(1964) 05 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2245 of 1963

Khazan Chand Dhamija APPELLANT

Vs

The State of Punjab and Another RESPONDENT

Date of Decision : 14-05-1964

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1964) 05 P&H CK 0010

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : M.S. Jain and H.L. Sarin, for the Appellant; H.S. Doabia, Additional Advocate-General and Messrs. T.S. Doabia and Sukhdeo Singh, for the Respondent

Final Decision : Allowed

Judgement

P.C. Pandit, J.—This is a petition under Articles 226 and 227 of the Constitution filed by Khazan Chand Dhamija challenging the order dated 18th May, 1963 passed by the Chairman, State Agriculture Marketing Board, Punjab, respondent No. 2, retiring him from the Secretaryship of the Market Committee, Giddarbaha, District Ferozepur, with effect from 2nd June, 1963.

2. According to the allegations of the petitioner he was appointed the Secretary of the Marketing Committee on 15th March 1942 and had been working as such since that time. He had been confirmed in this post in the year 1942-43. On the enforcement of the Punjab Agricultural Produce Markets Act, 1961, his services were placed under the control of the State Agriculture Marketing Board, Punjab. Under the old Rules, his retirement at the age of 55 years was due on 3rd February, 1963, but before the date of superannuation; he was given an extension in service for a period of three months with effect from 4th February, 1963 under the old Rules (vide letter No. ESTT/4, dated 24th January, 1963). The Punjab Civil Service Rules had been adopted by the Punjab State Agricultural Marketing Board with regard to the conditions and tenure of service of the

Secretaries of the Market Committees working under its control. The Punjab Government decided to raise the age of superannuation of its employees from 55 years to 58 years with effect from 1st December 1962 vide its letter No. 5410-3GS-63/11926, dated 28th March, 1963, from the Financial Commissioner (Planning) and Additional Chief Secretary to Government, Punjab, to all Heads of Departments in Punjab etc. In this letter, it was also stated that the Government servants, who were on extension in service on the date of the issue of these orders, might be allowed to continue in service up to the age of 58 years. The aforesaid age of superannuation as raised by the Punjab Government was also adopted by the State Agricultural Marketing Board, Punjab vide Resolution No. 13, dated 4th April, 1963 and intimation to this effect had been sent to all the Market Committees in the Punjab (vide letter No. ESTT/18562-18686, dated 20th May, 1963). In view of the aforesaid letters of the Punjab Government and the State Agricultural Marketing Beard, the petitioner was actually entitled to continue in service up to the age of 58 years that is. 23rd February, 1966. The petitioner''s record during the entire period of his service for 21 years had been excellent and the remarks given by the superior officers and the Chairman of the Market Committees from time to time supported this fact. The petitioner had been granted the annual increment with effect from 1st April, 1963. While exercising his duties honestly and diligently as the Secretary of the Market Committee, Abohar, the petitioner requested the cotton factory owners of Abohar on 24th October 1962 to maintain a register of processors under Rules 30 2) of the Punjab Agricultural Produce Markets Rules, 1962, in respect of the imported agricultural produce and pay market fee due thereon. Several reminders were also issued to them, but without any effect. Instead, they, who were very influential persons and had access to the Ministers, started creating trouble for the petitioner in the enforcement of the provisions of the Punjab Agricultural Produce Markets Act, by making false and frivolous complaints against him. In view of their mischievous activities, the petitioner did not like to spoil(sic) respondent No. 2 to transfer him to some other (sic) control. He was, accordingly, transferred to Giddar-(sic) ok charge on 11th April, 1963. On 29th April, 1963 (sic) petition to respondent No. 2 that in view of the age of (sic) having been raised to 58 years, it was presumed that he (sic) automatically continue in service after the period of his extension (sic) Respondent No. however, informed the petitioner vide (sic) No. ESTT/8402-06, dated 18th May, 1963 that it was not possible (sic)grant any further extension in service beyond 2nd June, 1963, on which date the petitioner was required to hand over the charge of his post. After the receipt of the aforesaid letter dated i8th May, 1963, the Chairman, Market Committee, Giddarbaha, convened a meeting of the Members of the Committee on 25th May, 1963 and passed a unanimous resolution No. 149 to the effect that respondent No. 2 be requested to retain the petitioner in service, because he had worked very efficiently and had made lot of improvements in that Market Committee. The Chairman of the Committee, consequently, requested respondent No. 2 not to retire the petitioner and retain him in service for the unexpired period, The aforesaid action of respondent No. 2

