

(2001) 03 P&H CK 0062

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 11878 of 1999

A.S.I. Radhey Shyam

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: March 6, 2001**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Penal Code, 1860 (IPC) - Section 342, 377
- Punjab Police Rules, 1934 - Rule 16.3(1), 9.18(1)

Hon'ble Judges: V.S. Aggarwal, J; R.L. Anand, J**Bench:** Division Bench**Advocate:** Mr. S.P. Laler, for the Appellant; Ms. Ritu Bahri, DAG, for the Respondent

Judgement

R.L. Anand, J.

A.S.I. Radhey Shyam, Petitioner, has filed the present Civil Writ Petition under Articles 226 and 227 of the Constitution of India against the State of Haryana, Director General of Police, Haryana, Inspector General of Police, Rohtak Range, Rohtak and Superintendent of Police, Karnakand he has prayed that writ petition in the nature of certiorari be issued against the respondents and the order dated 18.5.1999 vide which the petitioner was retired from service with effect from 31.8.1999 under Rule 9.18(1)(c) of the Punjab Police Rules be quashed. The petitioner has further made a prayer that a writ of mandamus be issued against the respondents directing them to retain him in service till he completes the age of superannuation i.e. 58 years.

2. The case set up by the petitioner is that he joined the service in the police Department as a Constable on 16.6.1962. He was promoted as Head Constable on 2.11.1972 and thereafter he was promoted as Assistant Sub Inspector on 5.5.1982 under the orders of D.I.G. Ambala Range. He was confirmed on 31.1.1986. According to the petitioner, none of his Annual Confidential Reports is bad. The petitioner

earlier file Civil Writ Petition No. 11526 of 1995 for his further promotion and confirmation from the demand dates when his juniors were promoted and confirmed. It is further alleged by the petitioner that on the basis of his A.C.Rs. and service record, his case was sent to D.I.G. Rohtak Range, Rohtak for his retention in service beyond the age of 55 years, vide memo No. 24423 dated 9.7.1988. However, instead of granting extension the DIG had ordered for departmental inquiry vide order dated 9.3.1999. The aforesaid writ of the petitioner was disposed of by the High Court vide order dated 13.12.1995. An order dated 8.3.1996 was passed by the respondent-authorities vide which the claim of the petitioner was rejected and when the petitioner was in the process of challenging that order, he was falsely implicated in a criminal case vide FIR No. 177 dated 9.2.1997 u/s 342 and 377 of the Indian Penal Code. This FIR was got registered against the petitioner purposely to justify the denial of promotion to him. In the criminal case, the Court of competent jurisdiction acquitted him. So much so, even the statement of the petitioner was not recorded u/s 313 Cr.P.C. as there was no incriminating circumstance appearing in the prosecution evidence against him. The judicial order was passed by the Chief Judicial Magistrate, Karnal acquitting the petitioner on 1.2.1999. After his acquittal, the petitioner requested for promotion and retention in service beyond the age of 55 years. Instead of granting him promotion and extension the petitioner was compulsorily retired at the age of 55 years as a matter of punishment without conducting any regular departmental inquiry, vide order dated 18.5.1999 (Annexure P-2). This order dated 18.5.1999 was allegedly passed by the Superintendent of Police, Karnal, who had no jurisdiction to pass the said order as it does not even make a mention that order was being passed under the directions of D.I.G. who, alone was competent to pass the order of compulsory retirement. The petitioner has alleged that the order of compulsory retirement is a stigmatic order and no such order could be passed by respondent No. 4 without conducting regular inquiry. In the present case, no regular inquiry has been conducted, therefore, the order is liable to be quashed. The petitioner made a representation before the Superintendent of Police, Karnal but to no effect. Thus, the petitioner has given a challenge to the order dated 18.5.1999, Annexure P-2, on the ground of jurisdiction and also on the ground that the order is stigmatic in nature and cannot stand to judicial scrutiny.

3. Notice of the writ petition was given to respondents No. 1 to 4 and they filed a joint written statement. It was pleaded that the case of the petitioner for retention in service on attaining the age of 55 years was considered by the competent authority on 16.5.1999. On screening of the service record of the petitioner he was not given extension in service beyond the age of 55 years by respondent No. 3 and accordingly three months notice was given to the petitioner vide memo No. 22829-35 dated 19.5.1999 by respondent No. 4 wherein it was ordered that services of the petitioner were not longer required due to chequered service record and the petitioner would be deemed to have retired from service w.e.f. 31.8.1999 under Rule

