
a suit under Section 77(3)(n) of the Punjab Tenancy Act is instituted by a landlord, the defendant need not be a tenant in the accepted sense that he should be in possession of the leased land. The suit has to be by a landlord. In spite of the tenant having given up possession of the land and having ceased technically to be the tenant, there existing no relationship of landlord and tenant between him and the owner of the land, statute has made him liable for arrears and such arrears are recoverable under Section 77(3)(n) of the Act in a revenue Court. It was also held that the suit for arrears of rent by a landlord is not within the jurisdiction of a Civil Court. In considered view of this Court, the facts and circumstances of the case aforesaid have no parity with the case in hand. If the judgment is stretched a little bit, it turns in favour of the plaintiff and against the defendants.

(15) In view of the discussion made above, this writ petition is allowed. Orders, Annexures P-2 to P-4, are set aside and that of Assistant Collector 1st Grade, i.e., Annexure P-1, is restored. In view of the fluctuating fate of the parties, they are left to bear their own costs.

J.S.T.

Before G.S. Singhvi, J

LAL CHAND DALAL,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. NO. 9253 OF 1995

11th December, 2002

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Vol.I, Part I—Rl.3.26(d), Vol.II Rl.5.32—A(e)—Premature retirement of a Jail Superintendent one and a half years before his superannuation—Service record of the petitioner for ten years preceding his retirement almost good—No justification in recording adverse remarks by the Deputy Commissioner without any material for a short period about three months—State Govt. Committing a serious illegality in rejecting the representation for expunging the remarks—No cogent material before the Officer's Committee for forming an opinion that

petitioner's continuation in service was not in public interest or that he had outlived utility so as to justify his retirement—Impugned orders liable to be quashed being illegal.

Held, that the premature retirement of the petitioner is liable to be invalidated because the exercise of power by the State Government under Rule 5.32-A(c) of the Punjab Civil Services Rules, Volume II and Rule 3.26(d) of the Punjab Civil Services Rules, Volume I, part I is vitiated by arbitrariness and total non-application of mind.

(Para 21)

Further held, that the employee does not earn good or bad reputation in a day or few days or month. The reputation for integrity (good or bad) is earned after performing duties for a pretty long period of time and the employee who is rated as honest and efficient for 10 years cannot over-night become dishonest. Therefore, recording an entry casting doubt on the integrity of an employee, the employer/concerned officer must carefully examine the material available before him and record such entry only if he is convinced beyond any manner of doubt that an otherwise honest employee suddenly become dishonest.

(Para 21)

Arun Jain, Advocate, for the petitioner.

Jaswant Singh, Senior Deputy Advocate General,
Haryana, for the respondents.

JUDGMENT

G.S. Singhvi, J.

(1) Chopping of the dead wood and retention in service only those employees, who are efficient and honest is the primary object under lying the statutory provisions and executive instructions which enable the competent authorities to retire the employees before attaining the age of superannuation. The Courts have generally upheld the government's right to prematurely retire an employee and also recognised the fact that the scope of judicial review in such matters

is extremely limited—*Shyam Lal* versus *State of Uttar Pradesh*,⁽¹⁾ *Union of India* versus *Col. J.N. Sinha*,⁽²⁾ *M.E. Reddy* versus *Union of India*,⁽³⁾ *Baikuntha Nath Das* versus *Chief District Medical Officer, Baripada*,⁽⁴⁾ *Bishwanath Prasad Singh* versus *State of Bihar*,⁽⁵⁾ *State of Gujarat* versus *Umedbhai M.Patel*,⁽⁶⁾ and *State of U.P.* versus *Vijay Kumar Jain*,⁽⁷⁾.

(2) In *Baikuntha Nath Das* versus *Chief District Medical Officer, Baripada* (*supra*), the Supreme Court referred to various judicial precedents on the subject of compulsory retirement and culled out the following propositions:—

- “(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
- (ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.
- (iii) Principles of natural justice has no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) *mala fide*, or (b) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material in short: if it is found to be perverse order.
- (iv) The Government (or the Review Committee as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance

(1) AIR 1954 SC 369

(2) AIR 1971 SC 40

(3) AIR 1980 SC 563

(4) 1992(2) SCC 299

(5) 2001(2) SCC 305

(6) AIR 2001 SC 1109

(7) 2002(3) SCC 641

during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

- (v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it, uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.”

