

(1967) 10 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 469 of 1967

Bakshish Singh

APPELLANT

Vs

The Collector, Jullundur and Others

RESPONDENT

Date of Decision : 04-10-1967

Acts Referred:

Citation : (1967) 10 P&H CK 0003

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : H.R. Aggarwal, for the Appellant; Abnasha Singh, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, J.—The only question which arises in this petition under Article 226 of the Constitution relates to the interpretation of paragraph 3.55 of the Punjab Land Records Manual, which provides that the Patwaris appointed before the 1st of January, 1937, should not be retired merely on account of old age or otherwise than in accordance with clauses (i) and (ii), but on their attaining the age of sixty years a strict test of efficiency should be applied by the Collector and those who are considered unfit for work should be made to retire and the others allowed to continue in service upto the age of 65 years or beyond. Clause (i) of paragraph 3.55 states that a Patwari may be required to retire at any age if he is permanently incapacitated from efficiently fulfilling his duties. Clause (ii) of that paragraph empowers the Collector concerned to retire a Patwari who has performed 25 years' service in the permanent grade if in the opinion of the Collector the retention in service of such a Patwari is not in the interests of service. Clause (ii) does not, however, apply to Patwaris appointed substantively before the 1st of April, 1932.

2. It is an admitted fact that the petitioner was appointed as a permanent Patwari in May, 1923. After the partition of the country he has been serving as such at different places in the post-partition East Punjab and is at present posted

at Jullunder His date of birth was April 1, 1906. He attained the age of sixty years on March 31st 1966. Before he had attained that age, he was subjected to a test of efficiency in or about February, 1966. The petitioner also underwent a medical examination for physical fitness. The Chief Medical Officer issued a certificate, dated January 18, 1966. (a copy of which has been filed with the written statement of the respondents), wherein it was stated that the Chief Medical Officer had examined the petitioner for re-employment as a Patwari and that he found the petitioner to be "reasonably healthy for re-employment for one year". On the basis of the result of the efficiency test and the medical certificate referred to above an order was passed by the Collector on February 15, 1966, for the retention of the petitioner in service as a Patwari for a period of one year from April, 1, 1966. It is no body's case that the petitioner was subjected to any further efficiency test or any other medical examination thereafter till the impugned order was passed. On March 2, 1967, the Collector, Jullunder, passed an order (Annexure "A") to the effect that no further extension was being allowed to the petitioner after he had attained the age of sixty one years on March 31, 1967, and that he should be relieved on the afternoon of that day. In pursuance of the abovesaid order of the Collector, a notice, dated March 23, 1967 (Annexure "B") was sent by the Tahsildar, Jullundur, to the petitioner directing him to hand over charge of his office to Raj Kishan Patwari on the afternoon of March 31, 1967, as per order of the Collector referred to above. On March 28, 1967, the petitioner came to this Court to get quashed the order of the Collector, dated March 2, 1967 (Annexure "A") and to declare the petitioner to be entitled to continue in service as Patwari up to the time he attains the age of 65 years and even beyond that. The case of the petitioner is that the impugned order has been passed in violation of Article 311 (2) of the Constitution and contrary to the requirement and spirit of paragraph 3.55 of the Punjab Land Records Manual. Ad interim stay of the impugned order was granted to the petitioner by the Motion Bench on March 29, 1967, while admitting the writ petition. The ex-parte order was confirmed by me on April 5, 1967, for the duration of the main case.

3. In the undated written statement of the Collector (which has incidentally not been sworn before anyone, but is merely "verified" by a Magistrate without even mentioning the date of verification), which was filed in this Court on May 17, 1967, the position has been made clear in the following words:

The Deputy Chief Medical Officer, Jullunder, vide his medical certificate, dated January 18, 1966 (copy enclosed) had certified after medical examination that the petitioner was reasonably healthy for re-employment as Patwari for one year. The petitioner was therefore, granted extension in service up to April, 1967, namely for one year only vide order, dated February 15, 1966. Since the petitioner was declared fit for re-employment for one year only by the Deputy Chief Medical Officer, Jullunder, no further extension in service could be allowed to him thereafter as he had been declared fit for re-employment for one year only after attaining the age of 60 years.

In paragraph 4 of the written statement, it has been added that:

keeping in view the report of the Deputy Chief Medical Officer, Jullunder as referred to in paragraph 3 above, no further extension in service could be allowed to the petitioner after his attaining the age of 61 years and vide paragraph 3 55(i) of the Land Records Manual he was retired at the age of 61 years as he had been declared fit for service up to 61 years and beyond that he could not efficiently fulfill his duties.

In view of the fair and frank statement of facts contained in the written statement of the Collector, the factual position is not in dispute in this case. The relevant facts which emerge from that part of the writ petition which has been admitted to be correct by the Collector and from the averments made in the return itself are that the petitioner was found efficient in the efficiency test held in February, 1966, and that he was allowed to be retained in service up to the age of 61 years only because of the opinion expressed in the medical certificate to the effect that he was reasonably healthy for one year. It is also clear from the admitted facts of this case that the petitioner has not been allowed to continue in service after March 31, 1967, only because the medical certificate, dated January 18, 1966, has been interpreted to mean that he is medically unfit to continue in service from that date. No one has found that the petitioner has been incapacitated from fulfilling his duties.

