

(2010) 08 P&H CK 0475

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Ram Saran

APPELLANT

Vs

The State of Haryana and
Another

RESPONDENT

Date of Decision: Aug. 25, 2010

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

The petitioner has been compulsorily retired on completion of 55 years of age as he was not found fit for retention beyond the said age. He has, thus, filed this writ petition to challenge the said order.

2. As per the petitioner, the issue which would require consideration would be whether he can be thrown out of service just on the basis of sole entry regarding doubtful integrity in his Annual Confidential Report for the year 2000-2001, especially when the petitioner has been acquitted in a criminal case, which was the basis of endorsing the entry in the Annual Confidential Report.

3. The petitioner had joined the service as a Conductor in 1980. In the year 2001, he was involved in a criminal case while he was working at Sub-Depot, Naraingarh. He was placed under suspension and was ordered to be placed in the minimum pay scale of the Conductors. The petitioner filed an appeal against the same and on account of his acquittal of the criminal charges, the said order of punishment was set-aside on 21.7.2010. The petitioner thereafter was served a letter on 23.4.2010 giving him a notice for retirement on attaining the age of 55 years on the ground that his integrity was doubted in an Annual Confidential Report for the year 2000-2001. The petitioner has, thus, filed the present writ petition to challenge the said notice primarily on the ground that the basis on which these remarks were endorsed are no more in existence and hence said entry cannot be used for

compulsorily retiring the petitioner from service.

4. A perusal of the prayer made in the writ petition would show that the petitioner has not challenged the remarks endorsed in the Annual Confidential Report for the year 2000-2001. Even the report for the year 2000-2001 has not been placed on record to show if the same has got any connection with the registration of a criminal case.

5. Can the petitioner be retired on completion of 55 years of age if his integrity has been doubted even in one report, thus, is a question requiring consideration.

6. Similar issue came up for consideration before this Court in Civil Writ Petition No. 13181 of 2010 (Raghbir Singh (Head Constable) v. State of Haryana and Ors.), decided on 13.8.2010. After making detailed reference to the nature of the order of compulsory retirement, the plea was held not well founded. As is observed, order retiring a person on completion of 55 years of age is not passed as a punishment. It implies no stigma nor is a suggestion of misbehaviour. It is not a punitive order. A competent authority has a discretion to retire an employee after he attains a particular age or completes a particular period of qualifying service. This issue was discussed in detail in Baikuntha Nath Das and Anr. v. Chief District Medical Officer, Baripada and Anr. AIR 1992 Supreme Court 1020. The Hon'ble Supreme Court in this case has observed that the order can be interfered with when it is passed with malafide or it is based on no evidence or it is found to be perverse in the sense that no reasonable person would form the requisite opinion on given material. Nature of function while passing this order was held not to be quasi-judicial because the action has to be taken on subjective satisfaction of the Government. Thus, the court has held that there is no room for entertaining the facet of *audi alteram partem* of principles of natural justice in the said case.

7. In Bishwanath Prasad Singh v. State of Bihar and Ors. (2001) 2 Supreme Court Cases 305, a distinction between compulsory retirement when awarded as a punishment and when it is so ordered under fundamental rule has been pointed out. Compulsory retirement when ordered under Fundamental Rule 56 (j) of the Fundamental Rules, was held to be an absolute (but not arbitrary) right to retire a government servant on his attaining a particular age or on his completing a certain number of years of service on formation of an opinion that in public interest it was necessary to compulsorily retire him. In such cases, it is neither a punishment nor a penalty with loss of retiral benefits. This order is subject to judicial review on very limited grounds, such as the order being malafide, based on no material or on collateral grounds of having been passed by an authority not competent to do so. The object of such a compulsory retirement is to be weed out worthless, who have lost their utility for the administration.

8. The petitioner has been retired by taking into account an entry in his Annual Confidential Report where his integrity was doubted. No allegation of prejudice or

bias, thus, can be made. Since this entry is taken into consideration to find that the petitioner is not fit to be retained, the order is not found to be suffering from any malafide or arbitrariness. Such a decision can very well be taken by any reasonable person, who can form such an opinion on the material that is available. This order cannot be termed as perverse. The report has not been impugned in any manner and, thus, is to stand.

9. Therefore, there is no merit in the writ petition and the same is accordingly dismissed.