
(2013) 04 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5398 of 2011

Khurshid Ahmed, ASI

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Penal Code, 1860 (IPC) — Section 120B, 148, 149, 279, 307

Citation : (2013) 2 PLR 776 : (2013) 3 SCT 589

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Y.P. Malik, for the Appellant; Harish Rathee, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.—The petitioner who was serving as a Sub Inspector of Police in the Police Department, State of Haryana has impugned in the instant writ petition a notice dated 7.2.2011 issued by the Superintendent of Police, Palwal whereby in the light of the provisions contained in Rule 3.26(d) of the Punjab Civil Services Rules, Vol. 1, Part 1 and Rule 9.18(1) of the Punjab Police Rules as applicable to the State of Haryana, a decision has been taken to compulsorily retire him w.e.f. 7.5.2011 upon attaining the age of 55 years in public interest. Brief facts of the case are that the petitioner was enrolled as a Constable on 13.3.1979. He was promoted as Head Constable on 6.4.1990 and upon having passed Intermediate School Course, he was further promoted as Assistant Sub Inspector on 23.12.2002. It has been pleaded that the petitioner has even qualified the Upper School Course in the year 2009. The categorical averments made in the petition are to the effect that no adverse ACR has ever been conveyed to him in his 32 years service and it is only minor penalties in the nature of censure in the year 2008 and stoppage of two increments with temporary effect, vide order dated 21.2.2010, have been inflicted upon him.

2. Learned counsel for the petitioner while assailing the action of the State in compulsorily retiring the petitioner would contend that the grounds for compulsory retirement such as inefficiency, dishonesty, corruption or mis-conduct are not made out in the present case. Learned counsel would further contend that the integrity of the petitioner has never been doubted in his entire service career and, as such, there could be no basis for taking the decision to compulsorily retire him at the age of 55 years in the public interest. Reliance has also been placed upon the instructions dated 14.3.2006 issued by the Director General of Police, Haryana, Annexure P2, on the subject of extension in service beyond the age of 55 years. Learned counsel, while adverting to the instructions dated 14.3.2006, would contend that only such employees were vested with the right to continue in service beyond the age of 55 years who have earned 70% or above "good" reports and whose integrity has not been doubted in the last ten years. The case set up on behalf of the petitioner is that the petitioner possesses an unblemished record of service and his integrity having never been doubted, the impugned notice as regards compulsory retirement would be in clear violation of the instructions issued by the Police Department.

3. Per contra, Mr. Harish Rathee, Senior Deputy Advocate General, Haryana would refer to the common written statement filed on behalf of all the respondents and would seek to justify the action in compulsorily retiring the petitioner by stating that the petitioner has had a chequered service record. Towards such assertion, learned State counsel would submit that the petitioner had been awarded the punishment of censure vide order dated 11.4.2000. The petitioner had been awarded the punishment of stoppage of two annual increments with temporary effect vide order dated 5.1.2008. He was again awarded the punishment of censure on 22.1.2008 and in the recent past, in terms of order dated 30.4.2011, punishment of stoppage of two annual increments with temporary effect had also been awarded. Learned State counsel has argued that the aforementioned blemishes collectively have formed the basis for taking the decision not to retain the petitioner in service beyond the age of 55 years. It has also been argued on behalf of the State that such decision has been taken in public interest and not by way of punishment and, as such, the issue broadly would not fall within the scope of judicial review under Article 226 of the Constitution of India.

4. Learned counsel for the parties have been heard at length and the pleadings on record have been perused.

5. The principles governing compulsory retirement were culled out by the Hon"ble Supreme Court instate of State of Gujarat Vs. Umedbhai M. Patel, , and it was held in the following terms:--

The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:--

(i) Whenever the services of a public servant are no longer useful to the general

administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

6. The scope of judicial scrutiny in matters relating to compulsory retirement was also examined by the Hon'ble Apex Court in *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, and it was held that even though the Court would not examine the matter as an Appellate Court but an order of compulsory retirement would be open to interference if the same was vitiated by malafides, if it was based on no evidence or if the same was arbitrary i.e. if no reasonable person could form the requisite opinion on the given material.