4. Mr. Hans Raj Aggarwal, Learned Counsel for the petitioner, expressly conceded that he did not question the vires of paragraph 3.55, but in fact relied on that paragraph in support of his claim No part of the rule according to Mr. Aggarwal infringes or violates any part of the guarantee contained in Article 311(2) of the Constitution. His complaint is that in this particular case Article 311(2) of the Constitution has been infringed and the impugned order is volatile of the above said service rule. Sardar Abnasha Singh, the Learned Counsel for the State, has on the other hand relied on the judgment of the Mysore High Court in M. N. Seshadri Sethy v. State of Mysore 1967 S.L.R. 786, wherein it has been held that the refusal of extension of service on account of the unsatisfactory record of service after superannuation does not amount to removal from service within the meaning of Article 311 of the Constitution. On behalf of the State reliance has also been placed on the judgment of the Supreme Court in Kailash Chandra Vs. Union of India (UOI), In Kailash Chandra's case (supra) it has been held by the Supreme Court that rule 2046 (2) of the Railway Establishment Code, which is identical with the Fundamental Rule 56(b) (i) implies that as soon as the age of 55 years is reached, the appropriate authority has the right to require the servant to retire, but that between the age of 55 and 60 the appropriate authority is given the option to retain the servant but is not bound to do so. In view of the fact that the relevant part of paragraph 3.55 which is the admitted service rule applicable to the petitioner does not prescribe any age of superannuation as such, the law laid down by the Supreme Court in Kailash Chandra's case(supra) by the Mysore High Court in M. N. Seshadri Sethy's

case(supra) does not appear to me to be directly relevant. Sardar Abnasha Singh has then relied on the authoritative pronouncement of the Full Bench of this Court in Pritam Singh-Brar v. State of Punjab 1967. S.L.R. 668. After a review of the entire law on the subject the bench has held in that case that if under the relevant rule a public servant is compulsorily retired after a period of qualifying service which is reasonably long even before the normal prescribed age of superannuation, the order will neither amount to dismissal nor to removal within the meaning of Article 311 (2) of the Constitution. I think there can be no answer to the proposition of law laid down by the Full Bench of this Court in Pritam Singh Brar's case (supra). Assuming that the contention of Mr. Aggarwal is correct that no age of superannuation has been prescribed by the relevant part of paragraph 3.55 of the Punjab Land Records Manual, the compulsory retirement of the petitioner at any age would be before the normal age prescribed for superannuation. It cannot be successfully argued that a period of service ending with the 60 years of an incumbent's age is not a reasonably long period within the meaning of the said expression used in the operative part of the judgment in Pritam Singh Brar's case (supra). I do not, therefore, think that the Collector has in any manner violated Article 311 (2) of the Constitution in requiring the petitioner to retire after attaining the age of 61 years even though he may have done so under a misapprehension of facts or law.

5. I think Mr. Aggarwal is correct in submitting that it would normally be possible for a medical officer to certify about the physical fitness of a person for any particular purpose only in regard to the time at which he examined him. Even if the certificate of health for a definite period of one year or more or less is intended to imply that everything else remaining normal the person examined is expected to continue to be healthy to perform his duties for the period covered by the certificate, it cannot in any circumstances mean that after the expiry of that period the person would automatically become unfit, and still this is what the learned Collector seems to have thought. As already stated it has not been found that the petitioner is no more fit to perform the duties of his office on any ground other than the supposed ground of medical unfitness. Not only has no one certified him to be unfit, but the petitioner has taken the precaution of producing with his replication a certificate of the Chief Medical Officer, Jullundur, dated May 24, 1967, to the effect that the petitioner is fit to serve for one year more, with effect from the date of the certificate. This also proves that the Collector was in serious error in thinking that when a Medical Officer certifies a person to be fit to perform certain duties for one year it necessarily follows that after the expiry of that period of one year, he would be unfit to perform those duties. The termination of petitioner's services after completing the age of 61 years has not been justified by the respondents under clause (i) of paragraph 3-55 *ibid*. That clause is applicable only to such cases where the Collector is satisfied that a Patwari has been "permanently incapacitated from performing his duties". There is neither any finding to that effect nor any evidence to support any such allegation in this case. It appears to be highly fallacious to hold that

certificate of fitness for one year is equivalent to a certificate of permanent physical incapacity at the end of the year. Since the impugned order of the Collector is based solely and exclusively on the above said apparent fallacy, I have no hesitation in striking it down.

6. In the above circumstances this writ petition is allowed and the impugned order of the Collector and the notice of the Tahsiildar based thereon are set aside. No order is, however, made about costs in this case.