

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:058661

(102) CM-6041-CWP-2024 and
CM-6042-CWP-2024 in/and
CWP-5059-2009
Date of Decision : April 30, 2024

Rajeshwar .. Petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vijay Rana, Advocate, for the applicant-petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-6041-CWP-2024

As prayed for, the application is allowed.

Annexure A-1 is taken on record.

CM-6042-CWP-2024

Present application has been filed for fixing the actual date of
hearing of the main writ petition.

Notice of the application to the counsel opposite.

Mr. Harish Nain, learned Assistant Advocate General, Haryana,
accepts notice on behalf of the respondents. He raises no objection for the
grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which
are duly supported by an affidavit, the application is allowed. On joint
request of learned counsel for the parties, the main writ petition is taken up
for hearing today itself.

CWP-5059-2009

1. In the present writ petition, the challenge is to the order dated 20.01.2009 (Annexure P-11) by which, the petitioner who was working as Veterinary and Livestock Development Assistant has not been given extension in service beyond the age of 55 years.

2. Learned counsel for the petitioner argues that there was no adverse report of the petitioner and retiring the petitioner from service upon attaining the age of 55 years, keeping in view the facts and circumstances of the present case is totally arbitrary and illegal.

3. Learned counsel for the petitioner submits that the petitioner has achieved the targets whatever is required for during his service career hence, treating the petitioner as deadwood so as not to grant him extension in service beyond the age of 55 years is totally arbitrary and illegal.

4. Upon notice of motion, the respondents have filed the reply wherein, they have stated that there are adverse entries in the confidential report of the petitioner pertaining to the year 2003-04, 2004-05 and 2007-08 and in the year 2007-08 and as the confidential report of the petitioner is below average.

5. As per the respondents, even the targets given to the petitioner have not been completed and the detailed reasons qua the non achieving of the targets have been mentioned in paragraphs 8 and 9 of the reply.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. The employee is entitled to continue in service upto the age of superannuation under the Rules governing the service but as per the Rules governing the service, jurisdiction has been given to the employer to assess

the record of an employee so as to grant him/her extension in service beyond the age of 55 years. In the present case, the petitioner's claim to continue upto the age of superannuation has been curtailed by the respondents by not granting him extension in service beyond the age of 55 years.

8. It is a settled principle of law that the decision not to allow an employee to continue beyond the age of 55 years is to be taken on the basis of the service record of an employee. It is also a settled principle of law that total record of an employee is to be taken into account so as to decide whether the employee is a deadwood so as to grant him extension in service upto the age of superannuation.

9. In the present case, the respondents have given the details of the service record of the petitioner. As per the record of the petitioner, in the preceding 7 years from the date of passing of the impugned order dated 20.01.2009 (Annexure P-11), out of four confidential reports, three confidential reports are average or below average. Further, as per the reply filed by the respondents, the petitioner never achieved the targets and rather, the number of animals which were under the custody of the petitioner had gone down consistently. Overall assessment that the record of an employee should be 70% so as to allow him to continue upto the age of superannuation hence, it cannot be said that keeping in view the facts and circumstances of the present case i.e. service record of the petitioner and the performance in the last preceding seven years from the date of passing of the said impugned order, was good enough so as to retain him in service.

10. Learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.869 of***

1987 with Civil Appeal NO.870 of 1987 titled as Baikuntha Nath Das vs. Chief District Medical Officer, Baripada, decided on 19.02.1992 to contend that the petitioner was entitled to continue in service upto the age of superannuation.

11. It may be noticed that the Hon'ble Supreme Court of India had laid down the parameters in paragraph 32 of the said judgment. The case of the petitioner is satisfied so as to not to grant extension in service beyond 55 years of age on the basis of the parameters mentioned in paragraph 32 in *Baikuntha Nath Das's case (supra)* . There is no allegation of mala fide. There is no allegation that the order passed by the respondents is stigmatic or by way of punishment. In the present case, the Government has passed an order on subjective satisfaction keeping in view the service record of the petitioner, the details of which have been given hereinbefore. Hence, it cannot be said that the parameters laid down by the Hon'ble Supreme Court of India in paragraph 32 in *Baikuntha Nath Das's case (supra)*, have been violated in any manner by passing the impugned order dated 20.01.2009 (Annexure P-11).

12. Learned counsel for the petitioner submits that no show cause notice was given to the petitioner before passing of the said order.

13. It is conceded that there is rule requiring the issuance of a show cause notice for not granting extension in service beyond the age of 55 years. No such rule has been brought to the notice of this Court.

14. Further, once not granting extension in service to the petitioner beyond the age of 55 years is not a punishment, no enquiry is liable to be held. Hence, the argument that the impugned order dated 20.01.2009 (Annexure P-11) passed by the respondents is violative of rules of natural

justice, cannot be accepted.

15. No other argument was raised.
16. Keeping in view the above, no ground is made out for any
interference by this Court in the present case.
17. Dismissed.

April 30, 2024

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No