
(1986) 05 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No: 9 of 1976

Sain Ditta

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 21-05-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 173, 34, 452
Police Act, 1861 — Section 29

Citation : (1986) 15 ILR HP 363

Hon'ble Judges : T.R. Handa, J

Bench : Single Bench

Advocate : Om Parkash Sharma, for the Appellant; M.S. Chandel, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

T.R. Honda, J.—In this petition under Articles 226/227 of the Constitution, the petitioner seeks in main the quashing of the order of his premature retirement passed under Fundamental Rule 56(j) by the Deputy Commissioner, Kangra (Respondent No. 2) and a copy of which order is found at Annexure-A.

2. The petitioner, Sain Ditta at the relevant time was holding the post of an Assistant in the Office of Respondent No. 2 in a substantive capacity, having been confirmed against that post with effect from 1-3-1968. He was due to attain the age of 55 years on 10-11-1973. Some time before this date, Respondent No. 2 considered the case of the petitioner along with his other colleagues falling in the same age group with a view to decide whether they should be allowed to continue in service beyond the age of 55 years. After such consideration Respondent No. 2 passed an order on 13-6-1973, copy found at Annexure-D allowing the petitioner and two other Assistants of his office named therein to continue in service till they attained the age of 58 years. In spite of this specific order along with the petitioner to continue in service till the age of 58 years,

Respondent No. 2 on 19-11-1975 passed the impugned order which had the effect of retiring the petitioner from service with effect from 20-11-1975, that is, about a year before he was to attain the age of superannuation.

3. The petitioner claims that his entire service record right from the date of his joining service till his retirement vide the impugned order was free from blemish. Not only that, the entries earned by him in his Annual Confidential Reports speak very high of his efficiency, integrity, sense of discipline and relations with his colleagues. In fact it was influenced by this service record of the petitioner that Respondent No. 2 had passed his earlier order found at Annexure-PD allowing him to continue in service till the age of 58 years. The further claim of the petitioner is that even after he crossed the age of 55 years, he continued to discharge his duties with the same zeal and efficiency and to the entire satisfaction of his superiors. In view of the work and conduct of the petitioner, as stated above, and which were the main, rather the only considerations for exercise of his jurisdiction by Respondent No. 2 under F.R. 56(j), the impugned order prima-facie appears to have been passed for totally extraneous considerations and is, therefore, illegal and unsustainable.

4. The Respondents concede that the service record of the petitioner is unblemished and that the entries in his ACRs certify his efficiency, integrity and sense of discipline. They also admit that the earlier order dated 13-6-1973 found at Annexure-PD was passed by Respondent No. 2 in view of the good service record of the petitioner. The contention of the Respondents, however, is that after he crossed the age of 55 years, the petitioner could not maintain the same standard of his efficiency as he had shown earlier and, therefore, it was considered in public interest within the meaning of F.R. 56(j) to retire him from service forthwith. In support of the contention that the petitioner had failed to maintain the standard of his efficiency after crossing the age of 55 years, the Respondents pleaded that while posted as Pong Dam Assistant in the office of Respondent No. 2, the petitioner took no interest in the work assigned to him. He was, therefore, transferred and posted as Record Keeper vernacular office where again he exhibited lack of interest and was unable to shoulder even the light work of the seat. As per the Respondents, the petitioner after the issue of the order found at Annexure-PD often remained on leave. During the period 3-10-1973 till 20-11-1975 the petitioner was on leave for a total number of 293 days as detailed in para No. 4 of the return filed on behalf of the Respondents. This, according to the Respondents, reflected lack of interest in his work on the part of the petitioner. It was, in these circumstances, that the appropriate authority, namely, Respondent No. 2 formed the opinion that the petitioner had outlived his utility and it was in public interest to retire him prematurely.

5. The petitioner in his rejoinder to the return filed by the Respondents, while admitting that he remained on leave for the period stated by the Respondents, denied if there was any fall in his efficiency or if his work and conduct were adversely commented upon by any of his superiors including Respondent No. 2.

On the other hand he claims to have cleared various arrears existing on the seats on which he was made to work. With respect to the leave his plea was that he had availed of the leave which was due to him and only after the same had been sanctioned in his favour by the competent authority. The fact that he had availed of the leave due to him under the rules and which had been duly sanctioned was certainly not a relevant factor for considering the desirability to retain the petitioner in service.

