

RSA-1270-1995 (O&M)

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2024:PHHC:000763

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

RSA-1270-1995 (O&M)

Date of decision: 01.01.2024

Reserved on : 11.12.2023

State of Haryana and another

....Appellants

Versus

Sh.Vidya Nand (deceased) through LRs

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Vibha Tewari, AAG, Haryana

Mr. B.S.Sewak, Advocate for the respondent

ANIL KSHETARPAL, J

1. In this Regular Second Appeal, the correctness of the concurrent findings of fact arrived at by the courts below is assailed by the defendants (State of Haryana).

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The plaintiff was recruited in the Haryana Civil Service Executive Branch through a competitive exam in the year 1972. In the year 1984, when he was posted as a Land Acquisition Collector, a piece of land was acquired in Taraf Afghan Panipat for the development of Sector 11 & 12 (part II), Panipat. The plaintiff on 04.11.1985, announced the award as a Land Acquisition Collector with respect to the aforesaid land. An FIR No.36, dated 13.12.1985,

under the Prevention of Corruption Act, 1988 read with Section 461, 468, 420, 120-B IPC was registered against him, which led to his arrest on the allegation that he has misused his position as a public servant. He was placed under suspension on 10.01.1986. Ultimately, on 05.05.1988 he was compulsorily retired (prematurely retired not as a punishment). Thereafter, in the aforesaid criminal case, he was acquitted vide judgment dated 25.04.1991. Thereafter, he made various representations, which were considered and rejected. Consequently, he filed a civil suit on 10.10.1991, for the grant of decree of declaration that the order passed on 05.05.1988, retiring him from service is illegal, null and void. The civil suit was decreed on 12.04.1993, which in appeal, has been upheld by the learned Additional District Judge vide judgment dated 06.12.1994. On 28.08.1995, the Regular Second Appeal was admitted for regular hearing and operation of the judgment and decree passed by the First Appellate Court was stayed.

4. Thereafter, now this appeal has come up for final disposal.

5. Learned counsel representing the parties have filed their respective synopsis alongwith gist of their arguments. From a perusal of the judgment passed by the courts below, it is evident that the trial court granted the decree of declaration in his favour on the following two grounds:-

i) Adverse Annual Confidential Reports (ACRs), which were never conveyed to the plaintiff-respondent, have been relied upon by the disciplinary authority while passing the order retiring him from service.

ii) The plaintiff has been compulsorily retired, not as a punishment during the period of suspension, which is not permissible accordingly to the rules governing the disciplinary proceedings

6. The First Appellate Court has upheld the judgment of the trial court only on the second ground i.e the order of compulsory retirement could not be passed, when the employee was placed under suspension.

7. The order passed by the Governor of Haryana on 05.05.1988, reads as under:-

“Whereas the Governor of Haryana is of the opinion that it is in the public interest to retire Shri Vidya Nand Kadhayala, HCS from service after attaining the age of fifty years, by giving him three months’ notice.

Now, therefore, in pursuance of the provisions contained in rule 3.26 (d) of the Punjab Civil Services Rules, Volume-I, Part-I, and rule 5.32 A (c) of the Punjab Civil Services Rules, Volume-II, as applicable to the State of Haryana, the Governor of Haryana in the public interest orders that Shri Vidya Nand Kadhayala, HCS shall stand retired from service under the State Government of Haryana, on the expiry of three months from the date of receipt of the order by him.

*Dated, Chandigarh,
the 5th May, 1988*

*Sd/-
(L.C.Gupta)*

Chief Secretary to Government, Haryana”

8. On the one hand, the learned counsel representing the appellants while relying upon a Division Bench judgment in **Kuldeep Singh (SE) PWD, (B&R) vs. State of Punjab 1992 (2) RSJ 528** and **Tara Chand vs. State of Haryana and others 2005 (2) SCT 460** contends that the order of compulsory retirement, not as a punishment, could be passed during the period of suspension.