(3) In *State of Gujarat versus Umedbhai M. Patel*, (*supra*), a two-Judges Bench of the Supreme Court reviewed the case law on the subject and laid down the following principles:—

- (1) Whenever the services of a public servant are no longer useful to the general administration, he can be compulsorily retired for the sake of public interest.
- (2) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
- (3) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
- (4) Any adverse entries made in the confidential record shall be taken note of and be given due weight in passing such order.
- (5) Even uncommunicated entries in the confidential record can also be taken into consideration.
- (6) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(7) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(8) Compulsory retirement shall not be imposed as a punitive measure.”

(4) In *State of U.P. versus Vijay Kumar Jain (supra)*, the Supreme Court considered the ambit and scope of the employer's right to retire an employee and observed as under:—

If the conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the Government has under FR 56(c) read with Expln.(2) an absolute right to compulsorily retire such an employee in public interest. The Government's right to compulsorily retire an employee is a method to ensure efficiency in public service and while doing so the Government is entitled under Fundamental Rule 56 to take into account the entire service record, character roll or confidential report with emphasis on the later entries in the character roll of an employee. In fact, entire service record, character roll or confidential report furnishes the materials to find out whether a government servant has outlived his utility in service. It is on consideration of totality of the materials with emphasis on the later entries in the character roll that the Government is expected to form its opinion whether an employee is to be compulsorily retired or not.”

(5) In *Bishwanath Prasad Singh versus State of Bihar (supra)*, a three-Judges Bench of the Supreme Court highlighted the distinction between compulsory retirement by way of punishment and compulsory retirement in public interest in the following words :—

“Compulsory retirement in service jurisprudence has two meanings. Under the various disciplinary rules, compulsory retirement is one of the penalties inflicted on a delinquent government servant consequent upon a finding of guilt recorded in disciplinary proceedings. Such penalty

involves stigma and cannot be inflicted except by following procedure prescribed by the relevant rules or consistently with the principles of natural justice if the field for inflicting such penalty be not occupied by any rules. Such compulsory retirement in the case of a government servant must also withstand the scrutiny of Article 311 of the Constitution. Then there are service rules, such as Fundamental Rule 56(j) of the Fundamental Rules, which confer on the Government or the appropriate authority, 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 that case, it is neither a punishment nor a penalty with loss of retiral benefits. Compulsory retirement in public interest under service rules is like premature retirement. It does not cast any stigma. The government servant shall be entitled to the pension actually earned and other retiral benefits. So long as the opinion forming basis of the order for compulsory retirement in public interest is formed bona fide, the opinion cannot be ordinarily interfered with by a judicial forum. Such an order may be subjected to judicial review on very limited grounds such as the order being mala fide, based on no material or on collateral grounds or having been passed by an authority not competent to do so. The object of such compulsory retirement is to weed out the worthless who have lost their utility for the administration." (Underlining is mine).

(6) In *Daya Nand* versus *State of Haryana*, (8) a Full Bench of this Court interpreted Rule 5.32-A(c) of the Punjab Civil Services Rules, Volume II and Rule 3.26(d) of the Punjab Civil Services Rules, Volume I, Part I, as applicable to the State of Haryana and which have been invoked by the State Government to prematurely retire the petitioner and held as under :—

“The approach of the Division Bench in K.K. Vaid’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 alongwith the other grounds as mentioned in J.N. Sinha's case and Baikunth 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 above.

(7) The Full Bench also over-ruled the judgment of the Division Bench in ***K. K. Vaid*** versus ***State of Haryana***, (9) which had struck down the instructions issued by the Government of Haryana challenging the retirement of those having less than 70% or above good record in the last 10 years by recording the following observations :—

“The approach of the Division Bench in *K. K. Vaid'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 alongwith the other grounds as mentioned in *J. N. Sinha's* case and *Baikunth 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 above.

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Thus we conclude that the decision in K. K. Vaid's case does not lay down good law and the instructions, issued by the State on 13th August, 1983, that the extension beyond the age of 55 years be granted to the officials/officers with the condition that more than 70% of the last ten years confidential reports are good, are not contrary to Rule 3.26(a) or (d) of the Rules, as discussed above.

(8) In *State of Gujarat versus Surya Kant Chuni Lal Shah*,⁽¹⁰⁾ the Supreme Court upheld the order of Gujarat High Court quashing the order of premature retirement and observed as under :—

“Public interest in relation to public administration means that only honest and efficient persons are to be retained in service while services of dishonest or corrupt or those who are almost dead wood, are to be dispensed with.

In order to find out whether any government servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that government servant has to be taken.

Performance of a government servant is reflected in annual character roll entries and, therefore, one of the methods of discerning efficiency, honesty or integrity of a government servant is to look to his character roll entries for the whole tenure from inception to the date on which decision for his compulsory retirement is taken. If character roll is studded with adverse entries of overall categorisation of employee

is poor and there is material also to cast doubts upon his integrity, such government servant cannot be said to be efficient. Efficiency is a bundle of sticks of personal assests, thickest of which is the stick of integrity. If this is missing, while bundle would disperse. A government servant has, therefore, to keep his belt tight.

Purpose of adverse entries is primarily to forewarn a government servant to mend his ways and to improve his performance. Adverse entries are required to be communicated so that the government servant, to whom adverse entry is given, may have either opportunity to explain his conduct so as to show that advese entry is wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance.

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There being no material before the Review Committee, inasmuch as, there were no adverse remarks in the character roll entries, the integrity was not doubted at any time, the character roll entries subsequent to respondent's promotion were not available, it could not come to a conclusion that the respondent was a man of doubtful integrity, nor could have anyone else come to the conclusion that the respondent was a fit person to be retired compulsorily. The order, in the circumstances of the case, was punitive having been passed for a collateral purpose of the respondent's immediate romoval, rather than in public interest."

(9) In *M. S. Bindra* versus *Union of India*. (11), the Supreme Court quashed the order of premature retirement and held as under :—

"Want of any material is almost equivalent to the next situation that from the available materials no reasonable

man would reach such a conclusion. While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim *nemo fuit repente turpissimus* (no one becomes dishonest all of a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of administrative law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To infer an officer as one of doubtful integrity it is not enough that doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the total doubtful integrity”.

(10) I have prefaced the decision of this petition by citing the above noted judgments in order to emphasise that while the Court would give due weightage to the opinion formed by the government on the desirability of prematurely retiring an employee in public interest, but at the same time, ensure that only those are weeded out of the service who are really inefficient or dishonest and this power is not misused/abused for extraneous purposes.

(11) Now a few facts :—

(12) The petitioner joined service in the erstwhile State of Punjab as Assistant Superintendent, Jail on 28th June, 1962. In 1966, his services were allotted to newly created State of Haryana. He was promoted as Deputy Superintendent, Jail in 1970 and as Superintendent, Jail in 1985. He continued in that capacity till issuance of order dated 9th June, 1995 (Annexure P 10) for his retirement under Rule 5.32-A(c) of the Punjab Civil Services Rules, Volume-II and Rule 3.26(d) of the Punjab Civil Services Rule, Volume-I, Part-I. In the course of 32 years service, the petitioner had earned very

good reports for 3 years and 6 months, 20 good reports, 2 satisfactory and 4 average reports. He was conveyed adverse remarks for years 1980-81 and 1981-82 but, on his representations, the same were expunged by the State Government. In eight out of 10 years preceding his premature retirement, the petitioner earned 8 good reports and one very good report. For the year 1991-92, he was rated as good officer except the adverse remarks recorded by respondent No. 3 for the period from 2nd July, 1991 to 12th October, 1991. He had also suffered two minor penalties of censure in the year 1984, out of which one was for taking salute from 10 warders at his residence on 1st January, 1993 and asking them to fire 150 blank rounds and the other was for accepting 'baan' without seal. The adverse remarks conveyed to the petitioner for the period from 2nd July, 1991 to 12th October, 1991 were as under :—

- (1) Honesty for reputation was not good.
- (2) Did not cooperate during the police strike.
- (3) Relationship with public—average.
- (4) Over-all assessment—An Average Officer.”

(13) He made detailed representation Annexure P4 dated 10th May, 1994 for expunging the above reproduced remarks by asserting that the same had been recorded by respondent No. 3, Shri Gulab Singh Sarot, the then Deputy Commissioner, Rohtak due to extraneous reason and with an ulterior motive. His representation was rejected by the State Government by one line communication dated 31st January, 1995, the relevant extracts of which are reproduced below :—

“Reference your representation dated 10th May, 1994 on the above subject.

- (2) The representation dated 10th May, 1994 submitted by you has been considered by the Government and after consideration your representation has been rejected.”

(14) In the meanwhile, a regular departmental enquiry was initiated against the petitioner under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 on the following charge :—

“That on 18th September, 1991, Sh. Lal Chand Dalal, Superintendent, Jail made cuttings in Register No. 16 and by threatening Warder Kapur Singh he got false record prepared to which he has interest.”

(15) The petitioner filed detailed reply Annexure P9 to controvert the allegation. Thereafter, the State Government passed the impugned order prematurely retiring him about one and half year before his superannuation.

(16) The petitioner has challenged the adverse remarks conveyed,—*vide* letter dated 31st March, 1994 on the ground of violation of instructions issued by the State Government,—*vide* circular letter No. 953-3S-74, dated 1st May, 1975 (Annexure P3) and the order of premature retirement on the ground of arbitrary and *mala fide* exercise of power and also on the ground that it is punitive in nature.

(17) The case set up by respondent Nos. 1 and 2 is that the decision to prematurely retire the petitioner was taken by the officers. Committee after an over-all assessment of his record including the adverse remarks relating to integrity which were conveyed to him,—*vide* Annexure P2. They have averred that the representation made by the petitioner against the adverse remarks was rejected by the government after due consideration and it was not necessary to assign reasons for doing so. They have further averred that the enquiry initiated,—*vide* charge sheet dated 23th November, 1994 does not have any bearing on the adverse remarks about his reputation of honesty.

(18) Before dealing with the grounds on which the petitioner has challenged his premature retirement. I consider it proper to notice some facts which have been revealed from the file produced by the learned Senior Deputy Advocate General. These are :—

- (a) The petitioner's case for retention in service beyond the age of 55 years was processed by the Jail Department

in September, 1994 in the backdrop of the entries recorded in the previous 10 years including the adverse remarks for the short period of three months and ten days and the allegation that he had coerced a Jail Warden to make interpolation in Register No. 16. When the file was put up before the Minister, Jails, he recorded the following note on 21st September, 1994 :—

“Only recently, I have separately put up to Hon’ble C.M. the case relating to disciplinary proceedings against Sh. Lal Chand Dalal, Superintendent, Jail and Sh. Harnam Singh, Deputy Superintendent, Jail in respect of the episode pertaining to the alleged transaction of Rs. 20,000 on 18th September, 1991 sought to be deposited in the personal account of the convict Jagdish, S/o Dalip Singh by one Sh. Krishan Lal, a relative of the said convict. After going through the relevant record and the office comments made thereon it transpired that the alleged transaction could neither be categorised as a bribe nor an attempt to bribe on the part of the said Superintendent, Jail. In the given circumstances, the gravity of the charge against Sh. Dalal evaporates and it only remains to be a simple case of minor punishment on the basis of proven guilt. With these observations this case of extension in service beyond 55 years to Sh. Lal Chand Dalal, Superintendent, Jail may be put up before the officers committee for consideration as proposed by C.M./ Hon’ble C.M. may kindly see for approval.”

- (b) The note of the Minister of Jails was approved by the Chief Minister, Haryana on 26th September, 1994.
- (c) Thereafter, the petitioner’s case for extension of service beyond 55 years was put up before the Officers Committee which recommended his premature retirement after giving three months notice. The recommendations of the Committee were approved by the Chief Minister on 17th May, 1995.

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- (d) In furtherance of the decision taken by the Officers Committee, Financial Commissioner and Secretary to the Government, Haryana, Jails Department issued the impugned order.
- (e) After his premature retirement from service, State Government finalised the disciplinary proceedings initiated,—*vide* memo dated 22nd November, 1994 and imposed penalty of censure on the petitioner,—*vide* order dated 26th July, 1996 by observing that the charge casting doubt on his integrity has not been proved. The State Government also ordered that the period of suspension shall be treated as spent on duty.
- (f) The result of the disciplinary enquiry was also incorporated in the A.C.R. of the petitioner for the year 1991-92.
- (g) Thereafter, on a reference made by Additional Director General, Prisons, Haryana,—*vide* letter No. 8038-GI/A-1, dated 23rd April, 1997, the Jail Department recommended that notice/order of premature retirement may be withdrawn. However, the General Administration Department disagreed with the Jail Department on the ground that the premature retirement of the petitioner had been stayed by the High Court. The then Chief Secretary, Haryana agreed with the General Administration Department and in that view of the matter, no further action was taken on the note of the Additional Director General of Prisons.

(19) Shri Arun Jain argued that the impugned order may be declared illegal and quashed because no reasonable person could have, after going through the record of the petitioner, formed an opinion that he had outlived the utility for public service or that his continuance in service would not be in public interest. He further argued that the recommendation made by the Officers Committee was tainted by arbitrariness, in-as-much as, the Committee had completely overlooked the good reports and based its opinion solely on the unfounded adverse remarks recorded by respondent No. 3 for a short period of three months and ten days. Shri Jain also assailed the

adverse remarks recorded by respondent No. 3 for the short period of three months and ten days by arguing that the same were the end-product of vindictive attitude adopted by the said respondent against the petitioner. Learned counsel submitted that respondent No. 3 felt annoyed with the petitioner because he had refused to obey the unlawful command given by him to frame up the agitating police employees and insisted for compliance of the provisions of the Jail Manual and Indian Prisons Act, 1894. Shri Jain lamented that the detailed representation made by the petitioner against the arbitrary and capricious remarks recorded by respondent No. 3 was summarily rejected by the State Government without assigning any reason which may show application of mind. He then argued that the impugned order should be declared punitive because it is founded on the decision taken by the Officers Committee in the back drop of departmental enquiry initiated,—*vide* memo dated 22nd November, 1994.

(20) Shri Jaswant Singh, learned Senior Deputy Advocate General candidly and fairly stated that the entries recorded in the majority of the A.C.Rs. of the petitioner speak good about his work and performance and there is no adverse reflection on his integrity except for the short period of three months and ten days. He conceded that the adverse entries recorded for the years 1980-81 and 1981-82 were expunged by the State Government. He further conceded that in the ten years preceding his premature retirement, the petitioner had earned 8 good reports, one very good and the remaining report relating to the year 1991-92 was largely good except the adverse remarks recorded by respondent No. 3 for the period from 2nd July, 1991 to 12th October, 1991. He, however, justified the rejection of the representation made by the petitioner against the adverse remarks by arguing that the government was not required to record reasons for doing so. He also half-heartedly tried to justify the premature retirement of the petitioner by arguing that the Officers Committee was entitled to act upon the adverse entries casting reflection on the petitioner's integrity.

(21) I have given serious thought to the respective arguments. In my opinion, the premature retirement of the petitioner is liable to be invalidated because the exercise of power by the State Government under Rule 5.32-A(c) of the Punjab Civil Services Rules, Volumen-II and Rule 3.26(d) of the Punjab Civil Services Rules, Volume-I, Part-I is

vitiated by arbitrariness and total non-application of mind. It is an undisputed position that in the ten years preceding his retirement from service, the petitioner had earned eight good reports and one very good report. For the remaining year i.e. 1991-92 also, he had earned good report except for a short period of three months and ten days. The adverse remarks recorded by respondent No. 3 casting doubt on the petitioner's integrity was primarily founded on the complaint made by a relation of one of the prisoners in the matter of deposit of Rs. 20,000 in the P.F. Account of the prisoner. In the preliminary enquiry conducted by Additional Director General of Prisons, Haryana, the petitioner was not found guilty of the charge. The only thing found against him was that he had pressurised the warder to make correction in Register No. 16. In his note dated 21st September, 1994, the then Jail Minister observed that the allegation levelled against the petitioner was simple and only the minor punishment was warranted. The same was approved by the then Chief Minister. The departmental enquiry initiated against the petitioner also resulted in the imposition of the mildest penalty of censure and that too after his retirement. In the backdrop of these facts, I am inclined to agree with the learned counsel for the petitioner that entry casting adverse reflection on the integrity of the petitioner was totally unfounded and unjustified and the government committed a serious illegality by rejecting his representation. In this context, it is appropriate to observe that the employee does not earn good or bad reputation in a day or few days or month. The reputation for integrity (good or bad) is earned after performing duties for a pretty long period of time and the employee who is rated as honest and efficient for 10 years cannot over-night become dishonest. Therefore, before recording an entry casting doubt on the integrity of an employee, the employer/concerned officer must carefully examine the material available before him and record such entry only if he is convinced beyond any manner of doubt that an otherwise honest employee has suddenly become dishonest. In the present case, no material whatsoever was available before respondent No. 3 which could justify the uncharitable remark on the integrity of the petitioner. Before this Court also, no material has been produced by the learned Senior Deputy Advocate General to justify the said remark. The reasons, if any, recorded by the government for rejecting the representation made by the petitioner have also not been produced before me. Therefore, there is no escape from the conclusion that

respondent No. 3 had recorded adverse remarks relating to the integrity of the petitioner without any material and the State Government committed a serious illegality by rejecting his representation made for expunging the same. In any case, the adverse remarks relating to the integrity of the petitioner will be deemed to have been washed off by virtue of his exoneration in the departmental enquiry in so far as the allegation casting doubt on his integrity is concerned. The second remark regarding non-cooperation during the police strike is also liable to be castigated as totally unfounded and unjustified because not a single instance has been cited by the respondents to substantiate the same. In his representation, the petitioner had specifically pointed out that he had insisted on the compliance of the provisions of the Jail Manual, Indian Prisoners Act, 1894 and departmental instructions. This must have annoyed respondent No. 3, who wanted the striking police employees to be dealt with sternly and it is this annoyance has found its way in the form of adverse remarks in the A.C.R. of the petitioner which, in my opinion, cannot be justified on any count. In the column of over-all assessment, respondent No. 3 has described the petitioner as an average officer. This remark is by itself sufficient to negate the other two adverse remarks about reputation for honesty and non-cooperation.

(22) I am also inclined to agree with the learned counsel for the petitioner that the adverse remarks recorded by respondent No. 3 were the end-product of the bias entertained by him against the petitioner. The respondents have not controverted the categorical assertion made by the petitioner that respondent No. 3 was greatly annoyed due to his insistence on the compliance of the Jail Manual, Prisoners Act and the departmental instructions. Therefore, it can be said that respondent No. 3 had reflected his annoyance against the petitioner in the form of adverse remarks recorded his A.C.R.

(23) On the basis of the above discussion, I hold that no cogent material was available before the Officers Committee for forming an opinion that the petitioner's continuance in service beyond 55 year's was not in public interest or that he had outlived utility so as to justify his retirement before attaining the age of superannuation.

(24) In view of the above conclusion. I do not consider it necessary to deal with other issue i.e. whether the premature retirement of the petitioner was punitive in character.

(25) For the reasons mentioned above, the writ petition is allowed. Order dated 9th June, 1995 is declared illegal and quashed. The petitioner shall get all consequential benefits. He shall also get costs of Rs. 10,000 out of which Rs. 5,000 shall be paid by respondent No. 3. The State Government shall not reimburse respondent No. 3 for the costs to be paid by him.

R.N.R.

Before S.S. SARON, J.

VINIT KUMAR BEHL—*Appellant*

versus

SMT. RUCHI—*Respondent*

F.A.O. No. 61/M of 1997

4th December, 2002

Hindu Marriage Act, 1955-Ss. 7 & 9—Restitution of conjugal rights—Respondent denying marriage with the appellant—Appellant failing to prove the factum of marriage even sufficient and adequate opportunities were granted by the trial Court to lead evidence—Standard of proof required to prove factum of marriage under the Act—Mere statement made by the respondent before the police in a criminal case would not go to establish the fact of marriage—Photographs submitted by the appellant neither exhibited nor proved on record—Such photographs do not amount to proof of marriage—There must be solemnisation in accordance with customary rites and ceremonies—Standard of proof is by preponderance of probabilities and not proof beyond reasonable doubt—Petition liable to be dismissed being not maintainable.

Held, that many opportunities were given to the appellant to lead his evidence. Besides, the appellant was given adequate and full opportunity to cross-examine the respondent. A detailed order was passed by the learned District Judge on 27th September, 1996 while closing the evidence of the appellant. Therefore, I find that the prayer of the petitioner for granting him still further opportunity to lead