6. In order to appreciate the rival contentions it looks expedient to extract in extenso the language of the impugned order as also the relevant provisions of F.R. 56(j) under which it purports to have been passed. The impugned order reads:

Whereas I, M.K. Kaw, Deputy Commissioner, Kangra, am of the opinion that it is in the public interest to do so;

Now, therefore, in exercise of the powers conferred by clause (j)(ii) of Rule 56 of the Fundamental Rules, I, M.K. Kaw, Deputy Commissioner, Kangra, hereby give notice to Shri Sain Ditta, Assistant of my office that he having attained the age of fifty-five years on 10-11-1973 shall retire from service with effect from the forenoon of 20th November, 1975.

Sd/- Deputy Commissioner, Kangra. 19-11-1975

R. 56(j) is in these terms:

F.R. 56(j). Notwithstanding anything contained in this rule the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice;

(i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity, or in a Group 'C' post or service in a substantive capacity, but officiating in a Group 'A' or Group 'B' post or service and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years:

7. It is true that prima-facie F.R. 56(j) confers an absolute right on the appropriate authority to retire a public servant at any time after he attains the age of 55 years. It is also true that such an order neither causes any stigma on the concerned Government servant nor entails any civil consequences nor can it be termed as penal. It, however, must not be forgotten that the right vested in the appropriate authority to retire a public servant after he attains the age of 55 years under F.R. 56(j), though described in the rules as 'absolute' cannot be taken as absolute in the sense that it can be exercised arbitrarily or capriciously. Absolute power in that sense is anathema under our constitutional scheme and

has always been considered as violative of Article 14 of the Constitution. Before the jurisdiction vested in the appropriate authority to retire a government servant in terms of F.R. 56(j) can be exercised, it is obligatory on the part of the appropriate authority to form an opinion that it is in public interest to do so. In forming an opinion of this type for, exercising powers under F.R. 56(j), the appropriate authority must act bona fide keeping in view the objective behind the grant of such powers. The objective obviously is to weedout the worthless incumbents who have outlived their utility and to replace them by more efficient ones. It cannot be gainsaid that the conduct and work of a Government servant are the most relevant factors which need consideration in forming the opinion whether it would be in public interest to retire him. While assessing such conduct and work of the government servant, his service record and Annual Confidential Reports can certainly not be ignored. In fact they alone would provide the relevant material for taking a decision on the above point. Where such record demonstrates that the opinion formed is not objective, the irresistible presumption would be that the decision to retire the Government servant had been taken under the influence of extraneous considerations. A decision founded on such extraneous considerations would certainly not meet the requirements of F.R. 56(j) which, as earlier stated, requires the appropriate authority to form a bona fide opinion on the point whether it would be in public interest to retire a particular Government servant. The legal position as stated above may be summarised thus. In order to invoke the jurisdiction of ordering premature retirement of a Government servant under F.R. 56(j), the appropriate authority must, in the first instance, form its opinion that it is in public interest to do so. It may be observed that all that public interest requires is that administration of the Government and functioning of its services should be carried out efficiently and properly. Such opinion must be formed by the appropriate authority bona fide and objectively after taking into consideration all the relevant factors and material which are in the true sense germane in arriving at the conclusion whether the concerned Government servant continues to maintain the desired standard of efficiency and integrity or whether he has outlived his utility.

8. The legal position summarised above is accepted on either side. The short question, therefore, which now calls for examination is whether on the facts of the instant case as they stand admitted or proved on the record, the impugned order can be said to have met the requirements of F.R. 56(j)?

9. For an answer to this question the main, rather the only point, which calls for consideration is whether the opinion ormed by Respondent No. 2 and as stated in the impugned order ?that it was in public interest to do so? had been formed objectively and bona fide taking into consideration the service record of the petitioner and other relevant factors reflecting of his efficiency and integrity. The contention of the petitioner, as noted earlier, is that he had maintained the standard of his efficiency and integrity and had been earning good reports even after he had attained the age of 55 years. The counter contention of the Respondents is that after attaining the age of 55 years, the petitioner showed

