

State of Punjab

Vs

Gurdas Singh

(Sujata V. Manohar, S. P. Kurdukar, D. P. Wadhwa JJ)

31.03.1998

JUDGMENT

WADHWA J

1. These are two cross appeals, both against two separate judgments of Punjab and Haryana High Court arising out of a judgment of the Additional District Judge, Gurdaspur passed in appeal filed by the State of Punjab and also by Gurdas Singh. The judgment of the High Court in the appeal of the State of Punjab is dated January 25, 1991 and that in the appeal of Gurdas Singh, it is dated March 3, 1991. Both the appeals were dismissed by the High Courts in limine.

2. Gurdas Singh, respondent in Civil Appeal No. 2978 of 1991 was recruited as Constable in 1961 in the Punjab Police. In 1976 he was promoted as Sub-Inspector and in 1984 as Sub-Inspector. By order dated September 3, 1987 of the Senior Superintendent of Police, passed in pursuance to Rule 3(1) (b) of the Punjab Civil Services (Premature Retirement) Rules, 1975, he was prematurely retired from the service. At that time he was holding substantive rank of Sub-Inspector of police and had completed 25 years of qualifying service as on February 3, 1986. This order read as under :-

"Office of the Senior Superintendent of Police, Guradaspur ORDER Whereas you, Shri Gurdas Singh, Sub-Inspector of Police No. 1151/Jull of this district, have completed 25 years qualifying service on 3.2.1986.

2. And whereas on consideration of your record I am of the opinion that it is in public interest to retire you from service prematurely.

3. Now, therefore, in pursuance of Rule 3(1) (b) of the Punjab Civil Services (Premature Retirement) Rules, 1975 it is ordered that you will retire from service with effect from 3rd September, 1987 afternoon.

4. You are further informed that you will be entitled to claim a sum equivalent to the amount of your pay and allowances at the same rates on which you are drawing immediately before the date of retirement in lieu of three months notice period.

Sd/-

Sr. Superintendent of Police

Gurdaspur 3.9.87"

3. Gurdas Singh filed appeal under the relevant service rules against the order prematurely retiring him from service but the same was rejected by the Deputy Inspector General of Police, Jalandhar Range, Jalandhar Cantt. by order dated November 18, 1987. The relevant portion of the order in appeal reads as under:- :-

"2. I have considered his representation alongwith the premature retirement papers and also examined his service record. The representationist came to be adversely commented upon in his ACRs for the period from 1.4.78 to 30.9.78, 1.4.79 to 30.9.79, 18.6.84 to 30.9.84 and 18.6.84 to 31.3.85 by different Reporting Officer for being dishonest and of shady character. I have examined the pleas put forth by the representationist, which are not convincing and are vague. I am satisfied that he was rightly retired prematurely. In view of the above discussion, I hereby reject his representation."

4. Thereafter Gurdas Singh filed a civil suit on February 25, 1988 challenging his premature retirement from the service and for quashing the order dated September 3, 1987 and that dated November 18, 1987 being illegal and void. The suit was decreed in favor of Gurdas Singh by judgment dated June 14, 1989 of the Subordinate Judge, Ist Class, Gurdaspur. The State of Punjab appealed against that Judgment and decree. By judgment dated August 10, 1990 Additional District Judge, Gurdaspur, dismissed the appeal. He, however, held that Gurdas Singh, plaintiff, had succeeded on ultra-technical point on the failure of the defendants to produce proof of their having conveyed to him two adverse entries. It was, therefore, directed that Gurdas Singh would not get any arrears of pay w.e.f. September 3, 1987 to June 14, 1989 when his suit was decreed by the trial court. Both the State of Punjab and Gurdas Singh filed appeals in the High Court. While the appeal of the State of Punjab was dismissed by the impugned judgment dated January 25, 1991, that filed by Gurdas Singh was dismissed by a judgment dated March 6, 1991. State of Punjab is aggrieved that the order prematurely retiring Gurdas Singh has been upset Gurdas Singh is aggrieved that he has been denied salary for a certain period.

5. The grounds on which the order prematurely retiring Gurdas Singh was set aside was that his record of service prior to his promotion to the rank of Sub-Inspector that is earlier to the year 1984 could not have been taken into account and that two adverse entries in his confidential dossier record recorded after 1984 were not communicated to him and those could not form basis for his premature retirement. When leave in the Special leave Petition filed by the State of Punjab was granted on July 19, 1991, this Court recorded as under :-

"The learned counsel for the petitioners strongly relies on the decision in Union of India Vs. M.E. Reddy: 1980(1) SCR 736, while Mr. Ujagar Singh refers to a later decision in Brij Mohan Chopra Vs. State of Punjab : 1987(2) SCR 583. Special Leave is granted. Let the appeal be placed for hearing before a larger bench. During the pendency of the appeal, operation of the impugned order shall remain stayed." Provided that no employee under suspensions shall retire from service except with the specific approval of the appropriate authority.

