
(2013) 07 P&H CK 0839
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 20568 of 2008 (O and M)

Mohinder Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 07 P&H CK 0839

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : Vivek Sharma, for the Appellant; Meenakshi Verma, Additional A.G. Haryana, for the Respondent

Judgement

Mahesh Grover, J.—The petitioner impugns the order dated 14.8.2008 (Annexure P-10) by which he has been compulsorily retired from service. The respondents have justified their action by referring to some of the ACRs of the petitioner which are adverse to him.

2. The facts of the case would indicate that the petitioner was an office-bearer of the Police Union and he claims that he has been victimized when a particular dispensation was at the helm of affairs of the State Government.

3. Initially, the services of the petitioner were terminated on 23.12.1990, but he was reinstated in the year 1991 after he approached this Court by way of a writ petition in which the order of termination was stayed and liberty granted to the petitioner to move a representation to the State Government. In the meantime, the petitioner's representation was also answered by the State Government and he was reinstated in the year 1991.

4. The petitioner was once again dismissed from service in October, 1991, but was reinstated subsequently in the year 1993. Thereafter, he has been subsequently retired from service in 2003 and he impugns this order by way of C.W.P. No. 17800 of 2003.

5. It would be interesting to note the observations made by this Court in the aforesaid proceedings:-

Civil Writ Petition No. 17800 of 2003

Present:- Mr. P.S. Patwalia, Senior Advocate assisted by

Mr. D.S. Patwalia, Advocate for the petitioner.

Mr. Harish Rathee, advocate for State of Haryana.

We have heard learned counsel for the parties at length.

Mr. Patwalia vehemently argues that no adverse annual confidential report has been communicated to the petitioner for the last 10 years. Under the relevant instructions, the petitioner could not be prematurely retired if 7 out of 10 ACRs in 10 years preceding the order of compulsory retirement, are found to be Good or above.

In the present case, the order of premature retirement has been passed on August 6, 2003. Therefore, the relevant record would be from August 2003 backward till 1993. Even if the reports for the years 1994-95 and then 1995-96 are taken into consideration, still there would be no material on the basis of which the order of premature retirement of the petitioner could have been passed. According to the learned counsel the ACRs for this period have been deliberately split into six monthly reports to increase the number from two ACRs to four ACRs. Therefore, the four reports should be treated as only two.

Learned counsel for the petitioner has also brought to the notice of this Court the order passed by a Division Bench of this Court on May 26, 2004. On that day the Division Bench had observed as under:-

Heard the learned counsel and perused the annual confidential reports of the petitioner. The respondents have heavily relied on the entries recorded in the annual confidential reports of the petitioner for the years 1994-95 and 1995-96 and punishments of censure to justify his compulsory retirement at the age of 55 years.

We are prima facie of the opinion that the compulsory retirement of the petitioner is legally unsustainable because no tangible material is available on the record to show that the competent authority had taken into consideration good/very good reports earned by the petitioner in the year immediately preceding his compulsory retirement. However, we do not consider it proper to finally pronounce the legality of the impugned order because Shri Vijay Dahiya, learned Assistant Advocate General, Haryana says that he may be given two days time to summon the record of the Screening Committee. We accept his request, put up on 29.5.2004.

Sd/- G.S. SINGHVI JUDGE Sd/- K.S. GREWAL JUDGE.

In view of the above, the respondents ought to have reconsidered the entire

matter, in the spirit in which this Court had made the observations.

At this stage, Mr. Rathee seeks short adjournment to find out as to whether the respondents are prepared to reconsider the matter in view of the above observations made by the Division Bench and by this Bench in the present order.

Put up on 8.4.2005.

A copy of this order be given Dasti to Mr. Rathree, Advocate for the State of Haryana under the signature of the Court Secretary.

Sd/- (S.S. NIJJAR) JUDGE Sd/- (M.M. AGGARWAL) JUDGE.

March 29, 2005

6. Subsequently, this petition was disposed of on the strength of the statement made by the learned counsel for the State who contended that the recall of the impugned order of compulsory retirement was under consideration of the authorities.

7. However, no such re-consideration took place in favour of the petitioner which led to the filing of the instant petition.

8. Learned counsel for the petitioner states that if the service record of the petitioner is to be seen, then except for the initial entries, all the subsequent entries immediately prior to the passing of the impugned order are "Good" and he has been assessed as an honest and efficient officer. He thus, contends that the petitioner was having 70% good reports in the preceding 10 years prior to the passing of the impugned order of compulsory retirement.

9. The action of the respondents is thus totally unjust and unsustainable.

10. This Court had summoned the record and has perused the service record of the petitioner and finds that the factual aspect of the petitioner having 70% good reports is well-founded. Except for the two entries for the year 1993-94, 1995-96, entries for the subsequent period till 2003, the petitioner is having "Good" reports. The entries prior to 1995 cannot be taken into consideration as the petitioner was reinstated into service despite the existence of a few adverse remarks against him.

11. Having regard to the facts in their totality, I am of the view that the respondents have resorted to an action which is highly arbitrary and unsustainable and is a result of acute victimization of the petitioner. There being no sustainable reasons to support the impugned order, I am of the opinion that the same deserves to be set aside. Ordered accordingly. The writ petition is accepted and the petitioner is directed to be reinstated in service with effect from the date when the impugned order was passed with all the consequential benefits arising therefrom. Since the petitioner has been unjustifiably kept out of service, the remarks which are completely unsustainable and for the reason that the petitioner has been victimized in a brazen manner, the respondents are burdened

with costs to the tune of Rs. 50,000/- to be paid to the petitioner as compensation within two months from today. The petitioner shall also be entitled to interest on the arrears at the rate of 6% per annum from the date the benefits became due till the date of realizations.