lack of interest in his work and Respondent No. 2, therefore, correctly and bona fide formed his opinion that the petitioner had outlived his utility and required to be weeded out. It may be observed that in so far as the service record and work and conduct of the petitioner till he attained the age of 55 years is concerned, the parties are agreed that the same was good and it was on an assessment thereof that the order found at Annexure-PD was passed by Respondent No. 2 earlier in 1973. The matter which, therefore, requires investigation is whether after he attained the age of 55 years, the petitioner by his conduct or otherwise provided an occasion for Respondent No. 2 to form an opinion that he had outlived his utility or had failed to maintain the desired standard of efficiency or integrity. The relevant material for that purpose would certainly be official record either in the form of A.C. Rs of the petitioner or any other relevant document. In so far as the A.C. Rs of the petitioner are concerned, the same are present in Court today and have been perused. No adverse reflection, either against the efficiency or against the integrity of the petitioner, is reflected in these A.C. Rs if at all they speak high of his efficiency and integrity. Two Annual Reports were earned by the petitioner after he attained the age of 55 years and before the impugned order was recorded. The first one relates to the period 1973-74. In this report the petitioner has been overall graded as very good. This assessment which was made by the Reporting Officer was accepted by the Reviewing Authority who was Respondent No. 2 himself and also by the Accepting Authority who was the Divisional Commissioner. Column 18 of this ACR deserves to be reproduced. This column reads:

18. Has he been responsible for Is successful in any outstanding work during liquidating pending the year under report ? If so, work.? what ?

As per this ACR, therefore, not only the work of the petitioner was assessed as very good but it was also certified that he was also successful in liquidating the pending work. The second A.C.R. which pertains to the year 1974-75 is on a different proforma. The main column is under the head ?general assessment?. Against this the Reporting Officer made the following observations:

He has knowledge of work, rules and regulations. He is disciplined and relation with fellow employees are cordial. He is due for retirement in November, 1976.

Respondent No. 2 in his capacity of a Reviewing Authority agreed with the aforesaid assessment of the petitioner. In column No. 14 Respondent No. 2 then certified the petitioner as fit for promotion to higher grade in his own turn. Naturally he could not have done so if there was found any deterioration in the efficiency and integrity of the petitioner. Respondent No. 2 had made this report only on 7-7-1975. There is absolutely nothing on the record to show if the conduct or work of the petitioner was ever adversely commented upon either by Respondent No. 2 or any other authority after this last A.C.R. was recorded. Considered in the light of the A.C.Rs of the petitioner referred to above it looks rather impossible to say if the Appropriate Authority, namely, Respondent No. 2, directed itself to this record while forming its opinion about the petitioner as

stated in the impugned order. It appears that Respondent No. 2 was very much influenced by the fact that the petitioner had availed of 293 days leave on different occasions during the period 3-10-1973 to 20-11-1975 which, in the opinion of Respondent No. 2, reflected lack of interest in his work on the part of the petitioner. I am totally unable to appreciate the line of reasoning which might have prevailed with Respondent No. 2 in this connection. It was certainly a legal right of the petitioner to avail of the leave which he had earned in the course of his service and in respect of which he had obtained prior sanction from Respondent No. 2 himself. Having himself granted sanction for the leave due to the petitioner, Respondent No. 2 in my view could not have taken this factor into consideration in forming his opinion that the petitioner had outlived his utility or was on that account showing lack of interest in his work. Looking to the facts of this case as stated above, I am clear in my mind that the opinion as recorded by Respondent No. 2 in the impugned order that it was in public interest to retire the petitioner from Government service, was not formed objectively after taking into consideration the relevant material and it is more of an arbitrary nature. Such an opinion can't be called as bona fide. An order passed on the basis of the opinion recorded in such an arbitrary manner cannot be called an order passed under F.R. 56(j) as it does not meet the essential requirements of this Rule. The impugned order, therefore, is unsustainable in law.

10. In view of what has been stated above, I allow this petition and quash the impugned order found at Annexure-PA which operated to retire the petitioner from service with effect from 20th November, 1975, before the date of his superannuation. The petitioner shall be deemed to have continued in service till the date of his superannuation which in this case was 10-11-1976 and to have retired thereafter in due course. He shall be entitled to all the benefits in the matter of pay and allowances etc. as if he had continued in service and retired on 10-11-1976. All such benefits shall be calculated and paid to the petitioner within three months from today.