4. Retiring Pensions and gratuity - A retiring person and death-cum-retirement gratuity shall be granted to Government employee who retires or is required to retire under rule 3.

5. Overriding effect - The provisions of these rules shall have effect notwithstanding

any thing inconsistent therewith contained in any other rules for the time being in force."

6. Rule 3 of Punjab Civil Service (Premature Retirement) Rules, 1975 under which action was taken against Gurdas Singh and Rules 4 and 5 are as under:-

"3. Premature Retirement - (1) (a) The appropriate authority shall, if it is of the opinion that 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 employees shall be entitled to claim a sum equivalent to the 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.

(2) Any Government employee may, after giving at least three months previous notice in writing to the appropriate authority retire from service 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:

Provided that no employee under suspension shall retire from service except with the specific approval of the appropriate authority.

4. Retiring Pension and gratuity - A retiring person and death-cum-retirement gratuity shall be granted to a Government employee who retires or is required to retire under rule 3.

5. Overriding effect - The provisions of these rules shall have effect notwithstanding any thing inconsistent therewith contained in any other rules for the time being in force."

7. It will be thus see that these Rules give absolute right to retire any Government employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or as on any date thereafter to be specified in the notice by giving that employee prior notice of three months in writing. This right has to be exercised if in the opinion of the appropriate authority it is in public interest to retire any employee under the Rules.

8. Mr. Sodhi, learned counsel for the State of Punjab, Submitted that primary anxiety of the Government is, in the interest of administrative efficiency, to ensure that dead wood or more precisely the inefficient and the corrupt element should be weeded out from the service and it was with that end in view that Punjab Civil Service (Premature Retirement) Rules, 1975 have been notified on July 28, 1975. He said action to retire Gurdas Singh in the present case has been taken judiciously in order that public interest is really served by prematurely retiring him. Whole of his record of service has been taken into consideration. Both the appropriate authority retiring him and

the appellate authority have applied their mind in proper perspective. He said that the issue whether two adverse entries after promotion of Gurdas Singh were communicated to him or not is not very material in view of the law laid down by this Court. Mr. Ujagar Singh, learned counsel appearing for Gurdas Singh, submitted that it was incumbent on the authorities concerned to communicate to Gurdas Singh any adverse entry in his record of service as required by Rule 13.17 of the Punjab Service Rules. Chapter XIII of the Punjab Service Rules deals with promotion. In the present case we are not concerned with rules relating to promotion or communication of adverse entries in the confidential records of the police officer. Rule 5 of the Punjab Civil Services (Premature Retirement) Rules, 1975 has overriding effect. We have only to see if action have been taken against Gurdas Singh in accordance with Rule 3 of these Rules.

9. In Union of India Vs. M.E. Reddy and Anr. (1980 (1) SCR 736), respondent was compulsorily retired from service by an order made under Rule 16(3) of the All India Service (Death -Cum-Retirement) Rules, 1958. This Rule reads as under :-

"16 (3) The Central Government in consultation with the State Government, may require a member of the Service who has completed 30 years of qualifying service or who has attained the age of 55 years to retire in the public interest provided that at least three months previous notice in writing will be given to the member concerned." The Court noted that the Rule gave an absolute right to the Government of India and not merely the discretion and, therefore, impliedly it excludes the rules of natural justice. The Court then observed as under :-

"It is now well settled by a long catena of authorities of this Court that compulsory retirement after the employee has put in a sufficient number of years of service having qualified for full pension is neither a punishment nor a stigma so as to attract the provisions of Art. 311 (2) of the Constitution. In fact, after an employee has served for 25 to 30 years and is retired on full pensionary benefits, it cannot be said that he suffers any real prejudice. The object of the Rule is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Service. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement of an officer who fulfills the conditions of Rule 16(3) is undoubtedly in public interest and is not passed by way of punishment. Similarly, there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for being compulsorily retired in public interest, since they have almost reached the fag end of their career and their retirement would not cast any aspersion nor does it entail any civil consequences. Of course, it may be said that if such officers were allowed to continue they would have drawn their salary until the usual date of retirement. But this is not an absolute right which can be claimed by an officer who has put in 30 years of service or has attained the age of 50 years. Thus, carried by most of the employees that compulsory retirement under these compulsory retirement under these conditions involves some sort of stigma must be completely removed because rule 16(3) does nothing of the sort."

