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

**CWP No.3846 of 2023(O&M)
Date of Decision: 27.03.2023**

**Ram Mehar S.I.
Vs**

.....Petitioner

State of Haryana and others

.....Respondents

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

Present:Mr. Gunjan Mehta, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, 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 notice-cum-order dated 05.01.2023, whereby the petitioner has been directed to be prematurely/compulsorily retired from the service on attaining the age of 55 years.

[2]. Learned counsel for the petitioner contended that the notice of compulsory retirement is penal in consequence and the same is not in public interest as the same has been passed on the basis of misconduct depicted in the notice-cum-order itself. The notice-cum-order has been issued in utter disregard

to the policy guidelines framed by the Haryana Government General Administration Department dated 05.02.2019, thereby providing parameters for premature retirement or continuing in service beyond 55 years. Learned counsel for the petitioner further submitted that the rule relating to premature retirement should not be used to retire a Government employee on the ground of specific misconduct as a shortcut to initiating formal disciplinary proceedings against him.

[3]. With reference to Guideline No.VIII, learned counsel for the petitioner submitted that the Head of the Department shall be competent to retain a Government employee of Group C who fulfills the eligibility criteria, otherwise case will be sent to Administrative Department with the advice of Haryana Staff Selection Commission before and after the issue of three months' notice for taking final decision to retire a Government employee of Group C prematurely or compulsorily.

[4]. With reference to the facts, learned counsel for the petitioner submitted that the petitioner was appointed as Constable and thereafter, promoted to the post of ASI w.e.f. 17.01.2017. He was promoted to the post of Sub Inspector w.e.f. 16.01.2020. The petitioner has earned more than 70% reports as 'good' or 'very good' for the last preceding 10 years. The Annual Confidential Report for the period 01.04.2018 to 21.11.2018 was shown to be 'average' and the period was of

seven months. For the period 01.04.2019 to 31.03.2020, in the general remarks, 'average' was shown and the period was of one year. Similarly, for the period 23.09.2020 to 31.03.2021, he was assessed as 'average' in the general remarks and the period was of six months. For a period of six months i.e. 30.04.2021 to 25.10.2021, the petitioner was assessed to be 'average'. The petitioner was served with a notice-cum-order dated 05.01.2023, detailing the aforesaid remarks in the following manner:-

S.N	Period of ACR	Remarks
1.	01.04.2018 to 21.11.2018	Defect if any- He awarded censure vide No.45259-62 dt. 08.09.18 in a R/DE conducted against him for negligence on his part. General Remarks-An Average Officer. Category of Report-Average
2.	01.04.2019 to 31.03.2020	Interest in modern methods of investigation and in modern police methods general-Average Preventive and defective ability-Average Working and defective ability- Average Defects if any- A DE institute vide this office order No.48218-20 dated 17.09.2019 Category of Report- Average

3.	23.09.2020 to 31.03.2021	Interest in modern methods of investigation and in modern police methods generally- Average Preventive and detective ability- Average Working and defective ability -Average Comments on the working regarding improvement & protection for the welfare of Scheduled Castes/Scheduled Tribes:- a) Behavior towards SC/ST- Average b) Attitude towards social justice- Average c) Ability for taking effective steps to prevent atrocities of SC/ST and to ensure justice to them- Average d) Ability to ensure progress of SC/ST- Average Gender sensitivity of a Police Officer and also his/her method of handling women issues- Average General Remarks- Average official. Category of Report- Average
4.	30.04.21 to 25.10.21	Reputation for fair dealing with the public and accessibility to the public-Fair, accessible, but he used abusive language with a complainant. Defects if any- DE was opened for abusive behavior with a complainant, held guilty and was punished with Censure. General Remarks- Hardworking but tempestuous official, needs to control anger. Category of Report- Average

[5]. In addition to the aforesaid remarks, the respondent-Department has mentioned punishments awarded to the petitioner for the acts committed by the petitioner from time to time. The respondent No.4 has detailed number of punishments and ultimately, in view of provisions contained in Rule 3.26(d) of CSR Vol-I, Part-I read with Rule 9.18 (I) (C) of Punjab Police Rules, 1934, notice-cum-order in question has been served upon the petitioner, giving him three months' notice-cum-order of retirement.

