
Before M.M. Kumar & M.M.S. Bedi, JJ.

JAGDISH PARSHAD,—*Petitioner*

versus

THE DISTRICT AND SESSIONS JUDGE,
YAMUNANAGER,—*Respondents*

C. W. P. NO. 18540 OF 2003

20th July, 2006

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Volume I, Part I—Rl. 3.26 (d) and (e)—Punjab Civil Services Rules, Volume II—Rl. 5.32-A—Compulsory retirement of a class IV employee on attaining age of 55 years by invoking Rl.3.26 (d)—Whether a Class IV employee could not be retired before the age of superannuation and Rl. 3.26 (d) does not apply to a member of Class IV employee—Under Rule 5.32 A Government has power to retire any Government employee if he has completed 25 years of qualifying service for pension—Petitioner completed 33 years of qualifying service—Petitioner unable to do any work due to old age and ill health—No illegality in the order retiring the petitioner compulsorily—Petition dismissed.

Held, that, Note-I appended to Rule 5.32 of the Punjab Civil Services Rules, Volume II, clothe the Government with an absolute right to retire any Government employee if he has completed 25 years of qualifying service for pension in case he is holding a pensionable post or he has completed similar period if he is holding a non-pensionable post but he is entitled to the benefit of Contributory Provident Fund. According to the Note, no reasons are required to be disclosed and no claim to special compensation on that account is to be entertained. The paramount consideration for exercising of such power is to serve public interest to weed out inefficient, dishonest and corrupt etc. The aforementioned rule does not make any distinction between various classes of employees and is uniformly applicable to Class I to IV.

(Para 7)

Further held, that the petitioner has completed 25 years of pensionable service as he was appointed on 1st September, 1970 and

has been retired,—*vide* order dated 4th November, 2004. It is evident that he has completed 33 years of service. The impugned order is in public interest because the petitioner has been rendered as a deadwood as he is inefficient and is unable to do any work due to old age and ill health. It has been remarked in his ACRs that he is getting pay without doing any work. The requirement of the Rules has been met, which is aimed at weeding out inefficient, dishonest and corrupt etc. Therefore, there is no illegality in the impugned order, which deserves to be upheld.

(Para 8)

Hari Om Sharma, Advocate, *for the petitioner.*

Harish Rathee, Sr. DAG, Haryana, *for the respondent.*

JUDGMENT

M. M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution challenges order dated 4th November, 2003 (P—5) passed by the District and Sessions Judge, Yamunanagar at Jagadhari, retiring the petitioner compulsorily on his attaining the age of 55 years. The petitioner is a Waterman and belongs to Class-IV category of employee.

(2) Brief facts are necessary to put the whole controversy in its right perspective. The petitioner was initially appointed as Waterman on 1st September, 1970 and his date of birth as per service record is 4th April, 1949. He was confirmed as such on 7th June, 2003 and was retired from service,—*vide* order dated 4th November, 2003 as Waterman. Before retiring him compulsorily, a notice was issued to him on 28th October, 2003, which is duly replied by him on 3rd November, 2003. After considering his reply, the District and Sessions Judge retired him compulsorily from service by passing the impugned order, which reads as under :—

“Please refer to your office endst No. 808, dated 3rd November, 2003, on the subject cited above.

Reply to the show-cause notice submitted by the official has been considered. The official has been adjudged to be a

slow-cart and lethargic by his Presiding Officers. His utility in the department has also been considered. He is of no utility to this department, therefore, it would not be prudent to retain him in Government service beyond the age of 55 years. It has thus, been decided that he be compulsorily retired from Government service with effect from 4th November, 2003 (A.N.).

The official concerned be informed accordingly and take further necessary action in getting his pensionary benefits, if any, released from the Government at the earliest.”

(3) Mr. Hari Om Sharma, learned counsel for the petitioner, has argued that the petitioner has been retired by invoking Rule 3.26(d) of the Punjab Civil Services Rules, Volume-I, Part-I (as applicable to Haryana), which in fact does not apply to a member of Class-IV category. According to the learned counsel, the proviso to Sub-rule (a) of Rule 3.26 clearly stipulates the age of superannuation for Class-IV employee to be 60 years and Class-IV employee could not be retired before the age of superannuation.

(4) Mr. Harish Rathee, learned State counsel, however, has pointed out that the service record of the petitioner bears ample testimony of the fact that the petitioner has become deadwood and is an inefficient worker. He has drawn our attention to the extracts of his ACR for the year 2001 (R—1) wherein it is recorded that he has not been able to do any work due to ill health and old age. It has further been remarked that he is ‘good for nothing fellow’. Likewise, for the year 2002 adverse remarks have been recorded which have been placed on record as Annexure R—2. Learned State counsel has then argued that the petitioner himself had requested for his retirement by stating that his GPF may not be deducted from his salary by expressing his willingness to retire prematurely.