in not allowing the petitioner to work in his capacity as Secretary of the Market Committee seemed to have been done mala fide at the instance of the Minister for Agriculture, whom the cotton factory owners of Abohar had approached for removing the petitioner from service. The petitioner then made a representation to respondent No 2 for reconsideration of his case, but since no action had been taken on the same, he had to hand over the charge to the Head Clerk of the Market Committee, Giddarbaha, under protest, in compliance with the order dated 18th May, 1963. Thereafter, on 17th June, 1963 the petitioner made a further representation to the Minister for Agriculture. On 22nd July, 1963 the petitioner received a letter from respondent No. 2 to the effect that the matter had been considered and it was not possible to take any further action at that belated stage. This led to the filing of the present writ petition on 7th December 1963.

3. In the return filed by respondent No. 2, it was stated that the extension in service for three months given to the petitioner was, in fact, three months'' notice from 4-2-1963 as required under the Rules. However, he was given another month''s notice vide order No. ESTT./4, dated 24-1-1963, but it was asserted that the new rule was not applicable to the petitioner. It was further mentioned that the petitioner was on extension from 4-2-1963 and it was discretionary with the Board to keep him in service or not. The petitioner was given one month''s notice and thereafter retired according to the conditions of his service. He had no legal right to continue in service up to the age of 58 as the new rule was not applicable to him. There were several complaints of serious nature against the petitioner, but as he had reached the age of superannuation, the Board did not consider it proper to take any disciplinary action against him and permitted him to retire. It was admitted that the petitioner applied for his transfer from Abohar and he was then sent to Giddarbaha by the Chairman of the Board. The impugned action taken against the petitioner, according to the respondent, was perfectly valid and in accordance with the conditions of his service. Respondent No. 2 had full power to retire the petitioner as he was on extension and it was as a matter of grace that he was given one month''s notice. The writ petition, according to respondent No. 2, was a belated one and the proper remedy of the petitioner was by way of a civil suit, if he was so advised.

4. Learned counsel for the petitioner has raised three contentions before me (1) that before retiring him from service, he should have been given three months'' notice as provided in paragraph 6 of the Punjab Government letter dated 28-3-1963, referred to above (2) that he should have been heard before the impugned order was passed by respondent No. 2 and (3) that the impugned order was mala fide, because it was passed at the instance of the Minister for Agriculture on the complaints made by the cotton factory owners of Abohar since he had asked them to maintain a register of processors under Rules 30(2) of the Punjab Agricultural Produce Market Rules, 1962, in respect of the imported agricultural produce and pay market fee due thereon. Learned counsel for respondent No. 2, on the other hand, submitted that the new Rules were not

applicable to the petitioner, because the resolution adopting these Rules was passed by the Board on 4-4-1963 and the same was communicated to the Market Committees on 20-5-1963 and it was from this date that the new Rules came into force. Before this date, the petitioner had retired on 3-2-1963 and even the further extension of three months given to him expired on 3-5-1963. The extension of one month from 3-(sic)-1963 was also given to him on 18-5-1963. Even if it be held that the new Rules were applicable, learned counsel submitted that action was taken by respondent No. 2 on the basis of paragraph 4 and not 6 of the Punjab Government letter dated 28-3-1963 and, therefore, three months'' notice was not necessary. He further submitted that no hearing was necessary before passing the impugned order, because it was purely discretionary with the Board to retire the petitioner before attaining the age of 58 years and it was not his right to continue in service up to that age. Lastly, it was submitted that it was wrong that the order was mala fide and, as a matter of fact, the allegation in the petition itself also on this point is very vague, because it is stated that the impugned action "seems to have been done mala fide at the instance of the Minister for Agriculture", whom the cotton factory owners of Abohar had approached for removing the petitioner from service.

5. The letter of the Punjab Government dated 28-3-1964 is in the following terms :

Subject:-Age of compulsory retirement raising of.

