

by the private Institutions which have been duly approved under sub section (1) of Section 12 of the Indian Pharmacy Act. According to the Board, since the students have given their first preference with a particular Institution, therefore, they were directed to be admitted by the said Institutions. However, since the said Institutions could not be directed by the Board to admit students since they were not getting any State aid, the petitioners in all these petitions will be entitled to be considered on merit for the purpose of their admissions in the State-owned Institutions. It may be made clear that the petitioners who come on merit will not be deprived of admissions only because they gave their preference for those Institutions which are not allowing them to join now. In that situation, if they come on merit, the Board will consider the same and give them admissions accordingly in other Institutions. Consequently, all these petitions succeed to the extent indicated above with no order as to costs.

(21) In C.W.P. No. 9981 of 1989, the students of the petitioner-Institution made an application under Order 1 rule 10 of the Code of Civil Procedure for being impleaded as party to the present writ petition. Such students are neither necessary nor proper parties. Hence, this said Civil Misc. application is dismissed.

R.N.R.

Before : A. L. Bahri, J.

CHAMAN LAL,—Appellant.

versus

STATE OF PUNJAB & OTHERS,—Respondents.

Regular Second Appeal No. 410 of 1986

12th March, 1990.

Punjab Civil Service (Premature Retirement) Rules, 1975—Rls. 2, 3, 5 & 6—Compulsory retirement in public interest—Competent Authority—Consideration of service record—Necessity of such consideration.

Held, that at the time of retirement, the appellant was working as a Record-Keeper in the Sessions Division. It is the District and Sessions Judge who has the authority to appoint ministerial staff of the District Court. It may be that initially the appellant might have

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been appointed by the Chief Justice but the relevant time for considering as to who is the appropriate authority is the time of retirement from the post then held i.e. the post of Record-Keeper in a Sessions Division. It was the District and Sessions Judge who could substantively appoint a person to the post of Record-Keeper and he was thus the appropriate authority to pass an order of his retirement.

(Para 8)

Held, that the present case is not a case of consideration of the service record for purposes of determining suitability of the appellant for retention in service beyond the due date. It was within the competence of the competent authority to compulsorily retire an employee of the Court subordinate to the High Court if it was considered in the public interest. Present is a case which falls in the latter category. The said power under sub-rule (3) of the Rules is only channelised by the instructions and is not abridged. If the competent authority considers that it will not in the interest of the public to retain an employee beyond the due date i.e. after completion of 25 years of qualifying service, without assigning any reasons, such an order could be passed and it was so passed in the present case.

(Para 4)

Regular Second Appeal from the decree of the Court of the Addl. District Judge, Bhatinda dated the 18th day of September, 1985 affirming that of the Sub Judge 1st Class, Bhatinda, dated the 10th February, 1983, dismissing the suit of the plaintiff but leaving the parties to bear their own costs.

CLAIM:—Suit for declaration to the effect that the order dated 8th February, 1977 passed by the District and Sessions Judge, Bhatinda,—vide which the plaintiff has been retired from service is wrong, illegal, arbitrary, null, void, ultravires to the provisions of the Constitution of India is against law and is opposed to the principles of natural justice, equity and good conscience and is based on malice and as such is in-operative against the rights of the plaintiff who continues in service with effect from the afternoon of 14th February, 1977 till the date of superannuation of full pay and allowances and other benefits of service attached to it according to rules.

CLAIM IN APPEAL:—For reversal of the order of the both the court below.

R. K. Battas, Advocate, for the Appellant.

Charu Tuli, A.A.G. (Pb.), for the State.

ORDER

A. L. Bahri, J.

(1) Chaman Lal, the plaintiff, has filed this regular second appeal against the judgment and decree of Additional District Judge,

Bathinda, dated September 18, 1985 dismissing his appeal filed against the judgment and decree of the trial Court dated February 10, 1983 whereby his suit was dismissed. The suit was filed for declaration that order of the District and Sessions Judge, Bathinda, dated February 8, 1977 retiring him permanently from the post of Record Keeper was illegal, arbitrary, null and void.

(2) The appellant was initially appointed as Stenographer in the erstwhile State of PEPSU. In February, 1956, he was confirmed. At the relevant time, he was working as Record Keeper at Bathinda from where he was relieved on February 14, 1977 under orders of the District and Sessions Judge dated February 8, 1977 compulsorily retiring him. The said order was challenged on different grounds. The suit was contested by the defendants-State of Punjab, Punjab and Haryana High Court and the District and Sessions Judge, Bathinda. The order was stated to be perfectly valid, passed under the provisions of the Punjab Civil Service (Premature Retirement) Rules, 1975. The order was passed in public interest. No flaw could be found with the said order on any such assertion as made in the plaint. The validity of the notice served under section 80 of the Code of Civil Procedure was also challenged. In the replication, the plaintiff-appellant reiterated his stand. The following issues were tried in the case:—

- (1) Whether the impugned order dated 8th February, 1977 retiring the plaintiff from service is wrong, illegal, arbitrary, null and void, *ultra vires*, against law and is opposed to the principles of natural justice and equity and good conscience and is based upon malice as alleged in paragraph No. 5 of the plaint? OPP
- (2) Whether the notice under section 80 C.P.C. is invalid? OPD
- (3) Relief.

