



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

(202)

RSA-916-2000 (O&M)

Date of Decision: **26.05.2026**

S. DALJIT SINGH JOSAN

... Appellant

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Vidul Kapoor, Advocate
for the appellant.

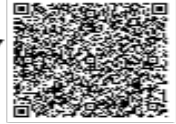
Mr. I.S. Kingra, Senior DAG, Punjab.

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VIRINDER AGGARWAL, J. (Oral)

1. This Regular Second Appeal (for short, "RSA") has been instituted to assail the judgment and decree passed by the learned First Appellate Court, whereby the appeal preferred by the State came to be allowed and the judgment and decree rendered by the learned Civil Judge, Amritsar, were set aside.

2. The appellant-plaintiff instituted a suit seeking a decree of declaration to the effect that the order dated 15.03.1990, whereby the plaintiff was prematurely retired from service, is illegal, arbitrary, null and void, and consequently inoperative against his rights. A further declaration was sought that the plaintiff shall be deemed to have continued in service



uninterruptedly and be held entitled to all consequential service benefits arising therefrom.

2.1. It was pleaded that the plaintiff joined service as an Agricultural Inspector in the Department of Agriculture in the year 1964 and was subsequently allocated to the Horticulture Wing in the year 1983. It was further averred that adverse Annual Confidential Reports (ACRs) for the years 1986–87 and 1987–88 were recorded against him, against which he had submitted representations. According to the plaintiff, the said representations remained undecided prior to the passing of the impugned order. It was further contended that despite the recording of the adverse ACRs, the plaintiff had been permitted to cross the efficiency bar and thereafter, vide order dated 13.03.1990, he was prematurely retired from service with effect from 02.04.1990.

3. The defendants contested the suit by filing a written statement raising various preliminary objections, *inter alia*, contending that the suit was barred by the principle of *res judicata*, that the Civil Court at Amritsar lacked territorial jurisdiction to entertain and adjudicate upon the matter, and that the order of premature retirement of the appellant–plaintiff had been passed in public interest and in furtherance of administrative efficiency.

4. The plaintiff filed a replication controverting the averments and objections raised by the defendants and reiterating the assertions contained in the plaint. Upon a comprehensive consideration of the pleadings of the parties and the material available on record, the learned

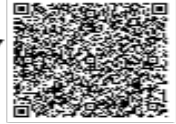


trial Court framed the following issues for adjudication in order to effectively determine the controversy involved between the parties:-

1. *Whether the plaintiff is entitled for mandatory injunction as claimed ?OPP*
2. *Whether the suit is barred by Principles of resjudicata? OPD*
3. *Whether Civil Court at Amritsar has no jurisdiction to try the suit ? OPD*
4. *Whether suit is not maintainable ? OPD*
5. *Relief.*

5. Both parties were afforded full and adequate opportunity to adduce oral as well as documentary evidence in support of their respective claims and contentions. Upon conclusion of the trial proceedings and after hearing learned counsel appearing on behalf of the parties, the learned Civil Judge, Amritsar decreed the suit and held the order of premature retirement to be illegal, null and void and without legal effect. Consequently, the appellant-plaintiff was deemed to have remained in continuous service and was held entitled to all consequential service benefits attached to his post.

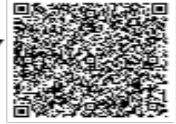
5.1. Aggrieved by the aforesaid judgment and decree, the State preferred an appeal before the learned First Appellate Court, which came to be allowed. The judgment and decree passed by the learned trial Court were consequently set aside and the suit instituted by the appellant-plaintiff was dismissed. Dissatisfied with the reversal of the findings recorded by the learned trial Court, the appellant has instituted the present appeal.



6. Notice of motion was issued vide order dated 05.10.2000 and the appeal was subsequently admitted for regular hearing vide order dated 29.10.2002 after framing the following substantial question of law for consideration, i.e. *whether the non-communication of the decision rejecting the representation against the adverse entries in the ACRs, thereby depriving the appellant-plaintiff of an effective opportunity to challenge such adverse entries, caused prejudice to him.* The records of the Courts below have been made available on DMS and have been examined for the purposes of proper adjudication of the controversy involved.