(5) We have thoughtfully considered the submissions made by the learned counsel for the parties and are of the view that the impugned order dated 4th November, 2003 (P—5) does not suffer from any illegality warranting our interference. In order to appreciate the whole controversy it would be appropriate to notice the provisions of Rule 3.26(d) and (e) of the Punjab Civil Services Rules, Volume-I, Part-I, along with the provisions of Rule 5.32-A of the Punjab Civil

Services Rules, Volume-II (as applicable to Haryana) and the same reads as under :—

“3.26 xxx xxx xxx xxx

(d) The appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government employee, other than Class IV Government employee by giving him notice of not less than three months in writing or three month's pay and allowances in lieu of such notice :—

(i) If he is in class I or class II Service or post and had entered Government service, before attaining the age of thirty five years, after he has attained the age of fifty year ; and

(ii) (a) If he is in class III Service or post, or

(b) If he is class I or class II Service or post and entered Government service after attaining the age of fifty five years ; after he has attained the age of fifty five years.

The Government employee would stand retired immediately on payment of three month's pay and allowances in lieu of the notice period and will not be in service thereafter.

(e) A Government employee, other than a class IV Government employee, may be (by ?) giving a notice of not less than three months in writing to the appointing authority, retire from service :—

(i) if he is in class I or II service or post and had entered Government service before attaining the age of thirty five years after he has attained the age of fifty years ; and

(ii)(a) if he (is ?) in class III service or post ; or

(b) if he is in class I or class II service or post and entered Government service after attaining the age of thirty-five years ; after he has attained the age of fifty five years :

Provided that it shall be open to the appointing authority to withhold permission to a Government employee under suspension who seeks to retire under this clause.”

xx xxx xxx xxx xxx xxx xxx

“5.32-A. The rule for the grant of retiring pensions is as follows :—

- (a) A Government employee is entitled, on his resignation being accepted, to a retiring pension after completing qualifying service of not less than 30 years, but a competent authority may permit the pension to be granted in special cases where the qualifying service is not less than 25 years.
- (b) A retiring pension is also granted to a Government employee who is required by Government to retire after completing 25 years' qualifying service or more and who has not attached (attained ?) the age of 55 years.

Note 1.—The Government retains an absolute right to retire any Government employee after he has completed twenty-five years of service qualifying for pension if he is holding a pensionable post or has completed service for a similar period if he is holding a non-pensionable post, but is entitled to the benefits of Contributory Provident Fund, without giving any reasons and no claim to special compensation on this account will be entertained. *This right will not be exercised except when it is in the public interest to dispense with the further services of a Government employee such as on account of inefficiency, dishonesty, corruption or infamous conduct. This clause (b) of this rule is intended for use—*

- (i) against a Government employee whose efficiency is impaired but against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient (i.e. when a Government employee's value is clearly incompensurate with the pay which

he draws) but not to such a degree as to warrant his retirement on a compassionate ground. It is not the intention to use the provisions of this note as a financial weapon, that is to say, the provision should be used only in the case of Government employees who are considered unfit for retention on personal as opposed to financial grounds ; and

- (ii) in cases where reputation for corruption, dishonesty or infamous conduct is clearly established even though no specific instance is likely to be proved under the Punishment and Appeal Rules, Appendix 24 of Volume I, Part II of these rules or the Public Service (Inquiries) Act, 1850 (XXXVII) of 1850.

The word "Government" used in this note should be interpreted to mean the authority which has the power of removing the Government employee from service under the Civil Services (Punishment and Appeal) Rules.

Note 2.—The Government employee should be given a reasonable opportunity to show cause against the proposed action under clause (b) of this rule. No Gazetted Government employee shall, however, be retired without the approval of Council of Ministers. In all cases of compulsory retirement of Gazetted Government employee belonging to the State Services, the Public Service Commission shall be consulted. In the case of non-Gazetted Government employees the Head of Departments should effect such retirement with the previous approval of the State Government.

Note 3.—A Government employee who has elected to retire under this rule and has given necessary intimation to that effect to the competent authority, shall be precluded from withdrawing his election subsequently except with the specific approval of the authority competent to fill the appointment ; provided his request for withdrawal is made within the intended date of his retirement.

