
(1994) 05 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13389 of 1993

Dhan Singh S.I.

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 05-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Civil Services Rules — Rule 3.26

Citation : (1994) 107 PLR 596

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Ishwar Singh Balhara, for the Appellant; Jaswant Singh Phogat, for the Respondent

Judgement

Jawahar Lal Gupta, J.—The petitioner, a Sub Inspector of Police, is aggrieved by the order dated October 1, 1993 by which he was retired from service w.e.f. October 1, 1993 (AN). A copy of this order which has been passed by the Superintendent of Police, Rohtak, has been produced Annexure P-7 with the writ petition.

2. Mr. I.S. Balhara, learned counsel for the petitioner submits that the petitioners had been promoted and confirmed as a Sub Inspector of Police by the Deputy Inspector General of Police, Rohtak Range vide order dated February 25, 1992. He submits that the impugned order has not been passed by the appointing authority. It is consequently without jurisdiction. On the other hand, Mr. Jaswant Singh submits that on April 23, 1993, the Superintendent of Police, Rohtak had forwarded the petitioner's case to the Deputy Inspector General of Police with a request that "case regarding extension in service beyond the age of 55 years may kindly be decided after consulting his personal file and decision taken in this regard may kindly be communicated to this office." In pursuance to this letter, the Deputy Inspector General of Police had vide his letter dated September 30, 1993 informed the Superintendent of Police, Rohtak that "the case of Sub

Inspector, Dhan Singh No. RR/72 has been examined on the basis of his confidential record. He is not allowed to continue in service beyond the age of 55 years." On receipt of this communication, the Superintendent of Police had issued the impugned order. On this basis, the learned counsel contends that the decision to retire the petitioner had in fact been taken by the Deputy Inspector General and as such the impugned order is wholly illegal.

3. Rule 3.26(d) of the Punjab Civil Services Rules, Volume I Part I (as applicable to the State of Haryana) inter alia provides that "the appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government employee, other than Class IV Government employee, by giving him notice of not less than three months in writing or three months' pay and allowances in view of such notice...".

4. A perusal of this provision clearly shows that the jurisdiction to pass an order of premature retirement vests in the appointing authority. A necessary precondition for the exercise of this jurisdiction is the formation of an opinion that it is in public interest to retire the Government employee. This opinion can be formed only by the appointing authority.

5. So far as the present case is concerned, the petitioner was conveyed the order passed by the Superintendent of Police. He was informed that "his services are no more required in the public interest and he is not allowed to serve beyond the age of 55 years. As such, he is retired from service w.e.f. 1.10.93 A.N. under Rule 3.26(d) of...". Apparently, the Superintendent of Police had no jurisdiction. Consequently, the order, a copy of which has been produced as Annexure P-7, does not appear to have been passed by the competent authority. So far as the order passed by the Deputy Inspector General of Police is concerned, it was never conveyed to the petitioner. Even if, this fact is ignored, a perusal of the letter sent by the Deputy Inspector General shows that there is no finding that it is in public interest to retire the petitioner. In fact, there is not even a reference to the provisions of Rule 3.26(d). In such a situation, it cannot be said that the competent authority had formed an opinion that it is in public interest to retire the petitioner.

6. Mr. Jaswant Singh, learned counsel for the respondents submits that the intention of the competent authority is apparent from the communication. The very fact that he had ordered that the petitioner should not be allowed to continue in service beyond the age of 55 years should be interpreted to mean that the Deputy Inspector General was of the opinion that it is in public interest to retire the petitioner. This contention cannot be accepted. The rule gives an absolute right to the appointing authority to retire a Government employee. The only safeguard is that he should form an opinion that it is in public interest to do so. This opinion has to be expressed in writing so that not only the requirement of the rule is met with but also the arbitrary exercise of power may be avoided. In the present case, the authority has not recorded any conclusion as envisaged under the rule. Still further, no record has been produced to show that the

matter had been examined in the office of the Deputy Inspector General of Police or any adverse material had been noticed by the D.I.G. before issuing the letter dated September 30, 1993.

7. Mr. Jaswant Singh is at pains to refer to a mercy petition submitted by the petitioner against the adverse remarks for the years 1981, 1982 and 1987. A perusal of the personal file of the petitioner shows that slips of paper had been pasted over the adverse remarks as a result of which it is not possible to make out as to what adverse comments, if any, had been recorded. It also appears that the then DIG Gurgaon Range had passed an order that these remarks be treated as not conveyed. In fact, it is not clear from the record as to on what material the DIG had formed an opinion that the petitioner should not be allowed to continue in service beyond the age of 55 years.

8. No other point has been urged.

9. In this situation, the impugned order cannot be sustained, It is, accordingly, set aside. The petitioner shall be deemed to have continued in service. In the circumstances of the case, there will be no order as to costs.