

State of Punjab and Others

Vs

Manohar Lal

Civil Appeal No. 2416 of 1981

(B. C. Ray, V. Khalid, R. S. Pathak JJ)

10.12.1986

JUDGMENT

B. C. RAY, J. -

1. This appeal by special leave is against the judgment and decree passed in Regular S. A. No. 2868 of 1980 by High Court of Punjab & Haryana whereby the appeal was dismissed.

2. The respondent, Manohar Lal who was at the relevant time working as Sub-Inspector in the Police Line, Gurdaspur was compulsorily retired by Order No. 9754-B dated September 24, 1975 issued by Shri M. M. Batra, Senior Superintendent of Police, Gurdaspur, in public interest. The said order of compulsory retirement has been challenged by the respondent by filing a suit being case No. 86 of 1977 praying for a declaration that the aforesaid order of compulsory retirement is illegal, mala fide, unconstitutional, against the rules of natural justice and the plaintiff-respondent shall be deemed to be in service of the Punjab State to the post of Sub-Inspector till his retirement at the age of 58 years i. e. on February 13, 1981. There is also a prayer for a direction to the defendant-appellant for payment of the balance of the salary for the period from September 5, 1974 to September 23, 1975 i. e. the suspension period after deducting therefrom the subsistence allowance paid by the defendant and also the increment that has accrued to him under the rules from time to time during that period. This amount was stated to be Rs. 3446 for the said period. The said suit was heard by the Subordinate Judge, Gurdaspur who by his order dated January 27, 1979 held that the impugned order was not passed at the instance of Sardar Harjit Singh Ahluwalia, Deputy Inspector General of Police nor the same was vitiated by malice or any mala fides. It was further held that the order was made innocuously by the Senior Superintendent of Police in public interest in accordance with the provision of Punjab Civil Services (Premature Retirement) Rules, 1975. The Subordinate Judge also held that so far as the pay for the period of suspension is concerned the plaintiff was entitled to have recovery or Rs. 3446 as arrears of pay during the suspension period. The suit was accordingly decreed in part. Against the said judgment and decree two appeals were filed, one by the plaintiff-respondent Manohar Lal being C. A. No. 169/308 of 1979 and another by the State of Punjab registered as C. A. No. 170 of 1979 and 12 of 1980. Both these appeals were heard together and were disposed of by a common judgment by the Additional Sessions Judge, Gurdaspur. Decreeing the Civil Appeal No. 169/308 of 1979 it was held that the order of compulsory retirement was made by an officer namely Senior Superintendent of Police, Gurdaspur who was below the rank of Inspector General of Police who is the appointing authority of the petitioner. It was also held that the judgment and decree as regards the payment of the balance of emoluments during the period of suspension after the reinstatement of the petitioner, was legal and valid and the said decree was affirmed and the appeal was allowed decreeing the suit. In that view of the matter the appeal filed by the State was dismissed. Against the said judgment and decree the State of Punjab preferred the

instant appeal being R. S. A. No. 2868 of 1980 before the High Court of Punjab and Haryana. The High Court dismissed the said appeal and affirmed the judgment and decree of the lower appellate court. Against this judgment and decree the present appeal was filed before this Court with an application for special leave under Article 136 of the Constitution.

3. The only question that arises for consideration in this appeal is whether the order of compulsory retirement made by the Senior Superintendent of Police, Gurdaspur is illegal and invalid being passed by an authority lower in rank than the appointing authority which according to the respondent is the Deputy Inspector General of Police. It appears that the Government of Punjab framed rules under proviso to Article 309 of the Constitution and these rules are termed as the Punjab Civil Services (Premature Retirement) Rules, 1975. In Rule 2 (i) the "Appointing Authority" has been defined as meaning the authority which has 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.

4. Rule 3 reads as follows :

3 (1) (a) The appropriate authority shall, if it is of the opinion it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

(b) The period of such notice shall not be less than three months : Provided that where at least three months' notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to amount of his pay and allowances, at the same rates at which he was drawing them immediately before the date of retirement for a period of three months or, as the case may be, for the period by which such notice falls short of three months.

5. The relevant excerpt of Rule 12.1 is quoted hereinbelow :

The following table summarises the directions given by the Provincial Government under clause (b) of sub-section (1) of Section 241 of the Government of India Act, 1935, in regard to the authorities competent to make appointments to the non-gazetted ranks.

#-----	1	2	3-----
-----	Class of Government	Deputy Inspector-General	Full
-----	subjectservants of police,	Assistant to rules governing	Inspector-General, the
-----	conditions of Government	Railway Police, as defined	Assistant Inspector- in
-----	General, Provincial	Additional Police, (designed	as Commandant, Provincial
-----	Additional Police), and the	Assistant Inspector-General	Police (Traffic). Sergeants,
-----	Sub- Superintendents of	Police, Inspectors and	Commandants of P. A. P.
-----	Assistant sub- vide C. S. No.	155 dated Inspectors. June	2, 1964 and Deputy
-----	Superintendent (Administrative)	Government Railway	Police and Assistant
-----	Superintendent	Government Railway	Police.-----
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Rule 13.3 (2) also provides that substantive promotions to the rank of Sub-Inspector and Assistant Sub-Inspector shall be made by the Superintendent of Police and the Assistant Superintendent, Government Railway Force.

6. On considering the provisions of the aforesaid rules it is quite clear and apparent that the Senior Superintendent of Police, Gurdaspur being the competent authority to make the appointment to the non-gazetted ranks of Sub-Inspectors, is also legally competent to pass the order of compulsory retirement of the plaintiff-respondent in public interest in accordance with the provisions of Rule 3 (1) (a) and (b) of the said rules. It has been tried to be contended by referring to the provisions of Rule of 13.9, sub-rule (2) by the respondent wherein it has been provided that substantive promotion to the rank of Assistant Sub-Inspector is to be made by the Deputy Inspector General of Police in accordance with the principles prescribed in Rule 13.1 that the Superintendent of Police is not the competent authority to make the impugned order. It is only the Deputy Inspector General of Police who is competent to make the order of compulsory retirement in question. This argument cannot be sustained in view of the specific provisions made in Rule 12.1 wherein it has been provided that the Superintendent of Police is competent to make the appointment to the non-gazetted ranks of Sub-Inspectors of Police and Assistant Sub-Inspector of Police. On a reading of both these provisions of the Rules 12.1 and 13.9 (2) it is clear and apparent that the Senior Superintendent of Police, Gurdaspur is legally competent to make the impugned order of compulsory retirement of the plaintiff-respondent from service in public interest after his attaining 50 years of age in accordance with the provisions of Rules 3 (1) (a) of the Punjab Civil Services (Premature Retirement) Rules, 1975.

7. In view of the reasons stated hereinbefore we do not find any merit in the contention made on behalf of the respondent and therefore we allow the appeal and set aside the judgment and order of the High Court in part insofar as it affirms the judgment and decree of the lower appellate court, setting aside the order of compulsory retirement. The judgment and decree of the trial court is hereby affirmed and the decree of the lower appellate court as regards the payment of Rs. 3446 being the balance of pay after deducting the subsistence allowance during the period of suspension of the respondent from September 5, 1974 to September 23, 1975 is hereby affirmed. There will however, be no order as to costs.

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