7. I have heard learned counsel for the parties at considerable length and have bestowed thoughtful and anxious consideration upon their respective submissions in the light of the pleadings, documentary evidence, and the findings recorded by the Courts below.

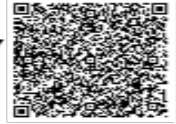
8. Learned counsel appearing on behalf of the appellant contended that the impugned order of premature retirement is admittedly founded upon the adverse ACRs for the years 1986–87 and 1987–88. It was submitted that it is an admitted position on the part of the respondents that representations had been preferred by the appellant-plaintiff against the said adverse entries and that such representations had not been decided at the time when the impugned order of premature retirement was passed. Learned counsel argued that the impugned order is legally unsustainable as the ACRs had not attained finality and, in the absence of adjudication of the representations submitted by the appellant-plaintiff, the adverse



remarks could not have constituted the basis for passing an order of premature retirement.

8.1. It was further contended that the provisions of the Punjab Civil Services (Premature Retirement) Rules, 1975 were not complied with by the respondents, inasmuch as the order of premature retirement was passed on 13.03.1990 and made effective from 02.04.1990, without issuance of the mandatory notice period of three months contemplated under the said Rules. It was also submitted that no reasons had been recorded by the competent authority for dispensing with the requirement of the prescribed notice period. Learned counsel further argued that since the appellant–plaintiff had been making complaints against his superior officers, animosity had developed against him and, owing to such hostile considerations, the impugned order was passed without any substantive material on record.

8.2. It was additionally contended that the learned First Appellate Court committed a patent illegality in reversing the well-reasoned judgment of the learned trial Court and exceeded the permissible limits of appellate jurisdiction by substituting its own opinion for that of the competent authority. Learned counsel submitted that although the learned First Appellate Court itself recorded a finding that the representations against the adverse entries in the ACRs had not been decided by the competent authority, it nevertheless proceeded to undertake an independent judicial scrutiny and arrived at a conclusion regarding the existence of material justifying the adverse ACRs, thereby travelling beyond the scope of its jurisdiction.



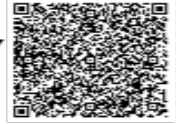
9. Per contra, learned Senior Deputy Advocate General, Punjab contended that the findings recorded by the learned First Appellate Court do not suffer from any illegality, perversity, or material infirmity warranting interference by this Court. It was submitted that the learned First Appellate Court has recorded its findings upon a proper and comprehensive appreciation of the pleadings and evidence available on record. It was further argued that the decision to prematurely retire the appellant–plaintiff had been taken in public interest and for maintaining administrative efficiency and was duly supported by relevant material, including the adverse ACRs for the years 1986–87 and 1987–88, wherein the integrity of the appellant–plaintiff had been found to be doubtful.

10. Rule 3.1 of the Punjab Civil Services (Premature Retirement) Rules, 1975 reads as under:-

3. (1) (a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty five years of qualifying service or attains fifty years of age or on any date there after to be specified in the notice.

(b) The period of such notice shall not be less than three months.

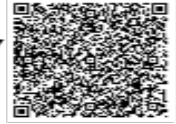
Provided that where at least three months' notice is not given or notice for a period less than three months is given, the employee shall be entitles to claim a sun equivalent to the amount of his pay and allowances, at the sane rates at which he was drawing them immediately before the date of retirement, for a period of three months or, as the case may be for the period by which such notice falls short of three months.



11. It is an admitted position on record that no notice of the prescribed period of three months was ever served upon the appellant–plaintiff prior to the issuance of the impugned order of premature retirement. It is further not in dispute that an order of premature retirement could have been passed by the competent authority only upon the formation and recording of a bona fide opinion that such retirement was warranted in public interest.

