

CM-4534-C-2022 ;
CM-4535-C-2022 ;
CM-4536-C-2022 ;
CM-4537-C-2022 ;
CM-4538-C-2022 in/and
RSA-1446-2022

2024:PHHC:023676

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(240)

CM-4534-C-2022 ;
CM-4535-C-2022 ;
CM-4536-C-2022 ;
CM-4537-C-2022 ;
CM-4538-C-2022 in/and
RSA-1446-2022
Date of Decision : 20.02.2024

Luxmi Niwas

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Tara Chand Dhanwal, Advocate for the appellant.

Mr. Pankaj Midda, Additional Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-4534-C-2022

For the reasons mentioned in the application as well as arguments addressed, leave to file and pursue this regular second appeal without registration as Advocate on Roll, is granted, subject to all just exceptions.

CM-4536-C-2022

Present application has been filed for seeking condonation of delay of 1221 days in re-filing the appeal.

CM-4534-C-2022 ;
CM-4535-C-2022 ;
CM-4536-C-2022 ;
CM-4537-C-2022 ;
CM-4538-C-2022 in/and
RSA-1446-2022

2024:PHHC:023676

2

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed and delay of 1221 days in re-filing the appeal is condoned.

CM-4537-C-2022

Present application has been filed for seeking condonation of delay of 266 days in filing the appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed and delay of 266 days in filing the appeal is condoned.

RSA-1446-2022

The present regular second appeal has been filed against the judgment and decree of the trial court dated 29.11.2014 by which the suit filed by the appellant-plaintiff has been dismissed as well as the judgment of the lower Appellate Court dated 15.12.2015 by which the said judgment of the trial court has been upheld.

Learned counsel appearing on behalf of the appellant-plaintiff argues that the appellant-plaintiff was retired prematurely on attaining the age of 55 years and no extension in service was given to him despite the fact that 70% of the record of the appellant-plaintiff was satisfactory, hence, keeping in view the Instructions of the Government of Haryana dated 19.11.1991, the appellant-plaintiff was entitled to continue in service upto the age of 58 years.

CM-4534-C-2022 ;
CM-4535-C-2022 ;
CM-4536-C-2022 ;
CM-4537-C-2022 ;
CM-4538-C-2022 in/and
RSA-1446-2022

2024:PHHC:023676

3

It is conceded by learned counsel for the appellant-plaintiff during the hearing that in the ACR for the year 2002-2003, which was part of the last ten years record which was required to be seen to form an opinion whether the officer concerned is to be retained in service beyond the age of 55 years, the integrity of the appellant-plaintiff has been doubted.

Once, the integrity of the appellant-plaintiff has been doubted and that too qua the period which is to be taken into consideration and the same has been classified as 'Poor', it cannot be said that the appellant-plaintiff was fit enough to continue in service beyond the age of 55 years. As per the settled principle of law, the total record of an employee is to be seen and even if there is one adverse entry qua the integrity of the employee concerned, the same can be a good enough ground so as to not to grant extension to an employee beyond the age of 55 years.

As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.5428 of 2012 titled as Central Industrial Security Force vs. HC (GD) Om Prakash, decided on 04.02.2022***, the total record of an employee can be seen especially the adverse record of the recent past. The relevant portion of the said judgment is as under:-

“ 5. We find that the High Court has completely misdirected itself while setting aside the order of premature retirement of the writ petitioner. The writ petitioner has been awarded number of

CM-4534-C-2022 ;
CM-4535-C-2022 ;
CM-4536-C-2022 ;
CM-4537-C-2022 ;
CM-4538-C-2022 in/and
RSA-1446-2022

2024:PHHC:023676

4

punishments prior to his promotion including receiving illegal gratification from a transporter while on duty in the year 1993. There are also allegations of absence from duty and overstaying of leave. After promotion, a punishment of four days fine was imposed on the charge of sleeping on duty and two days fine was imposed for overstayed from joining time. Apart from the said punishments, the writ petitioner has a mixed bag of ACRs such as average, below average, satisfactory good and very good. In the last 5 years, he has been graded average for the period 01.01.2010 to 31.12.2010.

