
(2011) 01 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13958 of 2010

ASI Balwan Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 323, 324, 452
Punjab Police Rules, 1934 — Rule 5.32

Citation : (2011) 162 PLR 635

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Grover, J.—The Petitioner impugns the order Annexure P-4 vide which he has been compulsorily retired from service at the age of 55 years when his case was considered for retention in service beyond the age of 55 years. Three months notice under Rule 5.32 of the Punjab Police Rules Volume-I was served upon him. The reason given in the impugned order Annexure P-4 was that he was placed under suspension vide order dated 5.6.1996 for misbehaving, beating and taking Rs. 100/- from a person which reflected upon his integrity/honesty.

2. That being the grievance of the Petitioner, he relied upon the instructions issued by the Respondents in the cases of such like persons whose service is to be reviewed at the age of 55 years for the purpose of retaining them beyond this particular age, to say, that the entire service record has to be seen and if a person has earned more than 70% good or above reports, and whose integrity is not doubted during the last 10 years, was fit to be retained in service.

3. Learned Counsel for the Petitioner thus, contended that all the service reports of the Petitioner have been good and except for the fact that he has earned minor punishments on a few occasions, there was No. other material adverse to him. He referred to the temporary punishments he had suffered which are as follows:

(a) In the year 2001 when the Petitioner was posted in Police Post Shivaji Colony, Rohtak, he retained case file of F.I.R. No. 162/2001 with him even after his transfer from Police Post Shivaji Colony and hence punishment of censure was given to him.

(b) For showing negligence in discharge of official duties he did not take interest in disposing of tracing 15 criminal cases of P.S. Sadar Rohtak, a regular departmental enquiry was ordered and punishment of stoppage of two annual increment with -permanent effect was awarded vide order dated 31.10.2006. However on appeal to the Inspector General of Police, Rohtak Range Rohtak the punishment was scaled down to stoppage of one annual increment with temporary effect.

(c) On 18.3.2008 the Petitioner was placed under suspension on account of dereliction in duty and disobedience/orders of D.S.P. Detective. Regular departmental enquiry was ordered against the Petitioner and he was awarded punishment of stoppage of two annual increments with temporary effect and the suspension period i.e. 18.3.2008 to 2.5.2008 was ordered to be treated as period not spent on duty for all intents and purposes.

(d) The Petitioner committed gross negligence in conducting investigation of case F.I.R. No. 20/2009 P.S. Shivaji Colony Rohtak show cause notice was given to him but he did not dare to reply the same and hence punishment of censure was given to him vide OB No. 644/2009.

(e) The Petitioner conducted improper investigation of case F.I.R. No. 189 of 21.8.2009 u/s 148/149/323/324/452/506 I.P.C.P.S. Shivaji Colony. A regular departmental enquiry is pending against the Petitioner.

4. He further contended that in the criminal cases registered against him, he was acquitted and in the regular departmental enquiry also, he was exonerated. He thus, contended that the order passed is totally arbitrary and in support of his contentions, he placed reliance upon the judgment of the Madhya Pradesh High Court in P.K. Pathak v. Union of India and Ors.,¹ 2008(7) Services Law Reporter 426, and judgments of this Court in C.W.P No. 4680 of 2010, decided on 02.12.2010 E/SI Anand Kishore v. State of Haryana and Ors.,² C.W.P. No. 2175 of 2008, decided on 28.04.2008 Vijay Parkash Bhardwaj v. Haryana Urban Development Authority, through its Chief Administrator, Panchkula and Ors,³ 2008(1) S.L.R. 210.

5. Learned Counsel for the Respondents, on the other hand, referred to the reply which has been filed, with emphasis on the minor punishments which the Petitioner has earned during his tenure to say that after consideration of the aforesaid material, the services of the Petitioner were not found fit to be retained beyond the age of 55 years.

6. I have heard the learned Counsel for the parties and perused the material placed before me.

7. On a due consideration, I find that the contention of the learned Counsel for the Petitioner merits acceptance. None of the material reflects on the integrity of the Petitioner and except for the instances mentioned and detailed in the written statement, which have also been reflected above, there is No. other adverse material against the Petitioner. The Government's own instructions that for the retention of a person beyond the age of 55 years, his entire service record has to be seen and evaluated and if he has earned more than 70% good or above reports with No. adverse entry regarding his integrity during the last 20 years, then such a person is to be considered to be fit for retention in service.

8. The Hon''ble Supreme Court in *Baikuntha Nath Das v. Chief District Medical Officer, Baripada*,⁴ 1992(2) S.C.T. 92 (S.C.), laid down certain principles which would normally govern the order of compulsory retirement. One of the principles, as laid down by the Court, relates to the scope of interference by the High Court to examine the issue of compulsory retirement of an individual. As is held in this case, the judicial scrutiny of an order of compulsory retirement is not excluded altogether. Though the courts cannot examine the matter as an appellate court, but can certainly interfere if they are satisfied that the order passed is mala fide; that it is based on No. evidence or that it is arbitrary in the sense that No. reasonable person would form the requisite opinion on the given material; in short, if it is found to be perverse order.

9. The view aforesaid was also followed by this Court in *C.W.P. No. 21-75 of 2008 Vijay Parkash Bhardwaj v. Haryana Urban Development Authority*,⁵.

10. Learned Counsel for the Respondents then contended that since the Petitioner had not conducted the investigations properly, he was hardly a person who can be considered fit to be retained in service.

11. I am also not in agreement with this contention. Once the rules and instructions prescribe that the entire conduct of the Petitioner is to be seen and evaluated, and if there is nothing against the Petitioner, the impugned order at best, can be termed to be arbitrary. The Respondents, if not satisfied with the investigation prowess of the Petitioner, could very well adjust him elsewhere by giving a lesser assignment, but cannot inflict the impugned order upon him.

The writ petition is thus, accepted and the impugned order is set aside.