

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No. 4751 of 2018****Date of Decision: 03.10.2023**

Brahmanand

... Appellant(s)

Versus

Haryana Roadways

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. U.K.Agnihotri and Ms. Anshul Agnihotri, Advocates
for the appellant(s).

Ms. Vibha Tewari, Assistant Advocate General,
Haryana.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. The correctness of the concurrent findings of facts, arrived at by both the Courts below, is assailed in this second appeal filed by the plaintiff.

3. The plaintiff retired on attaining the age of 55 years. He challenged the correctness of the aforesaid order by filing a civil suit. While defending the suit, the defendants submitted that numerous complaints were received against the appellant and many cases were pending against him.

Moreover, he was found guilty of embezzlement of the amount. Thus, both

the Courts below have dismissed the suit.

4. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

5. The learned counsel representing the appellant submits that most of the Annual Confidential Reports for the last five years before the date of order are “good”, therefore, the order retiring the appellant is not sustainable.

6. On the other hand, the learned counsel representing the respondent submits that the appellant’s record for the last ten years was examined and it was not found good even upto the extent of 70%. The learned counsel further submits that the appellant was found guilty of embezzlement of the amount, therefore, this Court should now interfere.

7. This Court has considered the submissions. The order retiring the appellant cannot be considered as a matter of punishment rather he attained the age of superannuation. The State has refused to retain him in service beyond the age of 55 years. The scope of interference in the aforesaid order passed by the employer has been explained in *Pyare Mohan Lal v. State of Jharkhand and Others (2010) 10 SCC 693* and *Central Industrial Security Force vs. Head Constable (GD) Om Parkash (2022) 5 SCC 100*. It has been held that the State is conferred with the enabling power to remove the dead wood from the service and the employer is entitled to make assessment on the basis of the entire service record. Such order is amenable to interference in exercise of the powers of judicial review only, if such order is the result of malafide or is patently arbitrary. In this case, the appellant has failed to prove that the order refusing his extension beyond the age of 55 years is patently arbitrary.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

October 03, 2023
“DK”

(Anil Kshetarpal)
Judge

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No