[6]. Learned counsel for the petitioner has made great emphasis on the guidelines dated 05.02.2019 to contend that the aforesaid guidelines have not been followed and the impugned action is vitiated on account of non-compliance of the aforesaid guidelines. Learned counsel further submitted that Rule 3.26(d), Volume-I, Part-I of Punjab Civil Service Rules has already been repealed in view of Rule 7(1) of the Punjab Civil Service Rules, Volume I, Part I and II as applicable to the State of Haryana and therefore, while issuing notice-cum-order, the respondent No.3 was not even alive to the existence of the relevant rule. For ready reference, Rule 9.18 of the Punjab Police Rules 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]. Before appreciating the contentions of the learned counsel for the petitioner, it is relevant to note that in the guidelines dated 05.02.2019 issued by the General Administration Department, a specific observation was made in the concluding para No.6 that the Guidelines be made applicable for all concern for strict compliance and necessary amendments in the Haryana Civil Services Rules be made in due course.

[8]. Evidently, no such amendment has been made in the relevant rule including the Punjab Police Rules. Rule 9.18 of the Punjab Police Rules deals with the present controversy.

[9]. In addition to the non-compliance of the guidelines, learned counsel for the petitioner submitted that the ratio laid down in **CWP No.8138 of 2012** titled **ASI Krishan Singh Vs. State of Haryana and others** decided on 15.01.2014 has not been appreciated by the respondent No.3. The ratio of the aforesaid judgment 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 and the State also 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.

[10]. Under Rule 9.18(c) of the Punjab Police Rules, there is no power available to the respondent No.3 to issue notice of retirement and the power is only available under Rule 9.18(2) and the said power can be exercised only after obtaining prior approval from the State Government.

[11]. Perusal of the aforesaid Rule and Note attached therewith would show that the 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 reasons. A corresponding right has been given to such a Government servant to retire on or after he has attained the age of 55 years. 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 25 years qualifying service, without giving any reasons. Note 2 attached to Rule 9.18(2) would show that 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 compulsorily 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.

[12]. With reference to the ratio laid down in **Ram Dhari Vs. State of Haryana and others, 2019(3) SCR 678 (DB)** and **CWP No.1745 of 2022** titled **Raj Bala Vs. State of Haryana and others** decided on 24.03.2022, learned State counsel opposed the bail on the ground that under Rule 9.18 (c) of the Punjab Police Rules, no approval is required from the State Government before compulsorily retiring any police officer. The requirement of approval is only under 9.18(2) when a police officer is to be retired after completion of 25 years of qualifying service. Rule 9.18 of the Punjab Police Rules would show 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 in case, 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) of Rule 9.18 of Punjab Police Rules. Note 2 appended to Sub Rule (2) further makes it clear that it cannot be read in conjunction with Sub Rule (1). The

difference between the applicability of 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.”

[13]. The difference between applicability of aforesaid two provisions has also been dealt by this Court 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 the State Government is necessary only before ordering compulsory retirement of officer after completion of 25 years of qualifying service. The views expressed in **Balwant Singh's case (supra)** and **Ram Dhari's case (supra)** were 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)**.

[14]. The Division Bench of this Court in **Babu Ram Walia**

Vs. State of Haryana and others, 2007(1) SCT 288 has upheld the order retiring a police officer after attaining the age of 55 years by the competent authority by observing that the competent authority has an absolute right to consider the entire service record of the police officer in order to weed out the deadwood, inefficient and dishonest officer and compulsorily retire such officer in the public interest. The aforesaid judgment passed by the Division Bench in **Babu Ram Walia's case (supra)** was not brought to the notice of the Court in **ASI Krishan Singh's case (supra)**. The main question for consideration is whether adverse remarks recorded in the Annual Confidential Report, where the honesty to be reported as doubtful, would create a stigma after the retirement of the police officer.

[15]. In **Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, AIR 1992 SC 1020**, the Hon'ble Apex Court has held that an order of compulsory retirement is not a punishment and it applies no stigma. Such orders are passed on the subjective satisfaction of the competent authority and even the principles of natural justice have no place in this context. The judicial scrutiny by the Court is limited only on the ground of *mala fide* or where such an order is based on no evidence or the order is arbitrary in the

sense that no reasonable person would form such an opinion on the basis of material i.e. the order being totally perverse in nature.

