2023:PHHC:111634

106 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1192-1993 (O&M)
Date of decision: 23.08.2023

State of Haryana and others

..Appellants

Versus

Sita Ram

.Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Vibha Tewari, AAG, Haryana

Mr. Ravi Girdhwal, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

1. This appeal has been filed by the State of Haryana to challenge the correctness of the judgment and decree passed by the First Appellate Court, which resulted in decreeing the suit filed by the plaintiff. The trial court dismissed the plaintiff's suit for grant of decree of declaration that the order dated 18.07.1989 retiring the petitioner compulsorily is illegal, null and void, with a consequential relief of the permanent injunction. However, the First Appellate Court reversed the judgment and decree passed by the trial court only on the ground that the mandatory notice under Rule 3.26 (d) of the Punjab Civil Services Rules, Vol. I, Chapter III was short of 26 days. The First Appellate Court has also held that there is no provision for making the payment in lieu of such notice.

2. Rule 3.26 (d) is extracted as under:-

> "*(d) The appointing authority shall, if it is of the opinion that it is in public interest so to do, have the absolute right to retire any Government*

employee, other than Class IV Government employee by giving him notice of not less than three months in writing or three month's pay and allowances in lieu of such notice:-

(i) If he is in class I or class II Service or post and had entered Government service, before attaining the age of thirty-five years, after he has attained the age of fifty years; and

(ii) (a) If he is in Class III Service or post, or

(b) If he is class I or class II Service or post and entered Government service after attaining the age of thirty-five years;

after he has attained the age of fifty five years.

The Government employee would stand retired immediately on payment of three months' pay and allowances in lieu of the notice period and will not be in service thereafter."

3. It is evident that the First Appellate Court has erred in reading the rule. In clause (d), it is specifically provided that the Government employee shall be retired in the public interest by giving him not less than three months notice in writing or three months' pay and allowances in lieu of such notice. It may be noted here that the respondent was not removed on account of any punishment. In fact, the Rule 3.26(d) enables the State to remove inefficient employee, who is a dead wood. The employer's right to exercise such power has already been approved by the courts in various judgments passed from time to time. Recently, in **Central Industrial Security Force vs. Head**

Constable (GD) Om Parkash Civil Appeal-5428-2012 decided on 04.12.2022, the Supreme Court held that such enabling power is to remove the dead wood form service and the employer is entitled to take into account the entire service record of the employee, while passing such an order.

4. In this case, it has come on record that the respondent was given repeated warnings to improve his efficiency including communications dated 30.09.1983, 27.09.1984, 15.03.1988, 01.03.1988, 07.11.1988, 20.04.1987, 30.03.1988. He was compulsorily retired on attaining the age of 58 years. Since the Rule provides for either three months notice or pay in lieu thereof, hence, the removal from service could not be set aside merely on the ground that the notice, is not for a minimum period of three months. In such circumstances, the court could order payment of three months' salary in lieu of notice, if the notice was short of the minimum three months time.

5. While interpreting the rules, the courts are required to examine the intent behind such provision. In this case, the intent of the rule is to give the employee either three months notice in writing or allowances in lieu of such notice. Hence, for the small defect of notice being short of three months, could not have led the court to pass order setting aside the order of compulsory retirement.

6. Learned counsel representing the respondent has not challenged the findings of fact arrived at by the trial court regarding the various notices given to the employee to improve his efficiency. In such circumstances, it was not in public interest to order reinstatement of the

respondent. The respondent was never taken back in service. Hence, the interest of justice would be served, if the order passed by the First Appellate Court is set aside subject to the payment of three months' salary in lieu of the notice.

7. Disposed of.

8. All the pending miscellaneous applications, if any, are also disposed of.

23.08.2023 **(ANIL KSHETARPAL)**
rekha **JUDGE**

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