6. After the judgment in *Baikuntha Nath Das*, a three Judge Bench in a judgment reported as [*Posts and Telegraphs Board and Others v. C.S.N. Murthy*](#)⁶ held that the courts would not interfere with the exercise of the power of compulsory retirement if arrived at bonafidely and on the basis of material available on record. The Court held as under:

“5. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record. No mala fides have been urged in the present case. The only suggestion of the High Court is that the record discloses no material which would justify the action taken against the respondent. We are unable to agree. In our opinion, there was material which showed that the efficiency of the petitioner was slackening in the last two years of the period under review and it is, therefore, not possible for us to fault the conclusion of the department as being mala fide, perverse, arbitrary or unreasonable.”

7. A three Judge Bench of this Court reported as [*Union of India and Others v. Dulal Dutt*](#)⁷ examined the order of compulsory retirement of a Controller of Stores in Indian Railway. It was held that an order of compulsory retirement is not an order of punishment. It is a prerogative of the Government but it should be based on material and

CM-4534-C-2022 ;
CM-4535-C-2022 ;
CM-4536-C-2022 ;
CM-4537-C-2022 ;
CM-4538-C-2022 in/and
RSA-1446-2022

2024:PHHC:023676

has to be passed on the subjective satisfaction of the Government and 6 (1992) 2 SCC 317 7 (1993) 2 SCC 179 that it is not required to be a speaking order. This Court held as under:

“18. It will be noticed that the Tribunal completely erred in assuming, in the circumstances of the case, that there ought to have been a speaking order for compulsory retirement. This Court, has been repeatedly emphasising right from the case of [R.L. Butail v. Union of India \[\(1970\) 2 SCC 876\]](#) and [Union of India v. J.N. Sinha \[\(1970\) 2 SCC 458\]](#) that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. From the very order of the Tribunal it is clear that the Government had, before it, the report of the Review Committee yet it thought it fit of compulsorily retiring the respondent. The order cannot be called either mala fide or arbitrary in law.”

8.	XXXX	XXXX	XXXX	XXXX
9.	XXXX	XXXX	XXXX	XXXX
10.	XXXX	XXXX	XXXX	XXXX
11.	XXXX	XXXX	XXXX	XXXX
12.	XXXX	XXXX	XXXX	XXXX
13.	XXXX	XXXX	XXXX	XXXX

14. Thus, we find that the High Court has not only misread the judgment of this Court in Baikuntha Nath Das but wrongly applied the principles laid down therein. The adverse remarks can be taken into consideration as mentioned in the number of judgments mentioned 15 (2020) 1 SCC 801 above. There is also a factual error in the order of the High Court that there are no adverse remarks and that the ACRs for the year 1990 till the year 2009 were either good or very good. In fact, the summary of ACRs as reproduced by the High Court itself shows average, satisfactory and in fact below average reports as well.

CM-4534-C-2022 ;
CM-4535-C-2022 ;
CM-4536-C-2022 ;
CM-4537-C-2022 ;
CM-4538-C-2022 in/and
RSA-1446-2022

2024:PHHC:023676

6

15. *The entire service record is to be taken into consideration which would include the ACRs of the period prior to the promotion. The order of premature retirement is required to be passed on the basis of entire service records, though the recent reports would carry their own weight.*

Learned counsel for the appellant-plaintiff has not been able to show as to how the findings recorded by the courts below are perverse to any evidence or the facts on record. In the absence of any perversity, the appellant-plaintiff cannot re-argue this case so as to convince this Court to arrive at a different finding as compared to the findings arrived at by the courts below.

As no perversity in the judgments of the courts below has been pointed out by the learned counsel for the appellant-plaintiff, no ground is made out for any interference by this Court.

Dismissed.

Any miscellaneous application, if pending, stands disposed of.

February 20th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No