

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

Reserved on 31.01.2023

**CWP No.727 of 2023(O&M)
Date of Decision: 17.02.2023**

EASI Satish Kumar

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Sunil Kumar Nehra, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the impugned notice of retirement dated 18.11.2022 being illegal and arbitrary. Further the petitioner also prayed for issuance of writ in the nature of mandamus, directing the

respondents to withdraw the impugned notice and allow the petitioner to continue in service till the age of superannuation.

[2]. Learned counsel for the petitioner contended that the petitioner was appointed as Constable in the year 1990 and was further promoted as Exemptee Head Constable and thereafter, as Exemptee Assistant Sub Inspector of Police. In his service tenure of about 33 years, the petitioner was once involved in FIR No.31 dated 18.12.2014 under sections 7 and 13(1)(d) of the Prevention of Corruption Act, Police Station State Vigilance Bureau, Gurugram. The petitioner has already been acquitted in the said case vide judgment of acquittal dated 14.12.2016.

[3]. On the basis of involvement of the petitioner in the aforesaid case, the petitioner was punished with the punishment of dismissal from service by the Punishing Authority vide order dated 14.05.2016. The appeal preferred by the petitioner was also rejected by the Appellate Authority on 21.03.2017 and 30.03.2017. Thereafter, the petitioner filed a revision petition before the Director General of Police, Haryana and the same was allowed and the petitioner was allowed to join his duties w.e.f. 23.04.2018. On the basis of registration of criminal case, Annual Confidential Reports of the petitioner for the period 06.06.2014 to 08.02.2015 and 19.06.2015 to 31.12.2015 were recorded as adverse. On representation filed by the petitioner, the adverse entries recorded for the period 19.06.2015 to

31.12.2015 have been expunged and upgraded as good vide order dated 23.06.2020 passed by the Commissioner of Police, Gurugram. The representation filed against the adverse remarks recorded in the ACR for the period 06.06.2014 to 08.02.2015 has been rejected on the ground of delay only. The civil suit filed by the petitioner, challenging the adverse remarks is pending consideration before the trial Court. Thereafter, vide show cause notice dated 18.11.2022, the petitioner is sought to be prematurely retired in terms of Rule 9.18 (c) of the Punjab Police Rules read with Rule 3.26 (d) of the Punjab Civil Services Rules Volume 1 Part 1.

[4]. The grievance of the petitioner is that no prior approval has been taken from the State Government before ordering the compulsory retirement of the petitioner. Adverse remarks were recorded in the ACR only because of the registration of criminal case against the petitioner, in which, the petitioner has already been acquitted.

[5]. Learned counsel for the petitioner submitted that non-approval from the State Government is in violation of law laid down by this Court in **CWP No.8138 of 2012** titled **ASI Krishan Singh Vs. State of Haryana and others** decided on 15.01.2014. Learned counsel with reference to Annual Confidential Report for the period 06.06.2014 to 08.02.2015 submitted that the integrity was shown doubtful in the general

remarks. In the said entry, it has been mentioned 'below average'. The departmental enquiry initiated on 25.12.2014 for the reason that the petitioner was arrested in FIR No.31 dated 18.12.2014 under Sections 7 and 13(1)(d) of the PC Act, Police Station SVB, Gurugram and the same is pending. On acquittal, the petitioner has already been reinstated.

[6]. Learned counsel for the petitioner with reference to **ASI Krishan Singh's case (supra)** submitted that the Court has considered Rule 9.18 which relates to retiring pension. For ready reference the aforesaid Rule is reproduced hereasunder:-

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

(a) who is permitted to retire from service after completing qualifying service of twenty-five years or such lesser period of as may, for any class of officers, be prescribed; or

(b) who is compulsorily retired under sub-rule (2) after completing twenty-five years' qualifying service; or

(c) 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; or

(d) who retires on or after attaining the age of 55 years by giving not less than three months' notice of his intention to retire to the appointing authority.

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 age

of fifty five years is attained.

Note:- *Appointing authority retains an absolute right to retire any 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.*

(2) The Inspector-General of Police may, with the previous approval of the State Government, compulsorily retire any Police Officer, other than an officer belonging to Indian Police Service or Haryana State Police Service who has completed twenty-five years' qualifying service, without giving any reasons. An officer who is so compulsorily retired will not be entitled to claim any special compensation for his retirement.

Note:- *The right to retire compulsorily shall not be exercised when it is in the public interest to dispense with the further services of an officer on grounds such as inefficiency, dishonesty, corruption or infamous conduct. Thus the rule is intended for use-*

(i) against an officer whose efficiency is impaired but against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient i.e., when an officer's value is clearly incommensurate with the pay which he draws but not to such a degree as to warrant his retirement on a compassionate allowance. It is not the intention to use the provisions of this rule as a financial weapon that is to say the provisions should be used in only the case of an officer who is considered unfit for retention on

personal as opposed to financial grounds.

(ii) in case where reputation for corruption, dishonesty or infamous conduct is clearly established even though no specific instance is likely to be proved.