Both the Courts below held issue No. 1 against the plaintiff-appellant and thus the suit was dismissed.

(3) Mr. R. K. Battas, Advocate appearing on behalf of the appellant, after referring to the record produced in the case, has argued that the impugned order of compulsory retirement of the appellant was passed by way of punishment as the same was passed on account of some inquiry which was being conducted against the

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appellant by the Vigilance Department. Subsequently, according to the counsel, a criminal case was initiated on the said inquiry and the appellant was acquitted. Since the impugned order leaves a stigma on the character of the appellant, it is not a case of simple retirement of the appellant but is a case of punishment and thus the impugned order cannot be sustained. On the other hand, the stand of Mrs. Charu Tuli, A.A.G. appearing on behalf of the respondents, is that the impugned order has been passed in public interest. No reasons were required to be given therein and the impugned order is not an order of punishment. I have given due consideration to these arguments. Rule 3 of the Punjab Civil Service (Premature Retirement) Rules, 1975 empowers the appropriate authority if it is of the opinion that it is in the public interest to do so to compulsorily retire a Government employee on completing 25 years of qualifying service or attaining 50 years of age or on any date thereafter to be specified in the notice. The period of notice has to be three months or in lieu thereof salary of three months. As per rule 6, the previous rules on the subject were repealed and as per rule 5 the provisions of these rules would have effect notwithstanding anything inconsistent contained in any other rules for the time being in force. Under rule 3(2) of the Rules, an option is also given to a Government employee to voluntarily retire from service by giving notice of three months on completion of 25 years qualifying service. The order of retirement under these rules does not affect the pensionary benefits and in that sense such an order passed under rule 3 is not to be treated as an order of punishment ordinarily.

(4) On behalf of the appellant, reference has been made to the instructions issued by the Punjab and Haryana High Court,—*vide* letter dated September 20, 1979 giving guidance for the premature retirement of Judicial Officers and employees subject to the control of the High Court. In nutshell, the guidelines provide for consideration of cases for determining suitability for retention in service four months before the due date i.e., completion of 25 years qualifying service or attaining the age of 55 years. Further, for considering suitability the entire service record with particular reference to such record pertaining to preceding five years is to be considered. Adverse remarks prior to the previous promotion were not to be considered. A person getting B plus (Good) grading be allowed to continue in service. It is further provided that once a decision is taken to retain a member of the staff beyond the specified period, ordinarily the employee would be allowed to continue in service till

next review unless some adverse reports concerning his integrity, effectiveness, competency or otherwise rendering his retention in service not to be in public interest comes to the notice. The contention of learned counsel for the appellant is that since admittedly the service record of the appellant was good throughout, he was entitled to be retained in service. The adverse entry recorded in the last year of his service was in fact recorded after the order of retirement and was of no consequence. After giving due consideration to this aspect, I find that contention of counsel for the appellant cannot be accepted. Present is not a case of consideration of the service record for purposes of determining suitability of the appellant for retention in service beyond the due date. In spite of the instructions, referred to above, it was within the competence of the competent authority to compulsorily retire an employee of the Court subordinate to the High Court if it was considered in the public interest. Present is a case which falls in the latter category. The said power under sub-rule (3) of the Rules is only channelised by the instructions and is not abridged. If the competent authority considers that it will not be in the interest of the public to retain an employee beyond the due date i.e. after completion of 25 years of qualifying service without assigning any reasons, such an order could be passed and it was so passed in the present case. Learned counsel for the appellant has referred to certain judicial decisions where order of retirement was passed on review of the annual confidential reports and the criteria or the guidelines given by the State were not adhered to and the appropriate relief was granted by the Court holding the order of compulsory retirement as illegal. I may briefly notice those cases. In *Hira Nand v. State of Himachal Pradesh*, (1), the employee was allowed to cross the efficiency bar and adverse entries which were earlier recorded, it was held, could not be used against the delinquent officer subsequently. In *S. S. Malhotra v. State of Himachal Pradesh*, (2), a few months before the order of retirement was passed, the employee was allowed to cross the efficiency bar and there was nothing coming on the record against him thereafter which could be considered as adverse for compulsorily retiring him. The order was held to be unjust and arbitrary and was set aside.

(1) 1981(2) S.L.R. 627.

(2) 1988(3) S.L.J. (CAT) 619.

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(5) Coming to the annual confidential report for the year 1976, the following remarks were recorded:—

“No opinion regarding his reputation for honesty is being expressed as an enquiry against him is being conducted by the Vigilance Department.”