10. This Court also considered the arguments of respondent that the order was based on material which was non-existent inasmuch as there were no adverse remarks against him and if there were

any such remarks in his confidential reports it should have been communicated to him under the Rules. The Court said :-

This argument, in our opinion, appears to be based on a serious misconception. In the first place under the various rules on the subject it is not every adverse entry remarks that has to be communicated to the officer concerned. The superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous, or may be connected with general reputation of honesty or integrity that a particular officer enjoys. It will indeed be difficult if not impossible to prove by positive evidence that a particular officer is dishonest but those who has had the opportunity to watch the performance of the said officer from close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys. The High Court has also laid great stress on the fact that as adverse entries had not been communicated to Reddy, therefore, the order impugned is illegal. We find ourselves unable to agree with the view taken by the High Court".

11. In *Brij Mohan Singh Chopra Vs. State of Punjab* (1987 (2) SCR 583), this Court adopted a somewhat different approach. The judgment in the case of *M.E. Reddy* was not noticed. In this case the Court held that it would be unjust and contrary to the principles of natural justice to retire prematurely a Government employee on the basis of adverse entries which were either not communicated to him or if communicated, representation made against those entire were not considered and disposed of. This judgment given by Two Judges Bench has been expressly overruled by a Three Judges Bench judgment of this Court in *Baikuntha Nath Das and Anr. Vs. Chief District Medical Officer, Baripada and Anr.* (1992 (2) SCC 299). The question for consideration before this Court in this latter case was whether it was permission to the Government to order compulsory retirement of a Government servant on the basis of materials which included uncommunicative adverse remarks. This Court considered various judgment on the issue and laid the following principles :-

"34. The following principles emerge from the above discussions :

- (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior.
- (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.
- (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
- (iv) The Government (or the Review Committee, as the case may be)

shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favorable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicative adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above." Same view was again affirmed in another Three Judge Bench Judgment of this Court in Posts and Telegrapher Board and Anr. Vs. C.S.N. Murthy (1992 (2) SCC 317).

12. In *Union of India Vs. V.P. Seth* (AIR 1994 SC 1261), a decision to retire respondent was taken on his completing fifty years of age and after pursuing his record of service. He challenged this order under Section 19 of the Administrative Tribunals Act, 1985 before the Central Administrative Tribunal, Jabalpur Bench. The Tribunal set aside the order of premature retirement on the sole ground that certain adverse remarks made in the Confidential Report of the respondent had not been conveyed to him and yet they were taken into consideration in passing the impugned order. The stand of the Union of India was that the entire record of service of the respondent had been taken into consideration and it was realized that his integrity was suspect and, therefore, decision was taken to compulsorily retire him from service. This Court noticed that it would be clear that on overall assessment of the officer his integrity was found to be suspect and, therefore, it was decided to exercise the power of compulsory retirement. The Tribunal, however, came to the conclusion that as the adverse remarks of 1985-86 and 1986-87 had not been communicated and as the earlier adverse remarks in connection with the integrity of the respondent stood eclipsed by his subsequent promotions, the authorities were not justified in terminating the services by way of compulsory retirement. Relying on two decisions of this Court in *Baikund Nath Das* and *C.S.N. Murthy* this Court observed that the position of law has been settled and the order of the tribunal could not be sustained as the same runs counter to the principles laid down in the said two decisions.

13. The fact in the present case are quite similar to that in *Union of India Vs. V.P. Seth*. Here also the only ground on which the order prematurely retiring Gurdas Singh was set aside was that two adverse entries after his promotion from the rank of Asstt. Sub-Inspector to Sub-Inspector were not communicated to him and earlier adverse entries could not be taken into account because even when those existed Gurdas Singh had earned his promotion. It is not necessary for us to again reiterate the principles where the Court will interfere in the order of premature retirement of an employee as these have been accurately set down by various pronouncements of this Court and particularly in *Baikuntha Nath Das* case. Before the decision to retire a Government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicative adverse entries as well.

14. We are, therefore, of the view that the suit filed by Gurdas Singh had no merit and the issue

whether order dated September 3, 1987 of his premature retirement and that dated November 18, 1987 dismissing the appeals an illegal and void was wrongly decided in his favor. We, therefore, allow the appeal filed by the State of Punjab and dismiss the suit filed by Gurdas Singh. In consequence appeal filed by Gurdas Singh is also dismissed. There shall be no order as to costs.