

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2025:PHHC:065326-DB



Letters Patent Appeal No. 787 of 2025 (O&M)

Reserved on : 18.03.2025.

Pronounced on : 16.05.2025

Mohinder Singh

.....Appellant

versus

High Court of Punjab and Haryana, Chandigarh through its Registrar General

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.....Respondents

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SUMEET GOEL, JUDGE**

Present : Mr. Atul Lakhanpal, Senior Advocate with
Mr. Sidharth Chawla, Advocate, for the appellant.

Mr. Sanjeev Sharma, Senior Advocate with
Ms. Gagandeep Kaur, Advocate, for the respondent.

SHEEL NAGU, CHIEF JUSTICE

This intra-court appeal assails the order dated 06.09.2024 passed by the learned Single Judge in Civil Writ Petition No. 11289 of 2023 whereby challenge to the order dated 21.02.2014 (vide Annexure P-17) retiring petitioner prematurely in public interest, has been repelled.

2. Learned counsel for the rival parties are heard at length.

3. The grounds raised by the petitioner-appellant to assail the order of learned Single Judge dated 06.09.2024 are summarized hereinbelow: -

- i) Once the respondents had issued a charge-sheet dated 16.06.2011 initiating disciplinary proceedings for misconduct which essentially relates to habitual absenteeism, the appellant-petitioner

could not have been prematurely retired in public interest by invoking Rule 33(4) of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973;

ii) That learned Single Judge has mistaken the order of compulsory retirement in public interest to be an order of punishment of compulsory retirement inflicted after conduction of disciplinary proceedings;

4. A bare perusal of the order of learned Single Judge admittedly gives a fleeting impression that the impugned order had been passed by treating the same to be a penalty order instead of being an order of compulsory retirement in public interest.

4.1. However, this cannot by itself be sufficient to annul the order of learned Single Judge without entering into the merits of the matter.

5. Admittedly, the petitioner was issued a charge sheet on 16.06.2011 initiating disciplinary proceedings for habitual absenteeism. After conduction of enquiry proceedings and submission of inculpatory enquiry report on 27.05.2011, the matter was taken up on the administrative side to decide upon the question of penalty. It was at this stage when Disciplinary Committee, which met on 19.02.2014, decided that instead of punishing the appellant-petitioner, the provisions of Rule 33(4) of the 1973 Rules be invoked to compulsorily retire the petitioner-appellant in public interest by paying him three months salary. This conscious decision was taken after perusing the entire service record of the appellant-petitioner, which was pockmarked with large number of minor penalties for absenteeism, the detail of which are given below:-

Year	Period of absence	Penalty
1993	25 days	Censure
2000	13 days	Withholding of one increment without cumulative effect.
2001	12 days	Withholding of one increment without cumulative effect.
2004 and 2005	19 days	Censure
2005	8 days	Withholding of two increments without cumulative effect.
Between February-2008 to May-2008		Withholding of two increments without cumulative effect.
Between July-2008 to September-2008		Withholding of one increments with cumulative effect.
2009		Stoppage of two increments without cumulative effect.
2011		Stoppage of two increments with cumulative effect.
2012		Stoppage of two increments without cumulative effect.
2012		Stoppage of two increments with cumulative effect.
2013		Stoppage of two increments without cumulative effect.

6. From the aforesaid, periods of absence reflect that appellant-petitioner is a habitual absentee and is not interested in discharging his official duties. As a result, petitioner earned below average gradings in his Annual Confidential Reports for number of years including one adverse entry in the ‘integrity column’ in the Annual Confidential Report for the year 2012. The aforesaid service profile reveals that petitioner for reasons solely attributed to him rendered himself unproductive for the employer, who was thus justified to invoke Rule 33(4) of the Rules of 1973 to weed out the deadwood.

7. The concept as to whether during the pendency of the disciplinary proceedings, the employer can exercise the right to compulsorily retire the delinquent employee in public interest, is no more res-integra. The relevant

ratio rendered by three Judges Bench of the Apex Court in ***State of Orissa vs. Ram Chandra Das (1996) 5 Supreme Court Cases 331***, is reproduced hereinbelow:-

“**3.** xx xx xx xx It is needless to reiterate that the settled legal position is that the Government is empowered and would be entitled to compulsorily retire a government servant in public interest with a view to improve efficiency of the administration or to weed out the people of doubtful integrity or are corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service. But the Government, before taking such decision to retire a government employee compulsorily from service, has to consider the entire record of the government servant including the latest reports”.

The same has been reiterated in para No.21 of the judgment rendered by Apex Court in ***Pyare Mohan Lal vs. State of Jharkhand and others (2010) 10 SCC 693*** and in para-24 of the judgment ***Captain Pramod Kumar Bajaj vs. Union of India and another (2023) 11 SCC 466***.

7.1 If the employer is of the view that instead of punishing the delinquent employee, it would be in the interest of the employee as well as of the employer to dispense with the services of the delinquent employee looking to the overall service profile, the employer is well within its right to exercise the power of compulsory retirement in public interest.

8. In the instant case, the service profile of last about one and half decades of the petitioner-appellant reveals a series of punishments inflicted upon him, after conduction of disciplinary proceedings, which are though minor in nature but elicit the incorrigible temperament of the appellant-petitioner of being habitual absentee who is least interested in work. More so, the service profile of last 15 years of appellant-petitioner indicates that he has failed to improve upon his past conduct which further emboldens the decision of the employer to treat him as a dead wood.

