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**(2004) 04 P&H CK 0086**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No. 1471 of 1984

State of Punjab and Others

APPELLANT

Vs

Amar Singh and Others

RESPONDENT

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**Date of Decision :** 21-04-2004

**Acts Referred:**

**Citation :** (2004) 138 PLR 232

**Hon'ble Judges :** Rajive Bhalla, J

**Bench :** Single Bench

**Advocate :** Ashok Bhardwaj, A.A.G, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

Rajive Bhalla, J.—The present Regular Second Appeal, filed by the State of Punjab and others, is directed against the judgment and decree passed by the Additional District Judge, Patiala, dated 26.7.1983 whereby the appeal filed by the respondent was accepted his suit decreed and the judgment and decree passed by the trial Court dated 14.10.1982 set aside.

2. Challenge in the suit was to the order of retirement dated 22.4.1975 as also the order dated 4.8.1978 vide which the representation made by the respondent was rejected. The respondent sought a declaration that the aforementioned orders were illegal, ultra-vires, unconstitutional void and malafide.

3. Respondent-Amar Singh joined the police force as a constable on 24.1.1948. In 1949 he was promoted as a Head Constable, in 1963 as an Assistant Sub Inspector and in 1965 as a Sub Inspector. In the year 1971, the respondent was reverted to the post of I lead Constable. The aforementioned reversion was impugned by the respondent, pursuant to a writ petition filed in this court which was allowed vide order dt. 13.1.1975. The order of reversion was quashed and the respondent was restored to the status of a Sub Inspector. Thereafter, vide order dt. 24.4.1975, the respondent was compulsorily retired on attaining the age of 55 years. The representation against the order of retirement was rejected

on 4.8.1978 hence the suit.

4. The stand of the appellants in the written statement, was that the respondent had been retired upon attaining the age of 55 years, in accordance with the rules/government instructions. The orders had been passed in public interest and, therefore the suit was not maintainable.

5. The trial Court dismissed the suit, upholding the impugned orders. However, in appeal, the first appellate court set aside the judgment and decree of the trial Court, accepted the appeal and decreed the suit holding that the order of retirement and the subsequent rejection of the representation was illegal, null and void and, therefore, the respondent would be deemed to have continued in service as a Sub Inspector, enjoying all the rights and privileges attached to the post.

6. The first appellate court while allowing the appeal and reversing the judgment of the trial Court, relied upon the following facts. While retiring the respondent his service record was not examined. The character role was not before the authority. The respondent was permitted to cross the Efficiency Bar in 1973. There was nothing against the efficiency or the integrity of the respondent. The office noting and orders Exs.D1, D2 and D3, recommending the retention of the respondent in service beyond the age of 55 years were ignored. It was thus, held that the order retiring the respondent had been passed without application of mind and, therefore being arbitrary was liable to be set aside.

7. Counsel for the appellants contends that Rule 5.32(c) of the Punjab Civil Services Rules, Volume II, (Chapter V) confers a right, upon the Govt. to retire a government employee upon his attaining the age of 55 years, without assigning any reason and, therefore the appellants were well within their rights to retire the respondent without assigning any reason. It has been further argued that the opinion of the authority to retire an employee cannot be examined by a civil Court and therefore the first appellate Court had no jurisdiction to quash the order of retirement and decree the suit.

8. No one has put in appearance on behalf of the respondent.

9. It is an established principle of law, that prior to the passing of an order, refusing to retain an employee beyond the age of 55 years, the authority passing the order is required to examine the confidential record the character roles as also the entire service record, with particular reference to the preceding few years. It is on the basis of the aforementioned facts that the appointing authority is required to form its opinion to retain or not to retain an employee beyond the age of 55 years. The first appellate court rightly held that the impugned order was arbitrary had been passed without application of mind and without taking into consideration the confidential record, character role and the entire service record. The first appellate court rightly held that as the respondent was permitted to cross the Efficiency Bar in the year 1973 i.e. 1.1/2 years before the order of retirement and as there was no report against the respondent doubting

his integrity or casting any aspersion upon his ability, the impugned orders were illegal, void and arbitrary. The first appellate court rightly took note of the office notings and orders Exs.D1, D2 and D3, which had been ignored by the appointing authority and which recommended that the respondent be allowed to continue in service beyond the age of 55 years. In so far as the argument, raised by counsel for the appellants that the Civil Courts cannot examine the correctness or otherwise of the order of retirement is concerned the same is totally misconceived. Judicial scrutiny of such an order is permissible. The Courts can examine as to whether the order is mala fide, arbitrary, passed without considering the entire service record, confidential reports etc. The provisions of Rule 5.32 of the Punjab Civil Services Rules, Volume II, (Chapter V) do not confer an unbridled power upon the respondent to retire a government servant at the age of 55 years, without due consideration as stated above.

10. The first appellant Court rightly quashed the order of retirement accepted the appeal and decreed the suit. Counsel for the appellants has not been able to raised any substantial question of law.

In view of what has been staled above, finding no merit in the present Regular Second Appeal, the same is dismissed with no order as to costs.