7. In the present case, the decision to compulsorily retire the petitioner, as per the written statement filed on behalf of State, is based on two orders of censure and two other orders of stoppage of annual increments with temporary effect. Such orders are in the nature of minor penalties having been awarded to the petitioner. The first punishment of censure awarded to the petitioner was with regard to allegations of the petitioner having not conducted proper investigation in case FIR No. 11 dated 11.1.1998, under Sections 148, 149, 452, 506 of the Indian Penal Code. The penalty of stoppage of two annual increments with temporary effect vide order dated 5.1.2008 was in relation to a lady accused having succeeded to run away from the custody of one lady Constable Sharmila and the petitioner while they were returning back after having produced the said accused in the Court of the Illaqa Magistrate, Palwal in case FIR No. 264 of 2007 registered under Sections 338, 120-B of the Indian Penal Code. The second punishment of censure awarded to the petitioner in terms of order dated 22.1.2008 was again pertaining to allegations of negligence during the course of investigation of case FIR No. 296 dated 20.9.2007 registered under Sections

148, 149, 307, 323, 325, 452, 506 of the Indian Penal Code at Police Station Camp Palwal. Still further, the recent punishment of stoppage of two annual increments with temporary effect vide order dated 30.4.2011 emanated from the allegation that the petitioner during the process of investigation of case FIR No. 65 dated 10.2.2008, under Sections 279, 337 of the Indian Penal Code had failed to trace out an offending vehicle as well as its driver.

8. The minor penalties inflicted upon the petitioner as against the backdrop of charges, that have been briefly noticed, do not reflect adversely on the integrity of the petitioner. They do not even point to any major dereliction of duty. The short question that would require consideration is as to whether such minor penalties of censure and stoppage of two increments with temporary effect could be construed as sufficient material to form an opinion to compulsorily retire the petitioner by terming him as deadwood and, as such, not to be retained in service beyond the age of 55 years?

9. Vide order dated 23.4.2012, this Court had directed the State counsel to place on record the gist of annual confidential reports of the petitioner of the preceding ten years from the date of passing of the order of his compulsory retirement. In compliance of the order dated 23.4.2012, an affidavit dated 24.7.2012 of Jagat Singh, HPS, Superintendent of Police, Palwal was placed, on record. The preceding ten years record of the petitioner is as follows:

img

10. Apparently, the petitioner has earned more than 70% good reports in the last ten years prior to the issuance of the impugned order of compulsory retirement. It is also the admitted case that the integrity of the petitioner has never been doubted in his entire service tenure. The respondent-Department itself having formulated a policy on the subject of compulsory retirement in the light of issuance of the instructions dated 14.3.2006, Annexure P2, would be bound by the same. If a certain yardstick has been laid for arriving at a certain kind of decision, the same would have to be substantially complied with even if the instructions dated 14.3.2006 are held to be directory and advisory in nature. Such instructions if applied to the facts of the present case would clearly show that the petitioner having secured 70% good or better reports in the last ten years and his integrity having not been doubted, was clearly vested with the right to continue in service even beyond the age of 55 years. Such instructions also envisage that minor punishments are to be avoided and would not, accordingly, be given such a weightage so as to form an opinion as regards non-retention of an employee beyond the age of 55 years.

11. This Court is of the considered view that the orders of censure as also the imposition of minor penalty of stoppage of increments with temporary effect, cannot be construed as sufficient material so as to justify a decision to hold the petitioner to be a deadwood and thereby to compulsorily retire him from service. The impugned order dated 7.2.2011, Annexure P1, is held to be arbitrary and

based on no material.

12. For the reasons recorded above, writ petition is allowed. The impugned order dated 7.2.2011, Annexure P1, is quashed. The petitioner is held entitled to all the consequential benefits flowing from the setting aside of his order of compulsory retirement. Petition allowed.