(c) A retiring pension is also granted to a Government employee other than a Class IV Government employee,—

(1) who is retired by the appointing authority by giving him a notice of not less than three months in writing,—

(i) If he is in class I or class II service or post and had enacted Government service before attaining the age of thirty-five years, after he has attained the age of fifty years ; and

(ii)(a) If he is in class III service or post ; or

(b) If he is in Class I or Class II service or post and entered Government service after attaining the age of thirty five years.

after he has attained the age of fifty five years ;

(2) Who, if from category (1) above retires on or after attaining the age of fifty years, or if from category (1) (ii) above retires on/or after attaining the age of fifty five years, by giving a notice of not less than three months, in writing, of his intention to retire, to the appointing authority :

Provided that where the notice is given before attaining the age of fifty years or fifty five years, as the case may, it shall be given effect to from a date not earlier than the date on which the age of fifty years, or fifty five years, as the case may be is attained.

Note.—Appointing authority retains an absolute right to retire any Government employee referred to above on or after he has attained the age of fifty years, or fifty five years, as the case may be, without assigning any reason. A corresponding right is also available to such a Government employee to retire on or after he has attained the age of fifty years or fifty five years, as the case may be.”

(6) A co-joint reading of both the rules would show that various provisions exist to retire a Government employee after completion of specified years of service. Rule 3.26 postulates the general age of retirement, which is 60 years for Class-IV employees. Sub-rule (d) (i) of Rule 3.26 deals with a situation in respect of Class-I and II Service or post. The power of premature retirement at the age of 50 years could be exercised in respect of an employee who had entered Service prior to attaining the age of 35 years. However, in respect of employees belonging to Class-III Service or post as also members of Class-I or Class-II Service or post, who had entered into Service after attaining the age of 35 years, this power of premature retirement could be exercised at the age of 55 years. It appears that Sub-rule (d) and (e) of Rule 3.26 also deal with mutuality of giving notice of three months by either side and it does not apply to a Class-IV employee like the petitioner.

(7) However, Note-1 appended to Rule 5.32-A of the Punjab Civil Services Rules, Volume-II, clothe the Government with an absolute right to retire any Government employee if he has completed 25 years of qualifying service for pension in case he is holding a pensionable post or he has completed similar period if he is holding a non-pensionable post but he is entitled to the benefit of Contributory Provident Fund. According to the Note, no reasons are required to be disclosed and no claim to special compensation on that account is to be entertained. The paramount consideration for exercising of such power is to serve public interest to weed out inefficient, dishonest and corrupt etc. The aforementioned Rule does not make any distinction between various classes of employees and is uniformly applicable to Class-I to IV.

(8) If we view the facts of the present case in the light of Rule 5.32-A, it becomes evident that the petitioner has completed 25 years of pensionable service as he was appointed on 1st September, 1970 and has been retired,—*vide* order dated 4th November, 2003. It is evident that he has completed over 33 years of service. The impugned order is in public interest because the petitioner has been rendered as a deadwood as he is inefficient and is unable to do any work due to old age and ill health. It has been remarked in his ACRs that he is getting pay without doing any work. The requirement of the Rules has been met, which is aimed at weeding out inefficient, dishonest and corrupt etc. Therefore, there is no illegality in the impugned order, which deserves to be upheld.

(9) The argument of the learned counsel that Rule 3.26 (d) of the Rules does not apply to the case of the petitioner being Class-IV (Category 'D') employee deserves to be accepted as has been held in the preceding para. However, it does not come to the rescue of the petitioner because Note-1 appended to Rule 5.32-A of the Rules thoroughly apply to the case of the petitioner. The aforementioned principle in Note-1 does not confine the exercise of the power to a particular class of employees. Therefore, we have no hesitation to reject the argument raised.

(10) For all the reasons stated above, this petition fails and the same is dismissed.

R.N.R.

Before Ashutosh Mohunta & R.S. Madan, JJ.

SATPAL KHAN,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS ... *Respondents*

C.W.P. NO. 7746 OF 2006

15th January, 2007

Constitution of India, 1950—Arts. 14, 16 & 226—Instructions dated 18th February, 2002 issued by State of Haryana—Petitioner belonging to Muslim community charge sheeted for not taking permission to keep beard as required by instructions dated 18th February, 2002—Dismissal from service—Selection of petitioner as Constable with supporting beard and continued to work for a period of two years—No objection from any authority for keeping of beard and petitioner found to be disciplined member of the force—On learning about instructions petitioner applying for permission which remained undecided—Violation of fundamental right of petitioner to keep beard being a member of the Muslim community—Petition allowed, respondents directed to reinstate petitioner with all consequential benefits.

Held, that the petitioner has joined the service having full beard as a Constable in the Haryana Police and continued to work