9. On the other hand, the learned counsel representing the respondents submits that this Court should not interfere with the concurrent findings of fact, particularly when un-communicated remarks have been relied upon while compulsorily retiring the respondent. He further submits that the court is entitled to lift the veil, which would prove that the order was passed only because of the registration of a criminal case against the respondent.

10. This Court has considered the submissions made by the learned counsel representing the parties and perused the paperbook alongwith the requisitioned record.

11. The first argument of the learned counsel representing the appellants is no longer res integra in view of the judgment passed by the Division Bench in **Kuldeep Singh's case (supra)**.

Para 7 of the judgment reads as under:-

7. The sole argument with regard to invalidity of the impugned order at the time the petitioner was under suspension and departmental proceedings against him with regard to allegations supported from the charge-sheet were pending against him is that if the services of the Government servant are terminated during such suspension without any enquiry

*being held against him, such termination would amount to punishment attracting thereto the provision of Article 311 of the Constitution of India. Obviously, it is the element of punishment which if attracted would suffer from the vice of Article 311 of the Constitution of India. The facts of the present case, however, would demonstrate that the impugned order does not take notice of either the suspension or the allegations, subject-matter of the charge-sheet, and so is the stand of the respondents in the written statement. It is true that it is well within the jurisdiction of the court to lift the veil and see as to whether actually the impugned order has been passed on account of suspension or allegations, the subject-matter of departmental proceedings, but as an abstract proposition of law that the moment an order of compulsory retirement is passed during pendency of departmental proceedings, it would straightaway attract the provisions of Article 311 of the Constitution is, in our opinion, neither sound nor supported by any binding precedent. In the case of suspension, all that the Government does is that it temporarily stops the Government servant from performing the duties of his office, which duties the Government servant was performing on account of terms of the contract of his service. The mere fact that the order of suspension was passed or departmental proceedings were going on, in our view, is not decisive for the question that needs to be determined. As referred to above, what is decisive is whether the order is by way of punishment. This element of punishment can be determined where two tests as were laid down by the Supreme Court in *Sham Lal v. State of U.P.* [AIR 1954 S.C. 369.] are satisfied. The two tests are as to whether a charge or imputation against the public servant is made the condition of exercise of power of retirement and as to whether by compulsory retirement the officer is losing the benefit that he has already earned as he does by dismissal or removal. The impugned order in the present case, as fully discussed above, was passed not on the basis of allegations, subject-matter of charge-sheet against the petitioner. We do not see how merely because the petitioner was under suspension and an enquiry was pending against him at the time the impugned order was passed, the same would amount to an order of punishment. A single judge of this Court while dealing with an identical issue in *J.M. Sharma v. The State of Haryana* [1981 (1) SLR*

554.] held that “it is patent that to be in public employment is a right to hold it according to the rules. This right to hold is defeasible in accordance with the rules. If the rules give jurisdiction to the competent authority to compulsorily retire a public servant and the said authority passes order of such compulsory retirement in exercise of that jurisdiction, then unless it is shown that the order is by way of punishment, no fault can be found with the said order of retirement. Merely that a public servant has been placed under suspension before the order of his compulsory retirement is passed does not, to my mind, lead to the only inference that it has been passed by way of punishment. Suspension as such, as has been observed by their Lordships of the Supreme Court in *H.L. Mehra v. Union of India* [1974 (2) SLR 107.] , does not in any manner affect the relationship of master and servant. What the Government as master does in such a case is merely to suspend the Government servant from performing the duties of his office. It is only that the Government issues a direction forbidding the Government servant from doing the work which he was required to do under the terms of the contract of service at the same time keeping in force the relationship of master and servant. Thus, the factum of pendency of an enquiry or the continuance of the employee under suspension when the order of his retirement is passed, is not decisive of the question that needs to be determined. What is decisive is whether the order is by way of punishment? For determining this question, the Supreme Court laid down two tests as far back as in the year 1951 in *Shyamlal v. State of Uttar Pradesh* [AIR 1954 S.C. 369.] and reiterated the same in a number of subsequent judgments. These two tests are: (i) whether a charge or imputation against the officer is made the condition of the exercise of power of retirement and (ii) whether by compulsory retirement the officer is losing the benefit that he had already earned as he does by dismissal or removal. Applying these two tests to the impugned notice Annexure P-6, I do not find the same to suffer from either of these. It is wholly innocuous so far as the question of imputation of any charge or misconduct is concerned. It does not in any manner affect the benefits which the petitioner has already earned and which have necessarily to flow, such as pension etc. from his retirement. Therefore, I do not see how, as has been maintained by the learned counsel for

