

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

**CWP-11800-1998(O&M)
DECIDED ON: 19.12.2023**

MANOHAR LAL

.....PETITIONER

VERSUS

STATE OF HARYANA AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S. Maanipur, Advocate
for the petitioner.

Mr. Sandeep Singh Mann, Addl. A.G., Haryana.

Mr. Shailendra Jain, Sr. Advocate with
Ms. Sacchi Mahajan, Advocate for respondent No. 5.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Article 226/227 of the Constitution of India for quashing the order dated 09.07.1998 (Annexure P-5) whereby the petitioner has been compulsorily retired w.e.f. 05.07.1998 (A.N.) under Clause 3.26 (d) of Chapter III of the Punjab Civil Services Rules by respondents.

2. Factual matrix of the present case is that the petitioner was appointed as a Technician in the year 1997 at The Haryana State Small

Industries and Export Corporation Ltd., Chandigarh (for short 'HSSIEC

Ltd.'). He was further appointed as Foreman with the said department on 24.06.1982. On 28.03.1985, the service of the petitioner was transferred to The District Rural Development Agency, Hisar (for short 'DRDA') and the petitioner was appointed as Foreman at Wooden Furniture Centre, Barwala. Again vide order dated 31.03.1985, the petitioner was transferred to Wooden Furniture Centre, Bhuna. Then the petitioner was transferred by Additional Deputy Commissioner-cum-Chief Executive Officer, DRDA, Hisar i.e. respondent No. 5 to HSSIEC Ltd.-respondent No.3 w.e.f. 19.06.1985 and was directed to report back to respondent. Thereafter, HSSIEC Ltd -respondent No.3 again wrote back to respondent No.4-DRDA to permit the petitioner to work at Bhuna. In pursuance thereof, the petitioner submitted his joining report at the office of respondent No.4 on 28.06.1985. The petitioner was sent back by respondent No.3 to respondent No.4., however, respondent No.4 again transferred the petitioner with respondent No.3 but the petitioner was neither permitted to join by respondent No.3 nor by respondent No. 4. Aggrieved by the said action, the petitioner filed civil suit No. 350 dated 25.09.1985 which was decreed in his favour vide judgment and decree dated 17.02.1988. Then in the year 1991, the Haryana State District Rural Development Agency Employees Service Rules were framed and were adopted by respondent No.3. In view of the provisions of Clause 3.26(d) of the Punjab Civil Services Rules, the petitioner was compulsorily retired from service by respondent No. 5 on 09.07.1998 (Annexure P-5).

3. Learned counsel for the petitioner contends that the order dated 09.07.1998 (Annexure P-5) whereby the services of the petitioner has been compulsorily dispensed w.e.f. 05.07.1998 is totally unwarranted and the same is against the principle of natural justice as no opportunity of hearing has been provided to the petitioner before compulsorily retiring him.

4. He further contends that the action of the respondents is violative of instructions dated 19.11.1991 (Annexure P-7) and is against the law laid down in CWP No. 4180-1986 and non-availability of funds has been held to be not a good ground to invoke the provisions of Rule 3.26(d) of Punjab Civil Services Rules.

5. He further submits that dispensing of the petitioner's service under Rule 3.26(d) which provides for compulsorily retirement is totally illegal, arbitrary and unconstitutional as the petitioner has been retired by respondent No. 4 whereas respondent No.4 is not the appointing authority of the petitioner. Moreover, the persons who were appointed later than the petitioner were still working in the TPC, Mela Kothi, Hisar whereas the petitioner had been compulsorily retired.

6. On the other hand, learned counsel for the respondents was directed to file an affidavit informing the Court as to how many employees were ordered to be compulsorily retired like the case of the petitioner on the basis of the instructions dated 19.11.1991. In compliance thereof, the respondents have filed an affidavit stating that as per the office

record, it has been found that since 05.07.1998 i.e. the date on which the

petitioner was compulsorily retired, till date no employee like the case of the petitioner was ordered to be compulsorily retired nor any employee was deputed against this post on the basis of government instructions dated 19.11.1991 (Annexure P-7).

7. In view of the affidavit filed by the respondents, it is evident and admitted fact in the affidavit itself that other persons who were appointed later to the petitioner in view of the instructions of 1991 were never compulsorily retired on attaining the age of 50-55 years. Thus, the petition is allowed with directions to the respondents to consider the petitioner in service from the date of his compulsorily retired till the date of attaining the age of 58 years, the stipulated date for superannuation. The arrears to which he is entitled too shall be released forthwith within a period of four weeks from the date of receipt of certified copy of this order along with interest @ 6% per annum till it became due of its realization. The arrears shall be computed after considering the amount on account of EPFO or any other benefits at the time he was compulsorily retired be adjusted.

19.12.2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No