis of above material, the petitioner was not found fit to be retained in service beyond the age of 55 years. As such three months retirement notice in pursuance of the provisions contained in rule 3.26(D) of Punjab Civil Service Rules, Volume-I, Part-I and Rule 9.18(1)(c) of Punjab Police Rules was served upon the petitioner by the Joint Commissioner of Police, Headquarters, Gurugram vide his office No. 43653/A-II dated 29.11.2014. On expiry of three months period the petitioner retired from service w.e.f. 03.03.2015 vide Joint Commissioner of Police, Gurugram order No. 7714-21/A-II dated 26.02.2015.

It is, therefore, requested that the present petition may kindly be dismissed in the interest of justice. ”

5. Learned counsel for the petitioner has strenuously argued that since the petitioner earned more than 70% good or above reports, he is entitled as a matter of right to seek extension and to continue in service beyond the age of 55 years.

6. In this regard, instructions No.638-88/E(III)-II dated 14.03.2006 contained in Annexure P-1 are relevant, which are reproduced herein below for ready reference:

“Reference Govt. instructions issued vide No.4776-3GS(I)/15823 dated 19/21/5.65/82-4GSI dated 27.12.82,

32/15-A/17- 4GSI dated 6.7.87, 32/194/89-GSI dated 22.3.09 and 32/01/2005- 4GSI dated 11.4.2005 on the above subject.

2. *It has been noted the above instructions are not being followed strictly.*

3. *As per above Govt. instructions issued from time to time, cases of extension in service beyond the age of 55 years should be taken up 6 months before a Govt. employee attains the age of 55 years. His record should be carefully examined by the appointing authority and a provisional judgment should be formed after ascertaining as to whether he should be retired on attaining the age of 55 years. This decision should be made well in advance so that in the event of retirement being finally decided upon, a notice could be given to the govt. employee concerned, at least 3 months before the date on which he is to attain the age of 55 years and his retirement given effect to at that age. Further, only those Govt. employees should be allowed to continue in service beyond the age of 55 years who has earn 70% or above good reports and whose integrity is not doubted during the last 10 years. However, cases of those, who on the basis of their service record are fit to be retained in service beyond the age of 55 years but his integrity is reported to be doubtful, are to be decided by the Head of the department In view of Govt. Instruction No.32/01/2005-04 GSI dated 11.4.05.*

Further while deciding such cases, service record of the official/ punishments awarded to him should be properly scrutinized. An official who has been awarded punishments on the basis of charges which reflect on the integrity of employee should not be permitted to service beyond the age of 55 years. Minor punishments like warning/ censure should be avoided. Cases in which charge sheets have been issued under rule 7/Court cases are pending, where the charges are such which caste aspersions on the integrity of the employee should be affected to this office for decision.

3. *It is, therefore, reiterated that instructions issued by the Govt. should be complied with meticulously. Any laxity/ delay of case shall be viewed seriously.”*

7. Perusal of the above shows that not only the service record but even otherwise it is the duty of the competent authority to see over all conduct of official and only after “careful application of mind such an extension is to be accorded”. Thus, it is so borne out that the argument of the learned counsel that more than 70% of the reports are good or above and it is a matter of right to get extension, has no bearing in the light of

the instructions *ibid* read as a whole and not selectively, as is attempted by learned counsel for the petitioner. Reference may be had to the provisions of Rule 3.26(d) of Punjab Civil Services Rules Vol. Part I and Rule 9.18(1)(c) of the Punjab Police Rules, which read thus:-

“Rule 3.26(d) of CSR: 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 Govt. employee other than Class IV Govt. employee by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice.”

Rule 9.18(1) (c) of PPR: Notwithstanding anything contain in these rules, a retiring pension is granted to an officer who is retired by the appointing authority on or after he attains the age of 55 years, by giving him not less than three months notice.”

8. A collective reading of the above would reveal that it is the absolute right of the appointing authority that if it is so found that it would be in the public interest to do so, to retire the Government employee on attaining the age of 55 years by giving him notice of not less than 3 months in writing. Similar is the import of Rule 9.18(1)(c) of Punjab Police Rules. In the backdrop of the above, all that has to be seen whether the appointing authority was justified (a) in not granting extension in public interest; and (b) had applied his mind carefully.

9. Reverting to the second point first. At the relevant time when the service record of the petitioner was considered, it is borne out that he was an undertrial and had been charge-sheeted in FIR No.358 dated 13.11.2010 registered under Sections 366, 376, 384, 506, 120-B, 342, 217, 221 read with Section 34 IPC, though originally not as an accused but being an Investigating Officer. However, during the pendency of the criminal proceedings, much worse happened i.e., in the

Court premises itself, the service revolver of one of the police officials

accompanying petitioner was snatched and the rape victim was killed by the accused, in the criminal proceedings, leading to collateral criminal proceedings against the petitioner for which he was tried. In the overall premise, it is but natural for the competent authority to lose faith in the petitioner's suitability, fitness and ability to serve further in the disciplined force.

10. Coming to the first point of public interest, being a police official, higher standards of public confidence are required on the part of police officials and **protector cannot become predator even though acquittal would have happened.** It was, therefore, in this background that to maintain public confidence in police department's official machinery, the extension has not been granted to the petitioner. After completion of criminal proceedings, no doubt the petitioner was acquitted. However, even the acquittal in criminal proceedings does not entitle the petitioner to get relief under Service Rules as the rigors of departmental proceedings as those of criminal proceedings are completely on different parameters. Trite it is to say that 10 guilty persons may go scot-free than that one innocent being punished. Certain benefit of doubt is, of course, accorded in the criminal proceedings unless material evidence is available against him, but the same rule cannot be applied in departmental proceedings. Reference may be had to **Corporation of City of Nagpur, Civil Lines, Nagpur and another vs. Ramchandra and others**, reported in **(1981) 2 SCC 714**, wherein the Supreme Court has held that merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor is its discretion in any way fettered.

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11. For the sake of arguments, even if the petitioner now gets extension beyond the age of 55 years, by sheer effluxion of time his right has become stale, as he must have now crossed the age of regular retirement.

12. As an upshot of the above discussion, no ground for interference is made out.

13. Petition is dismissed.

14. Pending civil miscellaneous applications, if any, also stand disposed of.

December 07, 2022
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No