
(2001) 09 P&H CK 0140
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition 3289 of 2001

Mawasi Ram

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Punjab Police Rules, 1934 — Rule 12.1, 13.4(2), 13.9, 13.9(1)

Citation : (2001) 09 P&H CK 0140

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Jaivir Yadav and I.S. Balhara, for the Appellant; Ritu Bahri, DAG, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sudhalkar, J.—This judgment shall dispose of three writ petitioners (bearing Nos. CWP 3289, 6196 and 8538 of 2001). The petitioners in these cases were working a Sub Inspector of Police when they were compulsory retired from service. They joined at the grass-root level of constable and earned promotions as Head Constable/Assistant Sub Inspector and Sub Inspector. The only point urged before me by the learned counsel for the petitioners is that the impugned orders of relirement were passed by the Superintendent of Police and, therefore they are passed by the authority not competent to retire them and hence the same are illegal and, therefore, they should be quashed.

2. Learned counsel for the petitioners argued that the Deputy Inspector General would be the competent authority to pass the order of retirement. Counsel for the respondents has relied on rule 12.1. of the Punjab Police Rules (hereinafter referred to as the "Rules"). It has mentioned the appointing authority of certain class of police officers. According to the rule for Sergeants, Sub Inspectors and Assistant Sub Inspector, Superintendent of Police and Deputy Superintendent (Administrative), Government Railway Police and Assistant Superintendent, Government Railway Police are the authority to whom the power of appointment

is delegated. Relying on this, learned State counsel urged that the contention raised by the petitioner cannot be substantiated.

3. So far rule 12.1 of the Rules is concerned, there is no dispute from the side of the petitioners. However, they contend that the rule 12.1 of the Rules is applicable to those police officers who are directly appointed to the posts of Sub Inspector or Assistant Sub Inspectors but does not apply to the promotees to the said posts. For promotion to the post of Assistant Sub Inspector, the rule is 13.9 of the Rules (there is a difference in rule 13.9 applicable to the State of Haryana and rule 13.9 applicable to the State of Punjab). The rule 13.9 applicable to the State of Haryana is as under :

"13.9. List D. Promotion to Assistant /Sub Inspector:- (1) A list shall be maintained in each district in card index Form 13.9(1) of those head constables who have passed the lower school course and the intermediate School course at the Police Training School and are approved by the Deputy Inspector-General as eligible for officiating or substantive promotion to the rank of Assistant Sub Inspector. No head constable shall be admitted to this list who is not thoroughly efficient in all branches of the duties of a constable and head constable and of established integrity.

(2) Officiating promotion to the rank of assistant Sub Inspector shall be made from the list prescribed in Sub-rule (1) as far as possible, so as to give each man a trial in the duties of the higher rank. Substantive promotion shall be made by the Deputy Inspector General in accordance with the principles prescribed in Rule 13.1 and officiating promotion shall be made in accordance with Sub-rule 13.4(2).

(3) Half-yearly reports in Form 13.9(3) on all head constables in this list shall be furnished on the 15th April and the 15th October, to the Deputy Inspector General."

4. Learned counsel for the petitioners has relied on the case of Karnail Singh v. State of Haryana 1989(2) SLR 345. In that case learned Single Judge of this Court held that when the petitioner was appointed as a Sub Inspector of Police by the Deputy Inspector General and the Deputy Inspector General also allowed him to continue in service beyond 55 years and the representation against adverse remarks was pending, as no time was given to represent against the adverse remarks communicated recently, the Superintendent of Police could not be considered to be the appointing authority of the petitioner and the order of compulsory retirement of the petitioner passed was held to be without jurisdiction.

5. Counsel for the petitioner have also relied upon Hira Lal v. State of Haryana 199(1) RSJ 88. It has been held in that case that when the petitioner was a confirmed Sub Inspector, the order of compulsory retirement passed by the Superintendent of Police was bad because the appointing authority as per rules was the Deputy Inspector General, In that case, the contention that the petitioner was promoted by the Superintendent of Police and hence was rightly

compulsorily retired by him was repelled. Counsel for the petitioner relied on a judgment of the Division Bench of this Court in *Ram Lal v. State of Haryana* 1997(2) SLR 421. That was a case of reversion by the authority subordinate to the appointing authority. The appointing authority in that case was DIG and the reversion order was passed by the SP, which was held to be bad.

6. Learned counsel for the State has relied upon the judgment of the Division Bench of this Court in the case of *Bhagwan Doss v. State of Haryana*. CWP No. 13361 of 1999. In that case the Sub Inspector of Police was compulsorily retired by the Superintendent of Police. The argument advanced in that case was that he could only be retired by the Director General of Police with the prior approval of the State Government. It has been held by the Division Bench that under Rule 9.18(1) of the Rules if, a person completes 25 years of service, the Inspector General of Police with the prior permission of the State Government can compulsorily retire a police officer. However, Rule 9 18(1)(2) is independent of it.

7. Counsel for the petitioners have relied upon the case of *ASI Amar Singh v. State of Haryana*, CWP No. 11606 of 1998. That was a case in which the Sub Inspector was compulsorily retired by the Superintendent of Police and it was contended that the Superintendent of Police had no jurisdiction to do so.

8. In the case of *Hira Lal (Supra)*, it has been observed by the Division Bench that the notice which has been issued by the Superintendent of Police, was not sustainable on the ground of having been issued by the authority, which was not competent to pass such an order. It has been argued on behalf of the petitioners that in the case of *Bhagwan Dass (supra)*, it is not clear whether the petitioner was promoted to the post of ASI or was directly appointed.

9. The judgments cited by learned counsel for the petitioners substantiate the argument raised by them. It may be noted that the judgments in the cases of *Bhagwan Dass (supra)*, and *Amar Singh (supra)* are by the same Division Bench that in the case of *Amar Singh* being the latter one. The question in controversy was not in direct CWP Nos. P-7 consideration in the case of *Bhagwan Dass (supra)*.

10. In view of the above reasons, these writ petitioners deserve to be allowed. Accordingly, those petitioners are allowed and the impugned orders of compulsory retirement of the petitioners are set aside.