

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

LPA-563-2014 (O&M)
Reserved on 23.01.2023
Date of Decision:03.02.2023

Haryana Dairy Development Co-operative Federation Ltd.

. . . . Appellants

Vs.

S.R. Tayal and another

. . . . Respondents

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR

Present: Mr.Baldev Raj Mahajan, Sr. Advocate, with
Mr.Padamkant Dwivedi, and
Ms.Nitika Goel, Advocates for the appellants.
Mr.S.R. Tayal, respondent No.1-in person.

M.S. RAMACHANDRA RAO, J.

This Letters Patent Appeal is filed against the order dt.05.12.2013
in CWP-12615-1997 passed by the learned Single Judge.

In the said Writ Petition, the petitioner had assailed order
dt.21/22.08.1997 of appellant by which he had been compulsorily retired from
service and also order dt.11.08.1997/30.06.1997 by which his representation
against the adverse confidential report for the year 1994-95 had been rejected,
and also order dt.21.06.1995 vide which ACR for the year 1994-95 was
conveyed to the petitioner.

The impugned order dt.21/22.8.1997

In the order dt.21.08.1997, imposing punishment of compulsory retirement on the petitioner, it was stated that there were remarks recorded in his ACR for the year 1994-95 by the then Managing Director doubting his integrity and that these remarks were conveyed to him on 31.06.1995; that the respondent No.1 had submitted a representation on 19.07.1995 against the said adverse remarks and the said representation was considered by the Personnel Committee, being the Appellate Authority, in its meeting held on 30.06.1997 and the said representation was rejected by the appellate authority, and was conveyed to the respondent No.1 on 11.08.1997.

It was mentioned further that in view of the adverse remarks involving his integrity, further continuation in service of the respondent No.1 was considered, and it was decided not to retain him in service and to retire him compulsorily.

The petitioner was also sent a bank draft for a sum of ₹32,250/- draw on the bank of Maharashtra with No.333902 dt.22.08.1997 representing his three months' salary in lieu of notice and he was relieved from his duties in the Federation w.e.f. 22.08.1997.

Contentions of respondent/Writ Petitioner in the CWP

It was the contention of the respondent in the Writ Petition that the impugned orders, particularly the order imposing compulsory retirement dt.21.8.1997, cast a stigma on him since no opportunity whatsoever was granted to him before passing the said order. According to him a stigmatic order cannot be passed except following due procedure i.e. issuing a charge sheet,

conducting disciplinary enquiry and then issuing another show cause notice, which was not done.

He also contended that the appellants could not have been placed any reliance on Rule 40.1 of the Haryana Dairy Cooperative Staff Service Rules, 1988 [for short 'the Rules'] since the said Rules entitle the appellants to compulsorily retire an employee only at the age of 50 years, that the respondent No.1 had completed the said age in September 1993, and thereafter his case was taken up; and after reviewing his confidential record, he was permitted to continue for a further period of five years in service, and therefore the said Rules cannot now be invoked.

It is also contended that the said order imposing punishment of compulsory retirement is an order of penalty and it was not open to pass such an order without following the procedure prescribed in Rule 48.3 of the Rules, which prescribe the procedure for taking disciplinary action and imposing penalties on employees.

According to him even the order passed on 11.08.1997 rejecting his representation against the entries made in his ACR for the year 1994-95 were vitiated and so also was the order dt.31.06.1995 vide which the said ACR was conveyed to the respondent No.1.

The order of the learned single Judge

Though the appellants filed a detailed counter refuting the said contentions, the learned Single Judge agreed with the contentions of the respondent that the order imposing punishment of compulsory retirement

dt.21.8.1997 was illegal in view of the law declared by the Supreme Court in *Allahabad Bank Officer's Association Vs. Allahabad Bank*¹.

He held that the Supreme Court held in *Allahabad Bank Officer's Association Case* that though compulsory retirement is neither a punishment nor a stigma and differs from dismissal and removal in its nature, incidence and effects, but if it casts a stigma on the Government servant, the Court will treat such an order as an order of punishment attracting the provisions of Article 311(2) of the Constitution of India. The Supreme Court in that case held that what has to be seen is the real intention of the employer to punish or to compulsorily retire; that stigma is something that detracts from the character or reputation of a person, a mark, sign etc, indicating that something is not considered normal or standard; that it is a blemish, defect, disgrace, disrepute, imputation and mark of disgrace or shame.

He also relied on the decision of the Supreme Court in the case of *State of Gujarat Vs. Umedbhai M. Patel*², where the Supreme Court held that if an inquiry was ordered into misconduct, then the decision of the authorities not to wait for the conclusion of the inquiry and to dispense with the services of an employee merely on the basis of allegations which have not been proved, has to be set aside. The Supreme Court observed that if the services of the public servant are found no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest; that its purpose is to chop off dead wood and all adverse entries made in the confidential record are to be taken note of and given due weightage in taking the final call; that even uncommunicated entries can be considered as relevant; but an order of

¹ 1996(4) SCC 504

² 2001(3) SCC 314

compulsorily retirement shall not be passed as a shortcut to avoid a departmental inquiry when such a course is more desirable.