9. Learned counsel for the appellant has also raised the ground that a shortcut method of compulsory retirement in public interest has been adopted by the employer by truncating the disciplinary proceedings which were at advanced stage thereby ousting the appellant as dead wood.

9.1 In this regard, it is relevant to point out that if the employer is able to establish, in cases like the one in hand, that the disciplinary proceedings, though initiated, were at an advance stage and the course of compulsorily retiring the delinquent employee was adopted in public interest, then the order of weeding out the dead wood can very well be sustained. More so, if the decision to abandon the disciplinary proceedings by adopting the mode of compulsory retirement in public interest is taken bonafidely, it is necessary for the employer to establish that decision to abandon disciplinary proceedings was merely a motive and not the foundation behind adopting the alternative course of compulsorily retiring the delinquent employee in public interest.

9.2 In the instant case, disciplinary proceedings were initiated against the appellant by issuing a charge sheet on 16.06.2011 and an inculpatory report was submitted by the Enquiry Officer which was placed before the relevant Administrative Committee for consideration. The Administrative Committee pondered upon the inculpatory report and also perused the entire service profile of appellant. It was found by the Administrative Committee that the appellant had suffered various minor punishments at regular intervals. Virtually every second year if not every year in the last 15 years, appellant indulged in misconduct of unauthorized absence for short and long periods, for no justifiable cause. This reflects appellant's disinterest in work. More so, this misdemeanor was not a one time delinquency but was repeatedly taking place,

virtually every second year in the last one and half decade. The appellant also did not learn from his mistakes and continued to commit the same misconduct of absenteeism for a very long period. The appellant, thus, rendered himself unproductive for the employer.

9.3 In the aforesaid given facts and circumstances, which are reflected from the service profile of the appellant, it is obvious that the appellant solely for reasons attributed to him, rendered himself a dead wood.

9.4 It was, thus, decided by the relevant Administrative Committee, after applying its mind to all the relevant aspects, that instead of taking disciplinary proceedings to its logical, end appellant be compulsorily retired in public interest to weed out the dead wood.

9.5 It is pertinent to point out that compulsory retirement in public interest is not a punishment, but is merely a legitimate mode available to the employer to carry out periodical assessment of entire service profile of each and every employee to decide as to whether to retain the employee in service or not. Such decision is taken based on entire service profile of the employee, and is not based on any stray or individual incident.

10. In the conspectus of aforesaid discussion, it is obvious that decision to abandon the disciplinary proceedings initiated against the appellant was merely a motive. Thus, the decision to abandon the disciplinary proceedings and adopt the other course of compulsorily retiring the appellant in public interest was merely the motive and not the foundation.

11. The subtle but clear difference between motive and foundation has been well explained by Apex Court in ***Radhey Shyam Gupta vs. U.P. State Agro Industries Corp. Ltd. 1999(2) SCC 21***, the relevant portion of which is re-produced hereinbelow:-

“33. *It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, as stated by Shah, J. (as he then was) in Ram Narayan Das case [AIR 1961 SC 177 : (1961) 1 SCR 606 : (1961) 1 LLJ 552] . It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary enquiry is held because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or material to initiate a regular departmental enquiry. It has been so decided in Champaklal case [AIR 1964 SC 1854 : (1964) 1 LLJ 752] . The purpose of the preliminary enquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started, a charge-memo issued, reply obtained, and an enquiry officer is appointed — if at that point of time, the enquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur case [AIR 1968 SC 1089 : (1968) 3 SCR 234 : (1970) 1 LLJ 373] and in Benjamin case [(1967) 1 LLJ 718 (SC)] . In the latter case, the departmental enquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujarat Steel Tubes case [(1980) 2 SCC 593 : 1980 SCC (L&S) 197] the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of*

appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive.”

12. It was also observed in para 335 of the judgment rendered by Apex Court in

13. More so compulsory retirement in public interest is not a punishment and the appellant-petitioner shall be entitled to all pensionary benefits as admissible in law. Reliance in this regard is placed on the judgment rendered by Apex Court in ***Delhi Transport Corporation vs. DTC Mazdoor Congress and others 1991 Supp (1) SCC 600***, wherein in para-335, it has been held as under:-

“335. It is undoubtedly true as contended by Sri Bhasin, learned counsel for the intervener, that it is open to the authorities to terminate the services of a temporary employee without holding an enquiry. But in view of the match of law made, viz., that it is not the form of the action but the substance of the order is to be looked into, it is open to the Court to lift the veil and pierce the impugned action to find whether the impugned action is the foundation to impose punishment or is only a motive. A larger Bench of seven Judges of this Court in [Shamsher Singh v. State of Punjab](#), [1975] 4 SCR 814 elaborately considered the question and laid down the rule in this regard. The play of fair play is to secure justice procedural as well as substantive. The substance of the order, the effect thereof is to be looked into. Whether no misconduct spurns the action or whether the services of a probationer is terminated without imputation of misconduct is the test. Termination simpliciter, either due to loss of confidence or unsuitability to the post may be a relevant factor to terminate the services of a probationer. But it must be hedged with a bonafide over-all consideration of the previous conduct without

trained with either mala-fide or colourable exercise of power or for extraneous considerations. Such actions were upheld by this Court. The action must be done honestly with due care and prudence.”

14. In view of the above, no case for interference in the order passed by the learned Single Judge is made out. Accordingly, the appeal stands dismissed.

(SHEEL NAGU)
CHIEF JUSTICE

(SUMEET GOEL)
JUDGE

16.05.2025

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√