

CWP No. 1727 of 1998

2023:PHHC:113178

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(205)

CWP No. 1727 of 1998

Date of Decision : 28.08.2023

Chaman Lal Shankla (since deceased) through his Lrs.

...Petitioners

Versus

The State of Haryana

...Respondent

(205/A)

CWP No. 366 of 2002

Chaman Lal Shankla (since deceased) through his Lrs.

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.S. Brar, Advocate for the petitioners.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

By this present order, the two writ petitions, which have been filed by the same petitioner, are being decided.

In the first petition, i.e. CWP No. 1727 of 1998, the challenge is to the adverse remarks recorded in the annual confidential report of the petitioner for the year 1994-1995 and in the second petition i.e. CWP No. 366 of 2002, the challenge is to the compulsory retirement of the petitioner on attaining the age of 55 years.

Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.

The petitioner was selected in the HCS (Executive Branch) on 05.01.1976. As per the petitioner, he has worked diligently and done his duty in accordance with law to the entire satisfaction of his superiors. It may be noticed that for the year 1994-1995, the petitioner was conveyed adverse remarks by the respondents vide letter dated 21.11.1995, wherein, the integrity of the petitioner was doubted. Aggrieved against the said opinion of the authorities qua the working of the petitioner as recorded in the ACR for the year 1994-1995, the petitioner immediately filed a detailed representation with the respondents, which representation came to be rejected by the respondents on 28.08.1997, which action of the department is under challenge in CWP No. 1727 of 1998.

Later on, keeping in view annual confidential report of the petitioner for the year 1994-1995 having adverse remarks qua the integrity of the petitioner, the respondents have not given extension in service to the petitioner beyond the age of 55 years and retired him, which action is under challenge in another writ petition i.e. CWP No. 366 of 2002.

Learned counsel appearing on behalf of the petitioner argues that the adverse remarks, which have been conveyed to the petitioner in the year 1994-1995 are bad as the same have not been recorded in accordance with the guidelines issued by the Government of Haryana,

wherein, certain procedures have been prescribed for the recording of the ACR. Learned counsel for the petitioner contends that even otherwise, once the over all assessment of the petitioner has been described as good, doubting his integrity would be contrary to the overall assessment, hence, the remarks recorded qua the doubtful integrity in the ACR for the year 1994-1995 is liable to be set-aside.

Learned counsel for the respondents submits that in the present case, the ACR is recorded by the Officer who has supervised the work of the petitioner and keeping in view the input from all the sources, the opinion qua a particular employee is recorded, hence, this Court does not have jurisdiction to substitute its own opinion with the opinion of the recording officer or the reviewing officer as the case may be. Learned counsel submits that in the present case, even the representation filed by the petitioner challenging the adverse remarks has already been rejected by the authorities concerned, hence, in the facts and circumstances of this case, the prayer of the petitioner for setting-aside the adverse remarks recorded in the ACR of the year 1994-1995 may kindly be declined.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It may be noticed that the remarks in the annual confidential report are recorded by the Officer, who has supervised the working of the officer concerned. While supervising the work, the Officer concerned comes through various information, which is kept in mind keeping in

view the working style of a particular officer, while recording the remarks in the annual confidential report.

In the present case, the integrity of the petitioner has been doubted by the officer concerned, who has initiated the recording of the ACR for the year 1994-1995, which opinion of the officer has also been approved by the reviewing authority. Not only this, even the representation filed by the petitioner challenging the said recording of the adverse remarks against him has already been rejected by the respondents. Under these circumstances, once the Officer concerned, who had monitored the working of the petitioner, has recorded certain remarks, which have been approved by the higher authorities, this Court will not like to interfere so as to expunge the same by substituting the opinion.

Even otherwise, as per the settled principle of law, the jurisdiction of a Court qua the recording of the ACRs is very limited. As per the settled principle of law, the Court cannot go into the correctness of the adverse remarks. In the present case, the plea of the petitioner is that the adverse remarks recorded are not correct. Keeping in view the law laid down by the Hon'ble Supreme Court of India while deciding Civil Appeal No. 5651 of 1997 titled as ***Amrik Singh Vs. Union of India***, decided on 16.11.2000 that the Court should not go into the correctness of the adverse remarks. Relevant paragraph of the said judgment is as under :-

“15. In para 29 of the said judgment, this Court stated as follows :-

"The contention put forth before us is that there are factual inaccuracies in the statement recorded by the Cabinet Secretary in his note and, therefore, must be deemed to be vitiated so as to reach a conclusion that the decision of the Government in this regard is not based on proper material. The learned Attorney General, therefore, took great pains to bring the entire records relating to the relevant period which was considered by the Cabinet Secretary and sought to point out that there were notings available in those files which justify these remarks.

Prima facie, we cannot say, having gone through those records, that these notings are baseless. Critical analysis or appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. May be one may emphasise one aspect rather than the other but in the appraisal of the total profile, the entire service profile has been taken care of by the authorities concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus to the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no

justification for the High Court to have interfered with the order made by the Government."

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21. In the result, we are not inclined to grant any relief to the appellant in spite of the fact that his performance in the subsequent years has been shown to be very good and his ratings were very high. Ultimately the single adverse remarks of 1985-86 by the Reviewing Officer had stood in his way, not only at the time of original consideration but also when the matter was considered afresh pursuant to the directions of the High Court. The result may be unfortunate. But the scope of the jurisdiction of the High Court being very limited, we cannot go into the correctness of the adverse remarks nor into the assessment made by the Selection Board on the two occasions."

Keeping in view the settled principle of law, the plea of the petitioner that the adverse remarks recorded in the ACR be expunged being incorrect, cannot be accepted.

Even otherwise, there is no plea that the recording of the adverse remarks is due to mala fide action so as to blemish the career of the petitioner. In the absence of any mala fide, it is to be assumed that the recording of the ACR by the officer concerned qua the working of the petitioner was a genuine opinion based upon the input from various sources during the period in question. Once the officer recording the remarks had supervised the work of the petitioner, hence, in the absence of any mala fide attached with the recording of the ACR, this Court will not like to interfere in the recording of the ACR, especially when even the higher authority had already rejected the representation qua the ACR

in question, hence, the prayer of the petitioner as raised in CWP No. 1727 of 1998 cannot be accepted keeping in view the facts and circumstances of this case as well as the settled principle of law noticed here-in-before and the same is rejected.

The plea in the second writ petition i.e. CWP No. 366 of 2002 is qua the challenge to the non-grant of extension beyond the age of 55 years. Keeping in view the facts and circumstances of the present case that allowing an employee to continue in service beyond 55 years of age depends upon the record of the employee concerned. Once, there is a report doubting the integrity of an officer, the respondents are well within their right to pass appropriate order as to whether the said employee needs to be allowed to continue in service till he attain the age of superannuation by granting him extension beyond the age of 55 years.

In the facts and circumstances of the present case, once the integrity of the petitioner has been doubted, respondents are well within their right to pass an appropriate order so as not to grant the extension to the petitioner beyond the age of 55 years. The said action cannot be interfered with as the respondents have taken an objective view keeping in view the record of the petitioner.

No ground is made out for any interference qua the prayer made in both the writ petitions.

Dismissed.

August 28, 2023

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No