

Haryana State Electricity Board

Vs

K.C. Gambhir

Civil Appeal No. 2986 of 1997

(S. C. Agarwal, G. T. Nanavati JJ)

24.04.1997

JUDGMENT

NANAVATI, J. –

1. Leave granted.
2. Heard learned counsel for both the sides.
3. This appeal is directed against the judgment and order dated 22-8-1996 passed by the High Court of Punjab and Haryana in CWP No. 6073 of 1996.
4. The respondent was an employee of the Haryana State Electricity Board. He was retired from service on 3-2-1994, about 9 months before the date of superannuation. He challenged that action of the appellant Board by filing a writ petition in the Punjab and Haryana High Court. It was the case of the respondent that he was promoted as Executive Engineer on 19-2-1997. When he attained the age of 50 years his case was considered for retirement/retention in service. It was decided on 30-11-1986 to continue him in service. Again his case was considered when he attained the age of 55 years and it was decided on 30-11-1991 to continue him in service. His service record was good, as on the basis of overall assessment for the last 10 years, the percentage of good reports was 77%. It was, therefore, not proper for the appellant to retire him before he attained the age of 58 years. He had challenged the said action as arbitrary and illegal.
5. It was disputed on behalf of the appellant before the High Court that service record of the respondent was good. It was pointed out that by an order dated 4-8-1993 he was punished by stopping his two increments and a recovery of Rs. 14,960.50 was ordered. He was again punished by an order dated 26-10-1995 and Rs. 7197 was ordered to be recovered.
6. The High Court after perusing the Confidential Reports for the years 1983-84 and onwards found that they did not justify the respondent's compulsory retirement just 9 months before the date of superannuation. The High Court was of the view that the two punishments, imposed on him were not for serious acts of misconduct. It took note of the fact that no act of misconduct was alleged against him after he was granted extension at the age of 55 years. It, therefore, allowed the petition, set aside the impugned order of retirement and held that he was entitled to continue in service with all benefits till the actual date of superannuation.
7. The contention of Mr. Malhotra, learned counsel for the appellant, is that the High Court failed to appreciate that the order, compulsorily retiring the respondent, was passed by the appellant on the

basis of his service record. He also submitted that the appellant did not retire him earlier when his case was taken up for consideration on attaining the age of 50 and 55 years because of pendency of his representation and a departmental enquiry. Soon after the enquiry was over the impugned order was passed. The learned counsel for the respondent, on the other hand, raised the same contentions which were raised before the High Court.

8. The record of the case discloses that in the Confidential Report for the year 1985-86 an adverse remark was made that his integrity was doubtful. At the time when he attained the age of 50 years, his case was taken up for consideration for his retention or retirement but it was not thought proper to retire him then as his representation against the adverse remark was still not decided. His case was again taken up for consideration when he attained the age of 55 years. At that time also the appellant did not think it fit to compulsorily retire the respondent as departmental proceedings were pending against him for a serious act of misconduct. That enquiry was over on 4-8-1993. Thereafter three months' notice was given to him and he was retired w.e.f. 3-2-1994. Though the appellant could have taken the action of compulsorily retiring the respondent earlier, it acted very fairly and allowed him to remain in service till his representation against the adverse remark was considered on the first occasion and subsequently, till the departmental enquiry was completed. No grievance can legitimately be made by the respondent for not taking the impugned action earlier as he had not suffered adversely as a result of the delay. The respondent's integrity was found doubtful and in the departmental enquiry regarding shortage of material he was found guilty. One more act of financial irregularity by the respondent was noticed. If under these circumstances the appellant thought it fit to compulsorily retire him even though only nine months were remaining for his superannuation, it cannot be said that the said action was arbitrary and unjustified. All these aspects were overlooked by the High Court and, therefore, the judgment and order passed by the High Court deserve to be set aside.

9. We, therefore, allow this appeal, set aside the judgment and order passed by the High Court and dismiss the writ petition filed by the respondent. However, in the facts and circumstances of the case there shall be no order as to costs.