9.18(1)(c). Thus, the petitioner was rightly retired after attaining the age of 55 years by giving three months prior notice under Rule 9.18(l)(c) of Punjab Police Rules, as applicable to the State of Haryana. It is further alleged by the respondents that integrity of the petitioner was considered to be doubtful in the year 1993-94 and these adverse remarks for the period 25.8.1993 to 31.3.1994 were conveyed to the petitioner and the same were received by him on 25.7.1994. These remarks were never expunged. Moreover, the petitioner was given adverse remarks for the period from 16.5.1992 to 31.3.1993 and these remarks were conveyed to the petitioner on 25.4.1995. Respondents denied that there were no adverse remarks in the A.C.Rs. of the petitioner after 3.11.1995. In fact, adverse remarks were also recorded in the A.C.R. of the petitioner for the period from 1.4.1995 to 13.3.1996 and the same were conveyed to the petitioner during the year 1997. It was also submitted by the respondents that the petitioner was awarded the punishment of censure twice in the year 1995. Punishment of stoppage of two future annual increments with temporary effect in the year 1986; punishment of censure in the year 1988; one punishment of censure in the year 1994 and punishment of censure four times during the year 1996, were also awarded to the petitioner. It was also pleaded that the competent authority after examining the case of the petitioner disallowed the-extension in service to the petitioner vide Memo No. 8430 dated 16.5.1999. In short the case of the respondents is that the service record of the petitioner was not good and that the impugned order is not stigmatic in nature and it was passed after considering the entire service record of the petitioner. So far as the criminal case is concerned, it is conceded by the respondents in the written statement that the petitioner was acquitted of the criminal charge due to resiling of the prosecution witnesses. The departmental inquiry against the petitioner regarding the same occurrence is still pending and this inquiry is being conducted against the petitioner as per provision of rule 16.3(1)(b) of Punjab Police Rules. With this defence, the respondents have prayed for the dismissal of the writ petition.

4. We have heard Shri S.P. Laler, learned counsel appearing on behalf of the petitioner and Ms Ritu Ba-hri, learned D.A.G., Haryana, appearing on behalf of the respondents and with their assistance have gone through the record of this case.

5. The learned counsel for the petitioner Shri Laler has attacked the order dated 18.5.1999 (Annexure P-2), conveyed to the petitioner vide Memo No. 22829 dated 19.5.1999 mainly on the ground that the order is stigmatic in nature and, therefore, it cannot stand in the eye of law. According to Shri Laler, since a stigma has been cast upon the petitioner through the impugned order, Annexure P-2, therefore, it was obligatory on the part of the respondents to hold a departmental regular inquiry. Admittedly, no departmental inquiry has been conducted against the petitioner, therefore, the impugned order, Annexure P-2 should be quashed.

6. On the contrary, learned counsel appearing on behalf of the respondents submitted that the impugned order has been passed by the Departmental

Committee on screening and judging the service record of the petitioner. It was observed in the impugned order that the petitioner was not entitled to extension in service. Ms Bahri also submitted that the order should be viewed in the light of the service record of the petitioner and since the service record of the petitioner was not up to the mark as indicated in the different paras of the writ-ten statement, therefore, the words used in the impugned order should not be read in isolation but should be read in conjunction with the entire service of the petitioner. The appointing authority i.e. D.I.G. examined all these aspects and formulated a subjective opinion that petitioner should not be retained in service beyond the age of 55 years and therefore, there is no illegality in the impugned order.

7. We have given our considered thought to the entire matter and are of the view that the impugned order dated 18.5.1999 (Annexure P-2) cannot be sustained in the eye of law and has to be quashed.

8. The impugned order is stigmatic in nature and such an order passed without holding the departmental inquiry cannot be sustained. It will be useful for us to incorporate in verbatim the impugned order in order to appreciate whether the contention of the learned counsel for the respondents can be sustained or not.

"Notice.

You, ASI Radhey Shayam No. 55/RR of this distt. have attained the age of 55 years of age on 6.3.1999. Your services are no longer required due to chequered service record. You will, therefore, be deemed to have retired from service w.e.f. 31.8.99 A.N. under PPR 9.18(1)(c). You are directed to deposit all Govt. articles on your charge including identity card before proceeding on retirement".

No. 22829 dated 19.5.99, Sd/-

ASI Radhey Shayam, Superintendent of Police, Karnal, 18.5.99"

The reading of the above would show that the Superintendent of Police, Karnal, while conveying the order had clearly made a mention that the services of the petitioner were not longer required due to chequered service record. The order is not innocent. It entails with penal consequences and, therefore, such an order passed without holding a regular departmental inquiry cannot stand. From the impugned order also it is not clear whether it was passed in public interest or otherwise.

9. Resultantly, this writ is hereby allowed and the order dated 18.5.1999 (Annexure P-2) retiring the petitioner w.e.f. 31.8.1999 is hereby quashed and directions are given to the respondents to admit the petitioner into service with all consequential benefits starting from 1.9.1999. It is, however, observed that it will always be open to the respondents to pass fresh order against the petitioner in accordance with law. There shall be no order as to costs.

10. Petition allowed.