the petitioner, that merely because the petitioner was under suspension without anything more at the time when the impugned notice Annexure P-6 for his compulsory retirement was served on him, the same would amount to an order of punishment. It is the admitted case that but for the serving of the charge-sheet on him, no other step had been taken in the enquiry initiated against him.”

12. Another judgment of the learned Single Judge in **J.M.Sharma vs. State of Haryana 1981 (1) SLR 554** was also relied upon.

13. Similarly in **Tara Chand’s case (supra)**, the court explained the judgments passed in **S.K.Taneja vs. State of Haryana, 1994 (2) RSJ 425** and **Prem Singh vs. State of Haryana and another 1993 (2) RSJ 526**. In **Tara Chand’s case (supra)** the Court considered the provisions contained in **Rule 3.26 (d) of the Punjab Civil Services Rules, Vol. I, Part I** and **Rule 5.32 A (c) of the Punjab Civil Services Rules Vol.II** as applicable to the State of Haryana.

14. Moreover, the scope of interference in an order passed by the competent authority while prematurely retiring the employee, not as a punishment has been examined by the Supreme Court in **Baikuntha Nath Das vs. Chief District Medical Officer, Baripada, 1992 (2) SCC 299**. The Court held that if the order of compulsory retirement is not passed as a punishment nor does it cast any stigma on the employee and it is based only on the subjective satisfaction of the Government, the Court is not required to interfere

unless the order passed is malafide or is based on no evidence or is arbitrary. Similarly, in a recent judgment passed by the Supreme Court in **Central Industrial Security Force vs. Head Constable (GD) Om Parkash** Civil Appeal 5428-2012 decided on 04.12.2022, the aforesaid position of law has further been explained. The scope of interference by the Court in such kind of matters is extremely limited.

15. It is evident that the order retiring the respondent was passed in the public interest. There is no material on record to prove that it was passed on the basis of the registration of the FIR.

16. Though the First Appellate Court has not dealt with the aforesaid fact, however, the learned trial court has erred while recording a finding that the adverse Annual Confidential Reports regarding his doubtful integrity were never communicated to the respondent and hence, could not be relied upon. First and foremost, all the aforesaid adverse Annual Confidential Reports have not been relied upon. Furthermore, it is the case of the plaintiff in Para 6 (v) that the adverse Annual Confidential Reports doubting his integrity with respect to period beginning from 08.07.1983 to 31.04.1984 and 01.04.1984 to 24.08.,1984 were communicated to him and he made representations, which were also rejected by the competent authority. Hence, the findings of the trial court in this regard are against the record.

17. In **Baikuntha Nath Das's case (supra)**, the Supreme Court even held that the entire record including the uncommunicated adverse remarks in the ACR's can be taken into consideration by the competent authority while passing the order.

18. There is also no substance in the argument of the learned counsel representing the respondent that this Court should lift the veil in order to come to a conclusion that the order was passed as a matter of punishment. It may be noted here that the adverse Annual Confidential Reports doubting his integrity were recorded much before the registration of the FIR.

19. Keeping in view the aforesaid facts and discussion, the result is inevitable. Hence, the judgments passed by the courts below are set aside. The appeal stands allowed and resultantly, the suit filed by the respondent-plaintiff shall stand dismissed, while allowing the Regular Second Appeal.

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

01.01.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE