

State of Punjab and another v. Mohan Lal Sharma
(Gokal Chand Mital, A.C.J.)

to avoid such interpretation as would leave any part of the provision enacted without effect.

(4) The plain and obvious meaning of the relevant words used in Section 32(1) (vi) of the Act, provides no escape from the conclusion that as the business of the assessee was not that of generation or distribution of electricity or any other form of power, its claim for depreciation in respect of the generator was rightly declined.

(5) This reference is answered accordingly. There will, however, be no order as to costs.

J.S.T.

Before : Gokal Chand Mital, A.C.J.

STATE OF PUNJAB AND ANOTHER,—Appellants.

versus

MOHAN LAL SHARMA,—Respondent.

Letters Patent Appeal No. 1748 of 1989.

1st August, 1991.

Constitution of India, 1950—Art. 226—Premature retirement—Employee promoted to the post of Inspector in 1982—Adverse remarks found subsequently in his service record including some of doubtful integrity—Promotion does not obliterate old entries—One stray entry of doubtful integrity in the entire service record is sufficient for purposes of ordering premature retirement—Entire record should be considered with special reference to recent entries—Order of premature retirement is valid.

Held, that before passing an order of premature retirement the entire record must be taken into account with special reference to the recent record and in case of doubtful integrity, the entire service record of an official has to be taken into account and any one entry to that effect is sufficient for purposes of ordering premature retirement.

(Paras 5 & 7)

State of Punjab v. Pirthi Singh, L.P.A. No. 1319 of 1990 decided on 26th April, 1991 (P & H)

(FOLLOWED)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment and order dated 30th May, 1989 passed/delivered in C.W.P. No. 5108 of 1987.

Nemo, for the appellants.

Mr. K. L. Arora, Advocate, for the respondent.

JUDGMENT

Gokal Chand Mital, ACJ.

(1) Mohan Lal Sharma, the present respondent, challenged the order Annexure P-2 through a writ petition under Articles 226 and 227 of the Constitution, whereby he was prematurely retired from service. The brief facts of the case are as under:—

(2) The writ petitioner was recruited as a Constable in the Punjab Police in the year 1951 and subsequently promoted to A.S.I. and thereafter Sub-Inspector on September 19, 1975. He was promoted as an Inspector,—*vide* order dated May 8, 1982, copy Annexure P-1. On February 9, 1985, the order Annexure P-2 retiring him from service prematurely was passed. Against order Annexure P-2, the respondent submitted a representation to the Director-General of Police and the same was rejected. The case of the respondent in the writ petition was that the adverse reports on the basis of which he had been retired prematurely had been recorded at the instance of Shri G. S. Bhullar, who had been his superior officer. On merits, it was contended that two adverse reports were conveyed to the respondent on September 1, 1983, in which the honesty of the respondent had been doubted. It is the case of the respondent that they had been initiated at the instance of Shri G. S. Bhullar, aforesaid. Aggrieved against the aforesaid adverse remarks, respondent filed two representations before the competent authority and those were stated to be pending when the order Annexure P-2 was passed, but,—*vide* order dated April 9, 1985, Annexure P-8, the said representations were rejected. It has also been mentioned that a third adverse report dated November 9, 1984, Annexure P-10 for the period April 1983 to September 1983 was also given and the representation against this report was also rejected by the Director-General of Police.—*vide* communication dated December 11, 1985.

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(3) The action of the authorities in retiring the respondent was challenged on a number of grounds. It was contended that the adverse reports against the respondent were initiated and made at the instance of Shri Bhullar, who had strained relations with the respondent. It was also contended that some of the adverse entries, on which reliance had been placed for making the order Annexure P-2, were old and stale and they ceased to have effect after the promotion of the respondent or the crossing of the efficiency bar.

(4) In reply to the averments of the respondent, it was stated that not only the entries alleged to have been recorded at the instance of Shri Bhullar, but the entire record of the respondent had been taken into account while ordering premature retirement. It was also mentioned in the reply that there were a large number of adverse reports recorded against the respondent, including some, involving his poor moral character and integrity. It has also been mentioned that the adverse remarks alleged to have been recorded at the instance of Mr. Bhullar were challenged by the respondent by filing civil suits and the said suits were dismissed and the appeals filed before the District Judge also failed. The learned Single Judge after going through the matter and relying on a decision of the Supreme Court in *Brij Mohan Singh Chopra v. State of Punjab* (1), to the effect that old and stale entry could not be taken into account while ordering premature retirement and that as subsequent to the recording of these adverse entries the respondent had, in fact, been promoted, no reliance could be placed on those entries. Special attention was drawn to the effect that in May, 1982,—*vide* order Annexure P1, the respondent had been promoted as Inspector. The learned Single Judge further held that in paragraphs 8 and 12 of the reply filed on behalf of respondent No. 1, it had been mentioned that the premature retirement had not been ordered on the basis of entries recorded subsequent to May, 1982 and, as such, there was in fact no sustainable adverse report against the respondent. Having held as above, the writ petition was allowed which has led the State of Punjab to file the present letters Patent Appeal.