In the instant case also a chargesheet was issued against the respondent No.1 by the appellants imputing misconduct that he was found guilty of performing his duties negligently, of violating the instructions of the Federation; and was a guilty of conniving with one Vinod Jain, distributor of Vita Milk for the areas of Panchkula, Chandimandir and Manimajra and thereby causing loss to the Federation to the tune of ₹1,77,632.72 as principal plus interest @21% and had committed breach of trust of the Federation, but no domestic enquiry was conducted and the decision was taken to compulsorily retire him on the basis of adverse remarks recorded in his ACR for the year 1994-95 by the then Managing Director of the Federation.

The learned Single Judge therefore, found fault with the action of the appellant-Federation in compulsorily retiring respondent No.1 without conducting a disciplinary proceeding after having issued a charge sheet to him and indicating in the order of compulsorily retirement his lack of integrity based on the remarks in the ACR for the year 1994-95, which cast a stigma on him.

He also held that Rule 41 of the Rules cannot be invoked against respondent No.1 since they can be invoked when an employee can be compulsorily retired at the age of 50 years, but the petitioner had already been granted an extension of service beyond 50 years. He therefore, allowed the Writ Petition by granting the following reliefs: -

- (a) respondent No.1 should be paid provident fund dues/gratuity/benefit of leave encashment with interest @ 21% per annum compounded yearly;

- (b) respondent No.1 should be deemed to have retired from service on 30.09.2001, the day when he would have attained the age of superannuation of 58 years, and the order dt.21.08.1997 imposing punishment of compulsorily retirement was quashed.
- (c) respondent No.1 should be paid salary for the period upto 30.09.2001 with salary increases as a result of pay revision meanwhile, if any, along with interest @ 12% per annum compounded yearly.
- (d) The respondent no.1 should also be paid costs/damages/compensation of ₹5 lakh since he could not be reinstated into service and had been subjected to harassment by the appellants and had lost his dignity and honour in society because of abuse of authority by the appellants.

The LPA

Challenging the same, this appeal is filed by the appellants.

Sh.Baldev Raj Mahajan, Advocate General, Haryana appearing on behalf of the appellants, contended that punishment of compulsorily retirement was rightly imposed on respondent No.1 by the order dt.21.08.1997 and the learned single Judge erred in allowing the Writ Petition.

Admittedly the contents of the said order cast a stigma on the respondent by doubting his integrity. In view of the decisions of the Supreme Court relied upon by the learned Single Judge mandating the holding of disciplinary action before passing an order of compulsory retirement which is stigmatic, which are binding on us, we cannot find fault with the learned single Judge in setting aside the said order dt.21.8.1997 passed by the appellant.

Moreover inspite of the fact that a charge sheet had been issued imputing misconduct to the respondent, no disciplinary enquiry was held admittedly.

Therefore, we see no reason to interfere with the conclusion of the learned Single Judge regarding the invalidity of the order of compulsorily retirement dt.22.08.1997 imposed on the respondent No.1 and to treat the respondent No.1 as having retired from the service as on 30.09.2001, his normal age of superannuation at 58 years of age.

Consequently, we uphold the order of the learned Single Judge that respondent No.1 is entitled to salary upto 30.09.2001 with salary increases as a result of pay revision meanwhile, if any.

We are also not inclined to interfere with the direction given by the learned Single Judge as regards payment of retirement dues such a provident fund, gratuity or benefit of leave encashment to respondent No.1.

Learned Advocate General, however, contended that exorbitant rate of interest, that too compound interest, could not have been awarded by the learned Single Judge and even huge costs/damages/compensation of ₹5 lakh could not have been awarded and to that extent the order of learned Single Judge cannot be sustained.

The party in person/respondent No.1 is unable to place before us any decision of this Court or the Supreme Court wherein interest at such high rates compounded yearly was awarded to any employee in a similar fact situation apart from such a large amount of compensation/damages/costs of ₹5 lakh.

Undoubtedly, an employee who has been subjected to an order of compulsory retirement casting a sigma, is entitled to the benefits such as salary with pay revision upto the date of actual attaining the age of superannuation and retirement benefits, but such amounts can be allowed to be recovered with a reasonable amount of interest and not interest at such high rates/compound interest/ very heavy costs as were awarded by the learned Single Judge.

Therefore, we are setting aside the order of the learned Single judge to that extent and award as under:

Interest @ 6% per annum shall be paid by appellants to respondent no.1 on retirement benefits such as provident fund, gratuity and leave encashment., arrears of salary (with pay revision), if any.

We are also of the opinion that since the respondent No.1 has been allowed the benefit of arrears of salary including pay revision upto the date of his actual retirement without his having to work during this period, he is not entitled to any amount towards costs/damages/compensation. So we are therefore setting aside the direction of the learned Single Judge to the appellants to pay ₹5 lakh to him in that regard.

LPA is thus allowed partly. No costs.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

03.02.2023

Vivek

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No