

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 1805 of 2006

Date of Decision: March 30, 2007

Inspector Bhim Singh* *Petitioner

Versus

State of Haryana and others* *Respondents

Coram: Hon'ble Mr. Justice Ashutosh Mohunta

Present: Mr. R.K.Malik, Advocate
for the petitioner.

Dr. Anmol Rattan Sidhu, Addl. A.G. Haryana with
Mr. Deepak Jindal, AAG, Haryana
for the respondents.

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ASHUTOSH MOHUNTA, J. (Oral)

The challenge in the writ petition is to the order dated 3.1.2006 (Annexure P-6) passed by the Inspector General of Police, Hisar Range, Hisar, by which the petitioner was compulsorily retired from service.

The petitioner was appointed as a Constable on 14.11.1974 and was promoted to the post of Head Constable, A.S.I. and Sub Inspector. The petitioner was lastly promoted as Inspector on 20.6.1993. As there were complaints against the petitioner regarding his honesty, therefore, on 23.11.2001 the Director General of Police, Haryana, issued a show cause notice (Annexure P-1) to the petitioner for compulsory retirement. The grounds of compulsory retirement were also supplied to the petitioner. The petitioner replied to the show cause notice vide Annexure P-2. The Superintendent of Police, Jhajjar, vide letter dated 7.12.2001 (Annexure P3) addressed to the Inspector General of Police submitted that the petitioner is an intelligent, industrious and well behaved police officer and, therefore, his compulsory retirement on the basis of an adverse report does not seem to be justified. Accordingly, the Director General of Police withdrew the show cause notice for compulsory retirement in the year 2002.

The petitioner filed a civil suit for expunging the adverse remarks recorded in the ACR for the period 20.8.1994 to 4.1.1995. The civil suit was decreed and the

adverse remarks for the year 1994-1995 were expunged vide judgment dated 28.2.2004. An appeal was filed by the Director General of Police, Haryana, against the judgment-Annexure P4 which was allowed by the Additional District Judge, Jhajjar, vide judgment dated 30.9.2005 and the judgment-Annexure P4 was set aside. Resultantly, the adverse entries for the year 1994-1995 against the petitioner remained intact.

Thereafter vide Annexure P6 dated 3.1.2006 the Inspector General of Police in pursuance to the provisions contained in Rule 5.32 (1) (C) of CSR Vol-II, Rule 3.26 (d) of CSR Vol-I, Part-I and Punjab Police Rule 9.18 (1) as applicable to the State of Haryana served a notice upon the petitioner compulsorily retiring him on expiry of three months of the notice. As per the notice only those Government employees are allowed to serve beyond the age of 55 years who have 70% good service record and whose honesty has not been reported to be doubtful for the last 10 years on the date of attaining 55 years of age. As the honesty and integrity of the petitioner was doubtful during the period he was posted as SHO in Police Station Sadar, Karnal, for the period 20.8.1994 to 4.1.1995, hence, he was ordered to be compulsorily retired.

Mr. R.K.Malik, counsel for the petitioner, has contended that the impugned order (Annexure P-6) is stigmatic in nature. It is contended that in the order-Annexure P6 it has been mentioned that the ACR of the petitioner for the period 20.8.1994 to 4.1.1995 is doubtful. It has further been mentioned that the petitioner has been awarded two 'Censure' punishments in the year 2000. Learned counsel has relied on the judgments Annexures P7 and P8 in support of his argument. It has next been contended by the learned counsel that the order-Annexure P6 retiring the petitioner compulsorily was passed on 3.1.2006 and, therefore, if the last 10 years ACRs are taken into account then no reference could be made to the ACR of the year 1994-1995 and, hence, retiring the petitioner compulsorily on the basis of an ACR which was more than 10 years old cannot be sustained. It has lastly been argued that once the Director General of Police has dropped the compulsory retirement show cause notice then on the basis of the same very service record the Inspector General could not compulsorily retire the petitioner.

Reply has been filed on behalf of respondent Nos. 1 to 3. It has

been averred that the integrity of the petitioner was reported to be doubtful in the ACR for the period 20.8.1994 to 4.1.1995 and that the petitioner was also awarded two 'Censure' punishments for his omissions and commissions. It is submitted by the counsel for the State that the civil suit filed by the petitioner against the adverse remarks was decided in his favour by the Civil Judge (Jr. Divn.), Bahadurgarh, vide judgment-Annexure P4 but on appeal the judgment-Annexure P4 was set aside by the Addl. District Judge, Jhajjar, vide judgment-Annexure P5 and, hence, the adverse remarks with regard to the petitioner's integrity being doubtful still stood in the service record of the petitioner. It has further been submitted that the impugned order is not stigmatic in any manner.

I have heard the learned counsel for the petitioner as well as the respondents at length.

A perusal of the note to Rule 9.18 (1) of the Punjab Police Rules shows that the appointing authority has the absolute right to retire any Government servant on or after he has attained the age of 55 years without assigning any reason. In the case of the petitioner, his ACR for the period 20.8.1994 to 4.1.1995 is as follows:-

“Complaints used to be received against the integrity of this officer due to which he was advised to do the work properly from time to time. His honesty was doubtful during his posting as SHO, Police Station Sadar, Karnal and he used to save his subordinates by not disclosing their misdeeds.”

A perusal of the aforementioned report clearly shows that the petitioner was being retired in view of his adverse service record and it was not in the public interest to retain such a police officer in service. As the service record of the petitioner from the period 1992-1993 to 2003-2004 had been taken into consideration, therefore, it cannot be said that the entries of 1994-1995 relied upon by the respondents while compulsorily retiring the petitioner could not be taken into consideration. As the adverse entries remained on the record of the petitioner, therefore, the same could be taken into consideration even after 10 years of his service. In ***State of U.P. v. Vijay Kumar Jain*** 2002(2) RSJ 543 the Hon'ble Supreme Court has held as under:-

“Vigour or sting of an adverse entry is not wiped out merely it

is relatable to 11th or 12th years of passing of the order of compulsory retirement. The aforesaid adverse entry which could have been taken into account while considering the case of the respondent for his compulsory retirement from services, was duly considered by the State Government and said single adverse entry in itself was sufficient to compulsorily retire the respondent from service. We are, therefore, of the view that entire service record or confidential report with emphasis on the later entries in the character roll can be taken into account by the government while considering a case for compulsory retirement of a government servant.”

Thus, in view of the fact that the integrity of the petitioner was held to be doubtful, therefore, the respondents are well within their rights to compulsorily retire the petitioner. The integrity of a Government employee is the foremost consideration in public service and in the present case as the adverse entries for the years 1994-1995 remained on the service record of the petitioner, hence, he could not be retained in service beyond the age of 55 years.

The cases relied upon by the petitioner i.e. Annexures P7 and P8 are different on facts from the present case. A perusal of the judgment-Annexure P7 shows that while retiring the petitioner details of the misdeeds committed by the petitioner (mentioned as (i) to (vi) in the impugned judgment) were stated in the order of compulsory retirement but the misdeeds had not transpired in the ACRs whereas in the present case the misdeeds have transpired in the ACRs although no details have been given and, hence, the impugned order is not stigmatic in any manner.

Apart from the above, once the integrity of a public servant has been found to be doubtful and his honesty is under question then it would not be in the interest of the State to retain such a person in service.

In view of the above, I find no merit in the present writ petition and the same is dismissed.

March 30, 2007
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(ASHUTOSH MOHUNTA)
JUDGE