11.1. The respondent–State examined only one witness, namely DW-1 H.L. Madan, who, in his examination-in-chief, deposed that the adverse ACRs for the years 1986–87 and 1987–88 had been communicated to the appellant–plaintiff, wherein his integrity had been recorded as doubtful and his work and conduct were assessed as unsatisfactory. The witness further stated that the appellant–plaintiff had never crossed the efficiency bar during the relevant period of service and that the order dated 07.08.1989 permitting him to cross the efficiency bar pertained only to the period up to 01.02.1981, when he was serving in a Class-III post.

11.2. However, during the course of cross-examination, the said witness categorically admitted that, apart from the adverse ACRs pertaining to the years 1986–87 and 1987–88, the entire service record of the appellant–plaintiff was otherwise clean and unblemished. He further admitted that the representations preferred by the appellant–plaintiff against the aforesaid adverse ACRs were pending consideration at the time when the order of premature retirement was passed. Though he subsequently asserted that such representations had been disposed of on



10.01.1989 and 10.08.1989 respectively, he failed to place on record any documentary evidence whatsoever demonstrating communication of the orders rejecting the appellant–plaintiff’s representations against the adverse ACRs.

11.3. The learned First Appellate Court, while considering the aforesaid aspect, recorded the following observations in paragraph No.15 of the impugned judgment:-

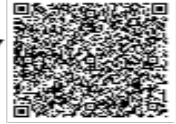
15. The respondent was retired from service vide latter Ex.P-1 dated 20.3.1990 in public interest. No reasons have been assigned as to how public interest was to be served by pre-maturely retiring the respondent from service. But during the trial of this suit, the stand of the appellants is that the respondent was pre-maturely retired because he was a government employee of doubtful integrity and dead wood.

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11.4. Thereafter, the learned First Appellate Court reproduced the adverse ACRs pertaining to the years 1986–87 and 1987–88 and proceeded to record a finding that, on the basis of the said adverse entries, the appellant–plaintiff was liable to be subjected to premature retirement.

11.5. The learned First Appellate Court further observed and recorded in paragraph No.22 of the impugned judgment as under:-

22. The last contention of the learned counsel for the respondent was that at the time of compulsory retirement of the respondent, his representations against those adverse remarks were still pending. Therefore, his compulsory retirement could not be ordered on the basis thereof. The adverse remarks referred to above have been



judicially scrutinised by this Court and there was material with the officers who made those remarks. Therefore, those adverse remarks rightly became the basis for premature retirement of the respondent. However, the appellate authority under the service rules has also rejected the representations of the respondent vide orders dated 11.08.1989 and 19.12.1989. Thus, there is no force in this contention of the learned counsel for the respondent.

12. A perusal of the reasons recorded by the learned First Appellate Court makes it evident that the action against the appellant–plaintiff was founded solely upon two adverse ACRs pertaining to the years 1986–87 and 1987–88. It is also not in dispute that the appellant–plaintiff had preferred representations against the adverse remarks recorded in the said Annual Confidential Reports. The material available on record clearly establishes that the said representations had not been decided at the time when the order of compulsory retirement of the appellant–plaintiff was passed.

12.1. The learned First Appellate Court, however, assumed unto itself the role and function of the competent authority and, in paragraph No.22 reproduced hereinabove, observed that the adverse remarks had been judicially scrutinized by the Court. Such an approach, in the considered opinion of this Court, is legally unsustainable. It was the exclusive obligation and duty of the competent authority to first adjudicate upon the representations submitted by the appellant–plaintiff against the adverse remarks and only thereafter attain finality with respect to the ACRs for the years 1986–87 and 1987–88. Until such exercise had been



duly undertaken, the said ACRs could not be treated as finalized or conclusive for any consequential administrative action.

12.2. Thus, it stands conclusively established from the record that the ACRs for the years 1986–87 and 1987–88 had never attained finality and the representations against the said entries were still pending consideration. It is further evident that, apart from the aforesaid two adverse ACRs, there existed no other adverse material against the appellant–plaintiff.