Note 2:- *The officer shall be given an adequate opportunity of making any representation that he may desire to make against the proposed action and such representation shall be taken into consideration before his compulsory retirement is ordered. In all cases of compulsorily retirement of enrolled police officers, the Inspector-General of police shall effect such retirement only with the previous approval of the State Government in accordance with the instructions, if any, issued by the Government on the subject from time to time.*

Note 3:- *The officer whose duty it would be to fill the post if vacant, shall record his orders on the application to retire, which, if in vernacular, should be accompanied by a translation in English. If the officer who applies for pension is permitted to retire, the application shall be forwarded with the pension papers.]”*

[7]. In the aforesaid cited case, the High Court has held that there is no power available under Rule 9.18 (c) to issue notice for retirement and the power is only available under Rule 9.18(2) and the said power has to be exercised only after obtaining prior approval from the State Government. The aforesaid CWP No.8138 of 2012 decided on 15.01.2014 has been upheld in **LPA No.725 of 2014** titled **The State of**

Haryana and others Vs. ASI Krishan Singh vide order dated 14.01.2015. The State remained unsuccessful in **Special Leave to Appeal(C) No(s).17945 of 2015**, which was dismissed by the Hon'ble Apex Court vide order dated 12.07.2016.

[8]. Learned counsel for the petitioner submitted that the aforesaid case has been followed by this Court in **Abhay Singh Vs. State of Haryana and others, 2017(1) SCT 642**. In **Davinder Singh ASI Vs. State of Haryana and others, 2011(1) SCT 447**, it has been held that the adverse remarks made in the ACR of the petitioner on the basis of criminal case and punishment of stoppage of increment become totally baseless once the employee is exonerated in the enquiry and not challaned in the criminal trial.

[9]. *Per contra*, learned State counsel submitted that under Rule 9.18(c), no approval is required from the State Government before compulsorily retiring any police officer. Learned State counsel referred to **Ram Dhari Vs. State of Haryana and others, 2019(3) SCT 678 (DB)** and **CWP No.1745 of 2022** titled **Raj Bala Vs. State of Haryana and others** decided on 24.03.2022, against which, LPA has already been withdrawn vide order dated 04.05.2022. With reference to the aforesaid precedents, learned State counsel submitted that bare perusal

of Rule 9.18 of Rules 1934 would make it clear that it is only in case of compulsory retirement of an officer upon attaining the age of 25 years of qualifying service under Sub Rule (2), the previous approval of the State Government is required and not where an officer 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, as has been prescribed in Clause (c) of Sub Rule (1). Note 2 is appended to Sub Rule (2) and it cannot be read in conjunction with Sub Rule (1). The difference between the applicability of the two provisions i.e. ordering premature retirement of an employee on attaining the age of 55 years in public interest by invoking Rule 9.18(1)(c) and by compulsorily retiring a person on completing 25 years of qualifying service, has to be appreciated in the light of Division Bench judgment passed in **Ram Dhari's case (supra)**, where distinction has been made in following paragraphs, which are reproduced hereasunder:-

“9. It is only in case of compulsory retirement under Sub Rule (2) the previous approval of the State Government is required. Different procedure envisaged in the contingency of retirement of a police official on attaining the age of 55 years or at any time thereafter and retirement of a police official on completion of 25 years of qualifying service admits no ambiguity.

10. Note appended to Sub Rule 1 makes it abundantly clear that for retiring a police official on or after he

attains the age of 55 years, whosoever may be the Appointing Authority, has an absolute right of retiring him without assigning any reason. Any previous sanction from the Government is not stipulated in this contingency. However, if the police official is to be retired on completion of 25 years of service, then sub rule (2) comes into operation which empowers the Inspector General of Police to compulsory retire the police official only after seeking previous sanction of the State Government.

11. In the case in hand it is undisputed that the appellant-petitioner had attained the age of 55 years and the impugned three months notice dated 16.07.2015 for retirement was issued to him in exercise of the powers conferred by Rule 9.18(1)(C) of the Punjab Police Rules, Volume-1.

12. The irresistible conclusion in the facts and analysis of Rule 9.18 is that there was no requirement of any previous sanction from the Government and notice was validly issued and the impugned order 02.10.2015 retiring the appellant-petitioner from service is not visited with any illegality for want of any previous sanction from the State Government. Thus the first argument advanced by learned counsel for the appellant does not merit any consideration.”

[10]. The difference between applicability of aforesaid two provisions has also been dealt with in detail in the judgment rendered in **CWP No.13021 of 2014** titled **Balwant Singh Vs. The State of Haryana and others** decided on 05.02.2018, wherein it has been held that the premature retirement of police

officer upon attaining the age of 55 years is not required to be preceded by approval of State Government. The approval of State Government is necessary only before ordering compulsory retirement of officer after completion of 25 years of qualifying service. The view expressed in **Balwant Singh's case (supra)** and **Ram Dhari's case (supra)** was further upheld by the Division Bench in **LPA No.1890 of 2018** decided on 22.01.2019. The similar view has been followed in **Raj Bala's case (supra)**.

[11]. In the present case, the representation filed by the petitioner against the adverse remarks recorded in the ACR for the period 06.06.2014 to 08.02.2015 has been rejected solely on the ground of delay by the Commissioner of Police, Gurugram, whereas on the representation filed by the petitioner, the adverse entries recorded for the period 19.06.2015 to 31.12.2015 have been expunged and upgraded as good.

[12]. At this stage, without going into further details of the case, this Court would like to obligate the Commissioner of Police, Gurugram to consider the representation of the petitioner against the adverse remarks recorded in the ACR for the period 06.06.2014 to 08.02.2015 on merits and on legal parameters. The petitioner is going to retire prematurely on 27.03.2023, therefore, it would be appropriate to direct the respondent No.3 to take final view on the representation of the petitioner afresh by 20.03.2023 and an intimation to that effect, be conveyed to

the petitioner forthwith.

[13]. Disposed of accordingly.

17.02.2023

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No