

years of the death of Banwari Lal and is not valid. This contention again has no merit. As already stated above, succession certificate legally is not required and secondly even if it was so required the decree holders obtained the same before filing the second execution application. The grant of succession certificate could be opposed in those proceedings when notice was published. In the present execution proceedings validity of the succession certificate cannot be challenged.

(6) When the first execution application was filed on 24th August, 1982, the present petitioners being decree holders were entitled to execute the decree. Even if it was dismissed as unsatisfied on the ground that they had not obtained the succession certificate in their favour, they filed the second execution application on 2nd January, 1984 after obtaining such a certificate. Under Article 136 of the Indian Limitation Act, 12 years period is provided for executing the decree. The present application was well within 12 years. Even otherwise the present application for execution was filed within 3 years of the disposal of the previous execution application. As it was not necessary for the decree holders to obtain succession certificate, the present application was to proceed accordingly to law.

(7) For the reasons stated above, this revision petition is allowed. The impugned order of the executing court is set aside. The parties are left to bear their own costs. The parties through their counsel are directed to appear before the executing Court on 30th September, 1991.

R.N.R.

Before Hon'ble A. L. Bahri & V. K. Bali, JJ.

SHAMSHER KAUR.—Petitioner.

versus

THE STATE OF HARYANA.—Respondent.

Civil Writ Petition No. 1608 of 1992.

May 27, 1992.

Constitution of India, 1950—Art. 226—Punjab Civil Service Rules Vol. I, RL 3.6 (d) and Vol. II, RL 5.3 (c)—Premature retirement—Uncommunicated adverse remarks in the confidential roll can be taken in account while ordering premature retirement of

government servant—Over-all record has to be seen—Teacher assessed below average, uncordial and obstinate—Order of premature retirement justified.

Held, that the petitioner had only two good reports whereas all the other reports are either average or below average. It is true that all the average reports have not been communicated to her but it is the over-all record which has to be taken into account while determining as to whether a person is fit for retention in service or not. An order of compulsory retirement is not a punishment and it implies no stigma. It is passed on the subjective satisfaction of the government. In *Shri Baikuntha Nath Das and Another v. Chief District Medical Officer, Baripada and another* J.T. 1992 (2) S.C., 1, the Apex Court has now held that 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, and the circumstance by itself cannot form the basis for interference.

(Para 5)

R. K. Malik, Advocate, for the Petitioner.

D. R. Trikha, D.A.G. Haryana, for the Respondent.

ORDER

V. K. Bali, J. (Oral)

(1) Aggrieved by order Annexure P-1,—*vide* which applying rule 5.32 (C) of the Punjab Civil Services Rules, Volume, II and rule 3.26 (d) of the Punjab Civil Services Rules, Volume-I, Government of Haryana, in the public interest, ordered pre-mature retirement, the petitioner has filed the present petition under Article 226 of the Constitution of India.

(2) The facts as culled out from the pleadings of the parties would reveal that the petitioner joined the Education Department on 19th October, 1977. She was at the relevant time Lecturer in Botany, posted at Government College (Women), Rohtak, and had attained 50 years of age when she received order of pre-mature retirement annexure P-1 as has been described above dated 26th September, 1991. It is the case of the petitioner that in her whole service career she had shown excellent results which demonstrated her ability as teacher. That apart, she had many research articles to her credit. Her one article "Simple Correlation of various Chemical Components of Plants" was published in the journal of international reputation in the year 1981 and another journal

"A New Teaching Technique for Forage Evaluation" was again Published in the international Journal i.e. Act Botanica India in the year 1983. She also claims to have an-excellent service career and during the last eight years no adverse confidential report were conveyed to her. However, prior to eight-years immediately preceding the order of pre-mature retirement she was conveyed two adverse reports. The remarks of the same were not known. On the assertions, as have been noticed above, notice of motion was issued and in consequence thereof written statement has been filed by the respondent-State through Shri R. D. Sheokand. Deputy Secretary Education to Government Haryana. By way of preliminary objection it is pleaded that by virtue of sub-clause (d) of Rule 3.26 (a) of Civil Services Rules, Volume I, the appointing authority has absolute right if in its opinion it is in the public interest to retire a Government Servant, the same can be done by giving the employee a notice of not less than three months in writing or three months pay in lieu thereof. It is also stated that the case of the petitioner was reviewed by the competent authority in accordance with the provisions of the above said rule and instructions contained in letter dated 19th November, 1991 and the competent authority decided to retire the petitioner in accordance with the provisions in public interest at the age of 50 years. Even though no serious dispute has been raised in the written statement with regard to the research articles, the petitioner claims to have written and which are stated to have been published in international journals as also without much commenting upon the results of the petitioner as have been claimed by her the respondents have, however, hotly contested the assertion of the petitioner that her service record of last eight years has been without any blamish or that she had not been conveyed any adverse remarks for the said period. It is pleaded that the adverse remarks recorded in the annual confidential report of the petitioner for the years 1981-82, 1984-85 and 1987-88 were conveyed and some of the said remarks even talked adversely with regard to integrity of the petitioner. The chart made below would manifest that the aforesaid contention of the respondents is substantially correct:—

Year	Advance remarks conveyed
1981-82 Punctuality:	Poor
Integrity :	Not upto the mark

