

(1998) 09 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 955 of 1992

State of Haryana and Others

APPELLANT

Vs

Puran Chand Sharma

RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Citation : (1999) 3 LLJ 1307

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Surinder Bishnoi, for the Appellant; S.N. Saini, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The State of Haryana, who is the appellant, maintains that the order of premature retirement passed against the respondent was legal and valid and that it had been wrongly set aside by the learned single Judge. Is it so? A few facts may be noticed.

2. The respondent had served in the Indian Army from June 14, 1955 to November 2, 1971. After his retirement from the Army, he had joined as a Clerk with the Directorate of Employment in the State of Haryana on January 5, 1972. On May 3, 1991, the respondent was served with a notice of three months under the rules for premature retirement. The writ petition preferred by him was allowed by the learned single Judge in view of the fact that the instructions issued by the Haryana Government vide letter dated August 16, 1983, had been struck down by a Division Bench of this Court in K.K. Vaid v. State of Haryana, 1990(1) SLR 1. The appellant contends that the action of the learned single Judge in setting aside the order of retirement cannot be sustained. The two fold submission made on behalf of the appellant is that the decision in K. K. Vaid's case has already been reversed by a Full Bench of this Court. Secondly, it is maintained that the record of the respondent was such as justified his being weeded out.

3-4. First of all the record of the respondent. The learned single Judge has noticed the summary of the record in the judgment. It is as under :--

"1980-81 VERY GOOD

1980-82 BELOW AVERAGE

June 18, 1982 Adverse remarks:

He is careless & negligent worker.

Conveyed.

Punishment: One increment stopped without cumulative effect.

November 4, 1982 Punishment : Censured.

March 7, 1983 Punishment : Stoppage of two increments with cumulative effect.

May 10, 1983 Suspension period shall not be treated as duty for the purpose of increment, pension & leave etc.

1982-83 BELOW AVERAGE

Adverse remarks :

He is unscrupulous official who can tamper with the record to favour people. He had to be charge sheeted & punished thrice during the course of the year.

Grading : Below Average--Conveyed.

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May 16, 84 Punishment : One increment stopped with cumulative effect.

January 21, 1985 Service Censured,

1984-85 GOOD

1985-86 AVERAGE

Adverse remarks :

1. No knowledge of Accounts work.

2 Received complaints--Conveyed.

1986-87 BELOW AVERAGE

Adverse remarks:

1. Honesty is not good. Adverse remarks at S. No. 1 to 4 expunged

2. A little knowledge of Accounts work.

3. Poor knowledge of Rules & Instructions.

4. Integrity not good.

5. Does work according to his own whims.

Does not care for Rules & Regulations.

6. Does work with mistakes & shows ignorance.

Assessment: Below Average.

1987-88 GOOD 1988-89 GOOD 1989-90 GOOD 1990-91 AVERAGE

5. The above record shows that the respondent had got five good entries. However, his performance was assessed as "below average" for the years 1981-82, 1982-83 and 1986-87. He was found to be "average" during the years 1985-86 and 1990-91. Still further, he had been communicated adverse remarks through various communications. He was awarded penalty of stoppage of increment more than once. He had been censured and suspended on different occasions. When the record is taken into consideration cumulatively, it cannot be said that the authority was not entitled to take the view that it was in public interest to weed him out. It was a possible conclusion that the authority could have legitimately arrived at.

6. Still further, it deserves mention that the decision in K. K. Void's case (supra) has been reversed by the Full Bench of this Court in Daya Nand v. State of Haryana, 1995(1) SCT 423. It was held as under:--

"The approach of the Division Bench in K. K. Void's case that the instructions of 1983 aforesaid were against the letter and spirit of Rule 3.26(a) as mentioned in para 9 of the judgment, cannot be accepted as laying down good law. The concept of weeding out dead wood" as embedded in Rule 3.26(a) or (d), is inherent but that is not the only ground available therein to pass order. The same is to be read along with the other grounds as mentioned in J. N. Sinha's case and Baikuntha Nath's case i.e., the object of these rules is also to maintain high standard of efficiency and initiative in the State services. There should be spirit of dedication and dynamism in the working of the State services. Officers who are lax, corrupt, inefficient or not up to the mark and have outlived utility should be weeded out. Thus the view expressed that Rule 3.26 will be attracted only to chop off dead wood is not correct. There may be varied reasons to be taken into consideration, that would constitute public interest that an order as required under Rule 3.26(d) can be passed as briefly noticed."

7. When the above test is applied to the facts of the present case, it cannot be said that the view taken by the authority was untenable.

8. Mr. Saini, learned counsel for the respondent, submits that after the decision of the learned single Judge, the respondent had been reinstated in service. Mr. Bishnoi points out that the operation of the judgment of the learned single Judge was stayed by the Division Bench on September 3, 1992. On November 25, 1992, the order of retirement was passed. That being so, it cannot be said that the respondent had completed his full tenure in service and continued till he

attained the age of 58 years.

9. Mr. Saini submits that the respondent has not been paid his salary for the period for which he has served. No such plea had been raised in the pleadings. However, the respondent may make a representation or seek his remedy in accordance with law.

10. No other point has been raised.

11. In view of the above, we are satisfied that the retirement of the respondent was in conformity with law. Thus, the appeal is allowed. The writ petition is dismissed and the order passed by the learned single Judge is reversed. In the circumstances of the case, the parties are left to bear their own costs.