[16]. The Hon'ble Apex Court again considered the aforesaid question in **National Aviation Company of India Ltd. Vs. S.M.K. Khan, 2009(2) SCT 442 AIR 2009** by observing that the order of compulsory retirement in pursuance of a rule which enables the competent authority to prematurely retire an employe, on the formation of *bona fide* opinion that continuation of the employee in service will not benefit the Institution or will not be in public interest on the basis of review of the performance/service record of such employee, then the same is not open to challenge as it is neither a punishment nor the same is stigmatic in nature. Where the compulsory retirement is not by way of punishment for misconduct, but the same is an action taken in pursuance of a valid condition of service, enabling the employer to prepone the retirement, then the action need not be preceded by any enquiry and the principles of natural justice have no application. The unsatisfactory service of the employee, which may include any persistent misconduct or inefficiency furnishes the background for taking a decision that the employee has become a dead wood and he should be retired compulsorily. Such compulsory retirement is different and distinct from imposition of a punishment of compulsory

retirement on a definite charge of misconduct. The difference is on account of two factors. Firstly, the employee on account of completing a particular age or number of years of service falls within the zone where his performance calls for assessment as to whether he is of continued utility to the employer or has become a dead wood or liability for the employer. Secondly, the record of service, which may include poor performance, unsatisfactory service or incidentally any recent conduct when considered as a whole, leads the reviewing authority to the conclusion that the employee is not fit to be continued in service and not of utility to the employer. Therefore, any incidental reference to unsatisfactory service, or any remarks in the context of explaining the reason for compulsory retirement will not be considered as stigmatic, even though read out of context, they may be capable of being construed as allegations of misconduct. Any order of compulsory retirement in terms of rule providing for such compulsory retirement is not open to interference unless shown to be *mala fide* or arbitrary or not based on any material on record. Reference can be made to **Baikuntha Nath Das case (supra), Allahabad Bank Officers Association Vs. Allahabad Bank, 1996 (4) SCC 504, I.K. Mishra Vs. Union of India, 1997 (6) SCC 228, State of Uttar Pradesh Vs. Lalsa Ram, 2001 (3) SCC 389 and M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 (6) SCC 224.**

[17]. The view expressed in **Balwant Singh's case (supra)** was expressed by the Division Bench in **Shamsher Singh Vs. State of Haryana and others, 2008 (2) SCT 616** and it was held that the premature retirement at the age of 55 years by the competent authority is not by way of a punishment and the same does not cast any stigma and has to be based on the objective consideration of the entire service record of the employee with greater emphasis on the Annual Confidential Reports of later periods. The appointing authority has an absolute right to retire any police officer at the age of 55 years without assigning any reason, the reason of course being that there was an adverse entry in his ACR reflecting on the integrity of the officer.

[18]. The aforesaid judgment was not brought to the notice of the Bench at the time of consideration of **ASI Krishan Singh's case (supra)**. SLP in **ASI Krishan Singh's case (supra)** was dismissed at the preliminary stage.

[19]. Even if, Rule 3.26(d), Volume-I, Part-I of Punjab Civil Service Rules has been repealed, the case of the petitioner has to be considered on the legal parameters as per Rule 9.18 of Punjab Police Rules, 1934 as applicable to the State of Haryana.

[20]. Evidently, as per legal parameters, the order of compulsory retirement can be passed by the competent

authority on the formation of bona fide opinion that continuation of the employee in service will not benefit the Institution or will not be in public interest on the basis of review of his performance. The exercise is not open to challenge as the same is not punitive and is not stigmatic in nature. The compulsory retirement is not by way of punishment for misconduct, rather the same is an action taken in pursuance of a valid condition of service, enabling the employer to prepone the retirement. The principles of natural justice are not attracted. The unsatisfactory service of the employee, which may include any persistent misconduct or inefficiency furnishes the background for taking a decision that the employee has become a dead wood and he should be retired compulsorily. Such an act of compulsory retirement is different and distinct from imposition of a punishment of compulsory retirement on a definite charge of misconduct. The difference is on account of two factors. Firstly, the employee on account of completing a particular age or number of years of service falls within the zone where his performance calls for assessment as to whether he is of continued utility to the employer or has become a dead wood or liability for the employer. Secondly, the record of service, which may include poor performance, unsatisfactory service or incidentally any recent conduct when considered as a whole, leads the reviewing authority to the conclusion that the

employee is not fit to be continued in service and not of utility to the employer. Therefore, any incidental reference to unsatisfactory service, or any remarks in the context of explaining the reason for compulsory retirement will not be considered as stigmatic, even though read out of context, they may be capable of being construed as allegations of misconduct. Any order of compulsory retirement in terms of rule providing for such compulsory retirement is not open to interference unless shown to be *mala fide* or arbitrary or not based on any material on record.

[21]. In the light of aforesaid facts and circumstances of the case and for the reasons detailed hereinabove, I do not find any substance in this writ petition. The present writ petition is accordingly dismissed.

27.03.2023
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No