Year	Adverse remarks conveyed	
(Conveyed vide Memo No. 24/4-82 CI(3) dated 17-2-83	Relation with Head & Other teachers of the Institution.	Bad
	Relations with other officials :	Poor
	Defect, if any : shirks duties is v.	She is obstinate defiant quarrelsome.
	Overall : Assessment	Below average
1984-85	Overall assessment :	Average, despite repeated reminders she did not sign the result part of the report and returned it with over writing. According to college record her result in B. Sc. II practical is at par. But the result of B. Sc. II (Theory) as per record available in the college is 32 Appeared 16 passed, result 50%. University result 67.91% 17.91%. Needs to be tempered and more restrained in her relations with the Principal and her colleagues.
(Conveyed vide Memo No. 2/78-85 CI (3) dated 10-4-1986)	Relation with Principal and colleagues.	Average but used to quarrel with the colleagues.
198 -88		
(Conveyed vide Memo No. 24/10-89 CI(3) dateu 7/8-90	Relation with Principals/ Colleagues.	Not good, she does not cooperate with any one.
	Overall assessment :	Average.

(3) Definite adverse remarks conveyed to the petitioner in the manner aforesaid apart, the case of the respondents is that even over all record of the petitioner was far from satisfactory in-as-much-as in the last ten years she had earned only two such reports which could be described as "good" whereas all other reports were either average or below average. Summary of the annual confidential reports of the petitioner from the years 1981-82 to 1990-91 is as follows :—

Year	Grading	Result	Overall assessment
1981-82	B (Below average)	+10.5 + 3.7 — 3.7	Integrity not upto the mark (Adverse remarks conveyed)
1982-83	+B (Good)	+ 2 10.39	
1983-84	B (Average)	Two at par + 1.7 — 6.38 + 0.66	
1984-85	B (Average)	One at part Two at par +12.54	Integrity average (Adverse remarks conveyed)
1985-86	+B (Good)	+ 1 +32.9 + 6.5 + 1	
1986-87	Average	One at par + 1.8 One at par + 1	
1987-88	Average	+ 8.1 + 2.1 + 8.1	Adverse remarks conveyed
1988-89	NAC (Average)	+ 3.8	
1989-90	NAC (Good)	+ 3.85	
1990-91	Average	Five plus Two at par	Uncordial with the Principal as well as with the colleagues particularly of her department.

(4) The main contention of the learned counsel appearing for the petitioner is that for the last more than eight years no adverse remarks were conveyed to the petitioner and it is by now well settled law that no adverse order like pre-mature retirement can be passed on the basis of such adverse confidential reports which have not been communicated to the official/officer and against which adverse remarks there was no chance or occasion to file any representation. It has also been argued by the learned counsel that in-as-much as the results of the petitioner have always been excellent she could not be retired in public interest as the said interest could only be achieved by removing the dead wood and to chop off such element which may be burden on the department as also that service tenure of the petitioner has been cut-short by as many as eight years without any justifiable reasons. Based upon the service record of the petitioner, as has been narrated above, the State counsel however, refutes the contention raised by the learned counsel for the petitioner.

(5) We have heard learned counsel appearing for the parties and after perusing the record we are of the considered view that the petitioner has been rightly retired and that none of the pleas raised by the learned counsel for the petitioner is good enough to interfere with the impugned order. It shall be seen from the summary of the adverse remarks which had been conveyed to the petitioner that her integrity was not upto the mark for the year 1981-82. Her relations with head and other teachers as also with officials were poor. She was opined to be an obstinate officer who also shirks duties and was quarrel-some. Her punctuality was also poor. She was assessed to be below average. For the year 1984-85 her results have also been poorly commented upon which is the main stake of the petitioner to claim herself to be an excellent teacher. She was commented to be a person who will take quarrels with the colleagues as also with the Principal. Likewise, for the year 1987-88, her relation with the Principal and colleagues were not stated to be good. She was also not co-operative with anyone. Her overall assessment was average. As is evident from the summary of annual confidential report she had only two good reports whereas all the other reports are either average or below average. It is true that all the average reports have not been communicated to her but it is the over-all record which has to be taken into account while determining as to whether a person is fit for retention in service or not. An order of compulsory retirement is not a punishment and it implies no stigma. It is passed on the subjective satisfaction of the government. In *Shri Baikuntha Nath Das & another v, Chief District*

Medical Officer, Baripada and another (1), the apex Court has now held that 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, and that circumstance by itself cannot form the basis for interference which is permissible only on the grounds such as if the order is passed *mala fide* or based on no evidence or that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material i.e. if it is found to be a perverse order. The mere fact that the petitioner has to her credit few publications, as have been noticed above, would not be in itself enough to interfere with the order Annexure P-1 which apparently has been passed on over-all assessment of the work and conduct of the petitioner during the last ten years. Finding no merit in this writ petition, we dismiss the same in limine. There shall be no orders as to costs.

R.N.R.

Before Hon'ble S. S. Sodhi & R. S. Mongia, JJ.

RAJ KUMAR SHARMA,—Petitioner.

versus

STATE OF HARYANA AND ANOTHER,—Respondents.

Review Application No. 172 of 1992.

in C.W.P. 12740 of 1991.

Constitution of India, 1950—Arts. 226/227—Admission granted on basis of fake certificate—Mandamus sought to allow to continue studies and complete course—Such prayer declined.

Held, that the petitioner had obtained admission on the basis of a fake certificate knowing it to be such. We are therefore, constrained to dismiss this writ petition and impose Rs. 1,000 as costs upon the petitioner.

(Para 3)

Ram Lal Gupta, Advocate. for the Petitioner.

R. C. Setia, Addl. A.G. Haryana, for the Respondents.

(1) J.T. 1992 (2) S.C. I.