(6) The aforesaid remarks, as is clear, were recorded after retirement of the appellant. Such remarks cannot be treated as adverse as no opinion is expressed regarding reputation for honesty. Recording of remarks and completing the service record is entirely different from taking action on such remarks. Only a fact was noticed in the annual confidential report, that matter was under investigation with the Vigilance Department. No further details are given therein. May be at the time when order of compulsory retirement was passed, the competent authority had come to know that some matter was under investigation with the Vigilance Department and in his wisdom decided to compulsorily retire the appellant on the due date. There is no evidence which can be relied upon that the competent authority (District and Sessions Judge) was acting vindictively against the appellant. The only material brought on the record is regarding an incident which took place between the District and Sessions Judge and a Class-IV employee. On that incident, one resolution is alleged to have been passed by the Employees Union of which the appellant was the President and copy of the same was sent to the District and Sessions Judge. The incident referred to above, had taken place much prior to the order of retirement of the appellant and there is no material to link it with the order of retirement. Otherwise, there was no direct illwill or vindictiveness of the District and Sessions Judge against the appellant. No incident had taken place involving the appellant with the District and Sessions Judge. The contention of learned counsel for the appellant that the District and Sessions Judge ought to have obtained report of the Vigilance Department or waited till such report is received in order to take action against the appellant under rule 3 of the Rules, referred to above. This contention cannot be accepted. The order passed by the District and Sessions Judge does not indicate that it was on account of any inquiry being conducted against the appellant by the Vigilance Department that the action was taken; rather, in the absence of any material, it cannot be held that the basis for passing an order of retirement was the said inquiry. Thus, it is in substance a simple case of retiring an

employee on the ground that it was so considered in the interest of public, as provided under rule 3 of the Rules, referred to above.

(7) The judgment of the Kerala High Court in *President of India v. Kunjappan* (3) is not applicable to the case in hand. In that case, departmental inquiry was initiated against the employee for taking action under Article 311(2) of the Constitution. The said inquiry was dispensed with and the employee was dismissed. It was held that without holding a fulfilled inquiry, the employee could not be dismissed. At this stage, it may be stated that the order of retirement cannot be equated to an order of dismissal or removal from service. Such orders are punitive in nature and no action can be taken against an employee without holding a departmental inquiry. The present is not a case of compulsory retiring the appellant on account of doubtfulness of his honesty and the rule of law as laid down in *Shri O. P. Kapoor v. State of Punjab & another* (4), or in *Dr. Ghanshayam Sharma v. State of Haryana* (5), or in *Chint Ram v. State of Punjab & others* (6), in *Karnail Singh v. The State of Haryana and others* (7), cannot be applied to the facts of the case in hand. These decisions are on their own facts. In *Dr. Ghanshayam Sharma's case* (supra), the report of the Vigilance Department was held not part of the service record and could not be taken into account while deciding the petitioner's case for premature retirement. In *Chint Ram's case* (supra), it was held that the order was passed on extraneous reasons. In *Karnail Singh's case* (supra), the order was not passed by the competent authority and some adverse reports were taken into consideration without deciding the representation pending against the same. Rather, a Division Bench of this Court (M. R. Agnihotri and N. C. Jain, JJ.), in C.W.P. 12640 of 1989 (*V. K. Jain v. The State of Punjab*) decided on October 3, 1989, held that if enquiries against an employee for embezzlement of Government funds were pending, the mere fact that Annual Confidential Reports were good, the Government was competent to compulsorily retire an employee, of about 52 years of age, in public interest. There being no *mala fide* against the State Government, such an order will not amount to punishment and Article 311(2) of the Constitution will not be attracted.

(3) 1985 (1) S.L.R. 494.

(4) 1981(1) S.L.R. 577.

(5) CWP 155 of 1987, decided on 11th September, 1987.

(6) CWP. No. 10375 of 1988, decided on 21st March, 1989.

(7) CWP. 3237 of 1984, decided on 7th March, 1989.

M/s. Driplex Water Engineering Limited v. Punjab State Electricity Board and another (J. S. Sekhon, J.)

(8) It has been argued on behalf of the appellant that initially the petitioner was appointed by the Chief Justice of the Erstwhile State of PEPSU and the District and Sessions Judge was not competent to compulsorily retire him as he was not the appointing authority. This contention cannot be accepted. It is the appropriate authority as defined under rule 2 of the Rules which is competent to take action. Rule 2(1) reads as under:—

“appropriate authority” means the authority which has the power to make substantive appointments to the post or service from which the Government employee is required or wants to retire or any other authority to which it is subordinate.”

At the time of retirement, the appellant was working as a Record-Keeper in the Sessions Division. It is the District and Sessions Judge who has the authority to appoint ministerial staff of the District Court. It may be that initially the appellant might have been appointed by the Chief Justice but the relevant time for considering as to who is the appropriate authority is the time of retirement from the post then held i.e. the post of Record-Keeper in a Sessions Division. It was the District and Sessions Judge who could substantively appoint a person to the post of Record-Keeper and he was thus the appropriate authority to pass an order of his retirement.

(9) Finding no merit in the appeal, the same is dismissed with no order as to costs.

S.C.K.

Before : Gokal Chand Mital & Jai Singh Sekhon, JJ.

M/S. DRIPLEX WATER ENGINEERING LIMITED,—Petitioner.

versus

**PUNJAB STATE ELECTRICITY BOARD AND ANOTHER,
—Respondents.**

Civil Writ Petition No. 12252 of 1989.

7th May, 1990.

Constitution of India, 1950—Art. 14—Awarding of contract—Tender for water treatment plant—Acceptance of tender—Challenge