(1976) 03 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 5926 of 1975

Harchand Singh APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 03-03-1976

Acts Referred:
Constitution of India, 1950 — Article 226, 227, 310, 311

Citation : AIR 1976 P&H 329

Hon'ble Judges : Harbans Lal, J;Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : Kuldip Singh, Bar-at-Law and Sarup Singh, for the Appellant; I.S. Tiwana, D.A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

Harbans Lal, J.—This writ petition has been filed by Harchand Singh, petitioner, under Articles 226 and 227 of the Constitution of India for the issuance of a writ of certiorari quashing the order dated October 1, 1975, prematurely retiring him under Rule 3 (1) (a) and (b) of the Punjab Civil Services (Premature Retirement) Rules, 1975 (hereinafter to be called the Rules).

2. The petitioner was appointed as a Sales Tax Sub-Inspector on March 3, 1950, in the erstwhile State- of PEPSU. He was promoted to the post of Taxation Inspector on November 1, 19.66. He was again promoted to the post of Assistant Excise and Taxation Officer on March 5, 1975 and he joined the said post on March 10, 1975. Before the merger of erstwhile Pepsu with Punjab on November 1, 1956, adverse confidential reports were not conveyed in erstwhile PEPSU. The petitioner was awarded adverse report for the years 1967-68, 1969-70 and 1970-71. On a representation made by the petitioner, all these adverse entries were expunged by the Excise and Taxation Minister by his order dated September 24, 1974, a copy of which is Annexure P-l to the writ petition. The operative part of which is reproduced below:--

"It is really strange that while on one hand, very serious charges have been levied against Shri Harchand Singh, but on the other hand, he has been either exonerated or the cases have been filed. In spite of these exonerations, the enquiries have been proceeding for which I do not find any reason. I also find that in support of the exonerations, no entries have been made in this ACR for year 1971-72(?) report (Report) (?) is contrary to the Government instructions of 1-3-1961."

On an earlier representation by the petitioner, the Excise and Taxation Minister had also passed an order on April 24, 1974, in his favour a copy of which is Annexure P-2 to the writ petition. The relevant part of that order is as follows:--

"This question has another very serious aspect, i.e. even after expiry of 5/6 years the enquiry was not finally disposed of. Even from that if it is concluded that continuous efforts are being made to obstruct the promotion of Shri Harchand; Singh then it would not be wrong. In my view, when once an enquiry has been completed then there is no necessity for holding second enquiry."

The above abstracted order of the Excise and Taxation Minister was also agreed to by the Chief Minister.

3. It has been averred in paragraph 9 of the writ petition that respondent No. 3, Shri Herdial Singh Chetwal Administration Officer, Excise and Taxation Commissioner''s Officer, Patiala, was biased against him and that the record for the purpose of premature retirement of the petitioner was prepared, processed and tabulated by the said respondent. In paragraph 10 of the writ petition, a number of allegations of mala fides, have been adverted to against respondent No. 3. Those allegations have been denied by respondent No. 3 in his affidavit. The petitioner was promoted as Assistant Excise and Taxation Officer on March 5, 1975 and the impugned order of premature retirement, a copy of which is Annexure P-5 was passed against the petitioner by the Financial Commissioner (Taxation) and Secretary to Government, Punjab, Excise and Taxation Department, on October 1, 1975, that is, within a period of seven months. It is admitted in the affidavit filed in reply by Shri O. P. Garg, Administrative Officer, Excise and Taxation Commissioner''s Office, Patiala, on behalf of respondents Nos. 1 and 2 that adverse entries against the petitioner for the years 1950-51, 1951-52, 1952-53, 1953-54, 1954-55 and 1955-56, had not ''been conveyed to the petitioner. It is however, stated that the subsequent adverse remarks for the years 1956-57 and 1957-58 had been conveyed to the petitioner. It is also admitted that adverse remarks for the 1967-68, 1969-70 and 1970-71, against the petitioner had been expunged on a representation by him. It was also stated that there were adverse remarks for the year 1971-72 against the petitioner and the same had been conveyed to him. In paragraph 13 of the reply, it is stated as under:--

"The petitioner''s record has been thoroughly unsatisfactory. In spite of the entries having been expunged there are still a good number of adverse entries regarding his work, conduct and integrity."

It is stated in paragraph 14 of the reply that respondent No. 1 had duly considered the record of the petitioner and had come to the conclusion that it w.as in public interest to retire the petitioner prematurely. In paragraph 15 of the reply, if is stated that a number of complaints against the petitioner were received after his promotion on March 5, 1975.

4. The only contention of Mr. Kul-dip Singh, learned counsel for the petitioner, is that upto the year 1956, no ad-veree entry, if any, against the petitioner, had been conveyed to him. For the period from the years 1967-66 to 1970-71, adverse entries against the petitioner had been expunged by the Minister, Excise and Taxation, Punjab by his orders, An-nexures P-l and P-2. The promotion of the petitioner as Assistant Excise and Taxation Officer from March 5, 1975 shows that the Government had applied its mind and had come to the conclusion that the record and performance of the petitioner was such as to warrant his promotion to a higher post on March 5, 1975, and, therefore, the previous record could not be taken into consideration for the purpose of retiring the petitioner by the impugned order. On the other hand, the learned counsel for the respondent State, Mr. I.S. Tiwana, urged that for the purpose of retirement, the Government was within its jurisdiction to peruse the entire record of the petitioner and come to an independent decision to prematurely retire the petitioner. According to him, the petitioner had earned a bad report regarding integrity in the year 1971-72 on the basis of which the petitioner could be justifiably retired. For our satisfaction, we called for the record regarding the confidential reports of the petitioner. From the perusal of the confidential report of the petitioner for the year 1971-72, it is found that the Excise and Taxation Officer, Sangrur, had no complaint against the petitioner regarding his reputation for honesty and integrity. Regarding overall assessment, the petitioner was placed in category ''B''. The petitioner was also adjudged as "a good executive official". This assessment by the Assistant Excise and Taxation Officer-cum-Officer Incharge, Sales Tax Chech Barrier, Moonak, was agreed to by the Excise and Taxation Officer, Sangrur, as well as the Deputy Excise and Taxation Commissioner, Patiala Division, Patiala. The Excise and Taxation Commissioner, Punjab, seems to have written a few words under his signatures on May 12, 1972 and cut off the same so that it is not possible to make out anything as to what had actually been written by him in the first instance. However, remarks by him on this confidential report are to the following effect:--