12.3. Learned State counsel placed reliance upon the judgment of this Court in ***Om Parkash Mahajan vs. State of Punjab, 1992(1) SLR 308*** to contend that even a single adverse entry recording doubtful integrity could constitute a valid basis for invoking the provisions of the Punjab Civil Services (Premature Retirement) Rules, 1975 and ordering premature retirement. There can be no dispute with regard to the proposition of law enunciated therein that even a solitary entry pertaining to doubtful integrity may furnish sufficient grounds for taking action under the said Rules. However, before any action is founded upon such an adverse entry, it is imperative that the competent authority first accords finality to the same in accordance with law. In the present case, such adverse entries had admittedly not attained finality, as the representations preferred against them remained pending.

12.4. Learned State counsel further contended that adverse remarks recorded even prior to promotion could legitimately be taken into consideration while evaluating a case for compulsory retirement and, in support thereof, reliance was placed upon ***State of Orissa vs. Ram***

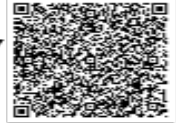


Chandra Dass, 1996 INSC 643. There is no quarrel with the settled proposition that, while considering the question of compulsory retirement, the entire service record of an employee, including adverse remarks recorded prior to promotion, may be taken into account. However, as already discussed hereinabove, the present case stands on an altogether different footing, inasmuch as there existed no adverse entries which had attained finality and could legally constitute the basis of such action.

12.5. The Hon'ble Division Bench of this Court in ***Ravinder Singh vs. High Court of Punjab and Haryana, Chandigarh, 2018(3) SCT 702***, in paragraph No.18, has held as under:-

18. Therefore, it was observed that writing of ACRs against an officer/employee are akin to quasi judicial function. If there are civil consequences, necessary and reasonable opportunity should be given to concerned person. It was also held by this Court that if it was a case of gathering over all report on the general reputation of the officer, the most damaging remarks ought to have been supported by material evidence/reasoning or in the alternative, the petitioner should have been given opportunity to meet those allegations by way of furnishing copy of the complaint and to seek his explanation against those allegations. Judgment of Jatinder Pal Singh's case (supra) was upheld by Supreme Court of India.

13. In the present case, since the representations preferred against the adverse remarks and Annual Confidential Reports were admittedly pending consideration and had not been adjudicated at the time of passing of the impugned order of premature retirement, the said ACRs had not attained finality and, therefore, could not legally have been relied upon as the basis for taking adverse action against the appellant-plaintiff. Any



reliance upon such unfinalized adverse entries, in the absence of a conclusive determination by the competent authority, was wholly impermissible in law.

13.1. Furthermore, there is no reference whatsoever in the impugned order to any independent material forming the basis of the satisfaction or opinion of the competent authority that the continuance of the appellant–plaintiff in service was against public interest or that he had become a liability upon the administration warranting premature retirement. The formation of such opinion is a condition precedent under the governing statutory framework and cannot be founded upon conjectures, assumptions, or unfinalized material.

13.2. It is an admitted position on record that the entire service profile of the appellant–plaintiff remained unblemished except for the two adverse Annual Confidential Reports for the years 1986–87 and 1987–88, which themselves had not attained finality as the representations preferred against the same remained pending consideration. Consequently, the very foundation of the order of premature retirement becomes legally unsustainable.

13.3. In these circumstances, this Court is of the considered view that the learned First Appellate Court committed a patent illegality and jurisdictional error in interfering with the well-reasoned and legally sustainable judgment and decree rendered by the learned trial Court. The findings recorded by the learned First Appellate Court are, accordingly, set aside. Consequently, the present appeal preferred by the appellant–plaintiff



stands **allowed** and the judgment and decree passed by the learned trial Court are restored.

14. Consequent upon the final adjudication of the principal matter, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, shall also stand disposed of by necessary implication. In view of the conclusions arrived at here-in-above, no separate or further orders are required to be passed in respect thereof.

26.05.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No