I am directed to say that the question of raising the age of compulsory retirement has been considered by the Government and it has been decided to raise the age of compulsory retirement of State Government employees from 55 years to 58 years with effect from the 1st December, 1962, subject to the exception that, the age of retirement of Patwaris. ministerial staff and Class IV Government Employees including new entrants, will remain 60 years in case this practice is being followed according to the rules governing their service conditions.

2. A Government employee who attained the age of compulsory retirement on or after 1-12-1962 or who was on leave preparatory to retirement or proceeded on such leave on or after will not be entitled to the benefit of the increased age or compulsory retirement unless he is permitted to resume duty after the appointing authority is satisfied that he is efficient and physically fit.

3. Government employees who had already retired before 1-12-1962 or who were on refused leave on 1-12-1962 beyond the date of compulsory retirement are not entitled to resume duty under these orders. Those employees, however, who on 1-12-1962 were on refused leave beyond the date of compulsory retirement may be re-employed, if fit.

4. Government employees, who are on extension in service on the date of the issue of these orders may be allowed to continue in service up to the age of 58 years.

5. Scientific and technical personnel may be given extension in service or re-employment beyond (sic)8 years subject to the instructions issued in the matter from time to time.

6. Notwithstanding anything contained in the foregoing paragraphs, the appointing authority may require a Government employee to retire after he attains the age of 55 years on three months'' notice without assigning any reason. This will be in addition to the provisions already contained rule 5 32 of the Punjab C.S.R. Vol. II to retire an Officer who had completed 10 years qualifying service and will normally be exercised to weed out unsuitable employees after they have attained the age of 55 years. A Government employee may also after attaining the age of 55 years, voluntarily retire after giving three months notice to the appointing authority.

7. Detailed instructions for regulating the period between the date of compulsory retirement of the Government employees who have already attained the age of compulsory retirement and the date they are permitted to resume duty by the appointing authority under paragraph 2 above, and other conditions will follow.

8. The orders shall apply to all Government employees in the integrated State.

9. Necessary amendments to the rules will be issued separately, in due course.

10. These orders issue in consultation with the Finance Department vide their U.O. 723-(2) FRI, 63 dated the 8th March, 1963, and U.O. No. 8736-FRI-63, dated 28th March, 1963.

It is clearly mentioned in paragraph 1 of this letter that it has been decided to raise the age of compulsory retirement of State Government employees from 55 to 58 years with effect from 1-12-1962. It is true that the Agricultural Marketing Board had decided to raise the retirement age of the Board/Market Committees employees up to 58 years on the same terms and conditions as laid down by the Punjab Government for its employees by resolution No. 13 dated 4-4-1963. It is further true that this resolution was communicated to the various Market Committees on 20-5-1963. But the moment the decision was taken that the retirement age of the employees of the Board/Market Committees had been raised on the same terms and conditions as was done in the case of Punjab Government Employees, the decision became effective with effect from 1-12-1962 as mentioned in the Punjab Government letter dated 28-3-1963. Therefore, these rules applied to the petitioner as well, who was admittedly in service on this date. Paragraph 4 of the Punjab Government letter only states that the Government employees who were on extension in service on the date of the issue of this letter, might be allowed to continue in service up to the age of 58 years. All that it means is that the petitioner, who was also on extension in service on 28-3-1963, could remain in service upto 58 years. Paragraph 6 of this very letter, which starts with the words "notwithstanding anything contained in the foregoing paragraphs", however, mentions that the Appointing Authority may require a Government employee to retire after he attains the age of 55 years on three months'' notice without assigning any reason. This means that the Appointing Authority has an absolute right to retire a Government employee after he has reached the age of 55 without assigning any reason, subject to this condition the he would be given three months'' notice. This has not been done in the present case. In paragraph 2 of the written statement on merits, the position taken by respondent No. 2 was that extension in service by three months given to the petitioner was, in fact, three months'' notice, but this is obviously incorrect, because this extension was given on 24-1-1963 when the Punjab Government letter was not even in existence at that time, since it was issued on 28-3-1963. Therefore, the requirements of paragraph 6 of the Punjab Government letter have not been complied with in the present case and the impugned order is, therefore, liable to be quashed on this ground alone.

6. In this view of the matter, it is not necessary to determine the other two points raised by the learned counsel for the petitioner.

7. The result is that this petition succeeds and the impugned order is set aside. In the circumstances of this case, however, I will make no order as to costs in these proceedings.