(5) We have gone through the pleadings as also the arguments advanced by the counsel and find that the matter is squarely covered against the respondent by a Division Bench decision of this Court in

(1) A.I.R. 1987 S.C. 948.

State of Punjab v. Pirthi Singh (2). While examining the matter of premature retirement with reference to an entry of doubtful integrity, the Division Bench held that even one such entry during the course of the service career of a government servant was good enough for ordering premature retirement and for finding such an entry, the entire service record was to be taken into account. The learned Single Judge had also relied on *Dr. Om Parkash Gupta v. State of Haryana* (3), for coming to the conclusion that the recent record of the official concerned was to be seen and a stray entry of doubtful integrity could not be deemed to be sufficient for ordering premature retirement. This matter was also considered by the Division Bench in *Pirthi Singh's case* (supra) and it was noticed that in *Dr. Om Parkash Gupta's case* itself, it had been specifically held that the overall record of the official was to be seen before passing an order of compulsory retirement but the recent conduct of the public servant was more relevant than the old one. When so viewed, we find that the entire record must be taken into account with special reference to the recent record.

(6) On examining the present case in the light of the above, we find that the recent record of the respondent has been extremely poor. A number of adverse entries, including some of doubtful integrity, were recorded against him subsequent to his promotion as Inspector in 1982. Against these adverse entries, the respondent filed representations which were rejected (although after his premature retirement) and also filed civil suits wherein he failed. The finding of the learned Single Judge that paragraphs 8 and 12 of the reply filed on behalf of respondent No. 1, indicate that these entries were not taken into account, is not entirely correct as in para 12 of the written statement it has been specifically stated that the petitioner was not prematurely retired on the basis of the ACRs recorded by respondent No. 2 but also on the basis of the entire service record. In other words, the entries recorded by Shri Bhullar, that is, subsequent to May, 1982, when the respondent was promoted as Inspector, were also taken into account while ordering premature retirement.

(7) Shri K. L. Arora, Advocate, appearing for the respondent, also contended, placing reliance on *Brij Mohan Singh Chopra's case* (supra) that the representations against the adverse remarks recorded

(2) L.P.A. No. 1319 of 1990 decided on 26th April, 1991.

(3) 1988 (6) S.L.R. 370.

Commissioner of Wealth-tax, Jullundur *v.* Ravi Kumar
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subsequent to May 1982 were pending on the date of premature retirement and, as such, the order Annexure P-2, could not be sustained. This matter had also been taken into account by the Division Bench in *Pirithi Singh's case*. In the aforesaid case, the representations of Pirithi Singh petitioner were pending even at the time of the hearing of the Letters Patent Appeal and it was during the course of the aforesaid appeal that a direction was issued to the concerned officer to dispose of the representations. In compliance with these directions, the representations of Pirithi Singh were disposed of and were rejected. In the present case the representations had been admittedly disposed of prior to the filing of the writ petition and, in any case, the stamp of approval of the adverse entries had been put by the Civil Court in the civil suits filed by the respondent challenging those entries. It is, therefore, not open to the respondent to say now that those adverse entries could not be taken into account as representations against those entries were pending on the date of premature retirement of the respondent. We also find that in case of doubtful integrity, the entire service record of an official has to be taken into account and any one entry to that effect is sufficient for purposes of ordering premature retirement.

(8) No other point has been urged before us.

(9) For the reasons recorded above, we allow the present Letters Patent Appeal and uphold the order of premature retirement passed against the respondent and dismiss the writ petition, but with no order as to costs.

R.N.R.

Before : S. S. Sodhi & Ashok Bhan, JJ.

COMMISSIONER OF WEALTH TAX, JULLUNDUR,—*Applicant*.

versus

RAVI KUMAR,—*Respondent*.

Wealth-tax Reference No. 20 to 24 of 1987.

7th August, 1991.

Wealth tax Act, 1957—Ss. 18 (i) (a), 18 (2-A) & 18-B—Delay in filing Wealth Tax Returns—Penalty proceedings initiated—During pendency of proceedings. Assessee moving Commissioner of Wealth-tax under S. 18-B for waiver of penalty—Commissioner directing that