"(a) An official of average calibre against whom a number of inquiries regarding false claim of T. A.

(b) Misbehaviour and unauthorised construction of house are pending.

His general reputation is not good."

''A'' part of the comments by the Excise and Taxation Commissioner, Punjab, are written on one side and ''B'' part, on the other side of the confidential report.

Below, these remarks, notes (i) and (ii) duly typed, have also been appended, which are to the following effect:

"(i) Enquiries regarding false claim of T. A. and misbehaviour have been filed by Government vide their memo. No. 925l-ET(5)-73/3027, dated 23-4-75 and orders of joint Excise and Taxation Commissioner, Punjab, vide orders dated 23-2-1973, respectively.

(ii) Enquiry regarding construction of house has been withdrawn by the Government from the Inquiry Officer, Vigilance Department vide their orders dated 22-10-74."

According to the learned counsel for the petitioner, the report for the year 1971-72, explained above cannot be treated as an adverse report against the petitioner. All the officials up to the Deputy Excise and Taxation Commissioner adjudged the petitioner as ''Good'' and according to them there was no complaint against the petitioner regarding his honesty and integrity. According to the remarks of the Excise and Taxation Commissioner, there were enquiries regarding false claim of T. A, and unauthorised construction of house pending against the petitioner on the basis of which the petitioner had been adjudged as, his general reputation is not good." As the petitioner had been later on absolved of all those allegations, therefore, the only conclusion drawn is that the remarks of the Excise and Taxation Commissioner, Punjab, also cannot be construed as adverse against him. There is a good deal of substance in this contention. In the year 1972-73, there was no complaint against the petitioner regarding his honesty and integrity. For the year 1973-74, the petitioner had been adjudged as ''good'' for reputation for honesty and integrity as well as regarding behaviour with subordinates, licensees and the public, by all the authorities upto the Excise and Taxation Commissioner. Regarding overall assessment, he was held to be ''hard working and efficient''. For the year 1974-75, the reputation for honesty and integrity of the petitioner was held to be ''fair'' and regarding overall assessment, he was held to be ''intelligent'' and ''hard working'' and that assessment was agreed to by all the officers upto the Excise and Taxation Commissioner.

5. From the reply filed on behalf of the respondents Nos. 1 to 2, as given in paragraph 13, the petitioner was retired and the impugned order passed by the Government on the basis of the conclusion:

"The petitioner''s records has been thoroughly unsatisfactory. In spite of the entries having been expunged, there are still a good number of adverse entries regarding his work, conduct and integrity." These conclusions are not borne out from the record of the petitioner. According to the reply in paragraph 15 of the written statement, there were a number of complaints received against the petitioner after his promotion on March 5, 1975. We specifically enquired from the learned counsel for the State the alleged complaints. We were informed that only one complaint had been received against the petitioner which was dated

October 3, 1975. That complaint, obviously, was received pafter the impugned order (Annexure P-5) was passed, which is dated October 1, 1975. From all this, we are fully convinced that the authority concerned had not applied its mind to the record of the petitioner so as to warrant the conclusion that it was in public interest to retire the petitioner.

6. It was then contended by the learned counsel for the respondent State that though the petitioner had been promoted as an Assistant Excise and Taxation Officer on March 5, 1975, yet it was within the jurisdiction of the Government to retire the petitioner in public interest after perusing the entire record of the petitioner including the one before the date of his promotion. As a principle of law, the appointing authority is not debarred from perusing the entire record of any employee so as to form an opinion whether to retire him or not under the rules. The scope and ambit of the power of the Government in this regard were exhaustively considered by a Division Bench of this court in Gurdial Singh v. The State of Punjab (1976) 1 SLR 78 . In paragraph 38 of the said judgment, the summary of the conclusion arrived at regarding the various matters in controversy in that case has been given. Whereas the right of Government to retire an employee in public interest has been recognised to the fullest extent according to that decision, it has also been held as follows:--

"An order of premature retirement can be quashed or set aside by a court only if it is either shown to have been actuated by malice or is shown to have been passed in an arbitrary or capricious manner or by an authority not competent to pass such an order under the relevant service rules."

7. Thus it is within the jurisdiction of this court to quash the order of premature retirement in the exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India in case such an order is found to be arbitrary or capricious. From a perusal of the record of the petitioner and the averments made in the written statement filed on behalf of respondents Nos. 1 and 2, we are of the considered opinion that the impugned order (Annexure P-5) cannot be termed anything but arbitrary in the circumstances of this case. We are further of the opinion that the retiring authority did not apply its mind to the record of the petitioner. An extraneous matter like the alleged complaint which was not in existence at the time of the passing of the impugned order (Annexure P-5) was also taken into consideration.

8. For the reasons recorded above, this writ petition is accepted and the impugned order (Annexure P-5) retiring the petitioner is set aside. There will however, be no order as to costs.

B.S. Dhillon, J.

I agree.

